[Cite as *Hillman v. Edwards*, 2011-Ohio-2677.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Robert L. Hillman,	:	
Plaintiff-Appellant,	:	
		No. 10AP-950
v.	:	(C.P.C. No. 09CVA-09-13707)
William Joseph Edwards,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 2, 2011

Robert L. Hillman, pro se.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Plaintiff-appellant, Robert L. Hillman ("Hillman"), appeals the judgment of the Franklin County Court of Common Pleas, which granted summary judgment in favor of defendant-appellee, William Joseph Edwards ("Edwards"), and denied various motions filed by Hillman, including motions for summary judgment, for default judgment, and to hold Edwards in contempt. We affirm.

{¶2} Hillman, an inmate in the custody of the Ohio Department of Rehabilitation and Corrections, first filed actions against Edwards in September and December 2007.

Those actions both generally alleged legal malpractice, misrepresentation, breach of contract, gross negligence, and deliberate indifference to Hillman's civil rights, arising out of Edwards' court-appointed representation of Hillman in an appeal from a burglary conviction. See *Hillman v. Edwards*, Franklin C.P. Nos. 07CVH9-12491 and 07CVH12-17248. Those cases were consolidated before Judge Beverly Y. Pfeiffer of the Franklin County Court of Common Pleas, who entered summary judgment in Edwards' favor. Hillman appealed that judgment to this court. See *Hillman v. Edwards*, 10th Dist. No. 08AP-1063, 2009-Ohio-5087 ("*Hillman I*").

{¶3} On September 11, 2009, while awaiting this court's decision on his appeal, Hillman filed this third action against Edwards; this third action was assigned to Judge Michael J. Holbrook. As in his earlier actions, Hillman's claims primarily arose out of Edwards' appellate representation of Hillman. Hillman alleged that Edwards breached an implied contract, fraudulently misrepresented facts to this court in Hillman's criminal appeal, and acted with deliberate indifference to Hillman's civil and constitutional rights. He also generally alleged that Edwards violated various criminal statutes and codes of professional responsibility. Finally, Hillman alleged that Edwards' motion for summary judgment and supporting affidavit in the prior consolidated actions were "fraudulent" because Edwards wrongly suggested support from Hillman's criminal trial counsel.

{¶4} On September 17, 2009, this court reversed the trial court's judgment in Hillman's consolidated cases and remanded them to the trial court. Although "the evidence support[ed] the trial court's decision to grant summary judgment to [Edwards] on [Hillman's] substantive claim of legal malpractice," procedural error required reversal. *Hillman I* at ¶1. Specifically, we held that the trial court abused its discretion in allowing

Edwards to file an untimely answer, after Hillman moved for default judgment, where Edwards neither filed a motion for leave to answer out of rule nor submitted evidence of excusable neglect. This court instructed as follows:

> On remand[,] the trial court may permit [Edwards] to submit a motion for leave to file an answer instanter, with an attached answer. If the trial court finds [Edwards'] motion demonstrates excusable neglect under the standard of Civ.R. 6, then the affirmed summary judgment ruling should be reinstated. If the trial court finds [Edwards] is unable to demonstrate excusable neglect to support his motion for leave to file his answer instanter, then default judgment should be entered for [Hillman].

Id. at ¶36.

{¶5} Meanwhile, Edwards filed a timely answer to Hillman's third complaint, along with a motion to consolidate it with the remanded cases before Judge Pfeiffer. On November 2, 2009, Judge Pfeiffer granted Edwards leave to file an answer out of rule in the remanded cases and, as directed by this court, reinstated final judgment in Edwards' favor.[1] Judge Holbrook subsequently denied Edwards' motion to consolidate because the cases before Judge Pfeiffer were no longer pending.

{¶6} During the pendency of his case before Judge Holbrook, Hillman filed a plethora of motions, including the following: a motion to compel Edwards to identify his insurance carrier; a motion for summary judgment; a motion for default judgment against Edwards' insurer;[2] a motion for contempt; a motion for a hearing on his motion for default judgment; a second (or amended) motion for summary judgment; a motion

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[1] This court affirmed the trial court's judgment granting Edwards' motion for leave to answer and reentering summary judgment in favor of Edwards on July 29, 2010. See *Hillman v. Edwards*, 10th Dist. No. 10AP-58, 2010-Ohio-3524.

[2] Contrary to Hillman's assertions, the sole defendant in this action is, and has always been, Edwards.

for judgment on the pleadings; a motion to proceed to judgment; and a motion for immediate ruling. Edwards filed a motion for summary judgment, into which he incorporated this court's decision in *Hillman I* and Judge Pfeiffer's decisions granting him summary judgment in the consolidated cases. As relevant here, Edwards argued that Hillman's claims are barred by the doctrine of res judicata and/or collateral estoppel as a result of the prior final judgment in Edwards' favor.

{¶7} On September 9, 2010, the trial court granted Edwards' motion for summary judgment and denied Hillman's pending motions. The court noted that the gravamen of Hillman's complaint remains a legal malpractice action against his former counsel and determined that Hillman's claims are barred by the doctrine of res judicata.

{¶8} Hillman, proceeding pro se, filed a timely notice of appeal and now raises the following assignments of error:

> [I.] [HILLMAN] CONTENDS THAT THE TRIAL COURT VIOLATED HIS STATUTORY, AND CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF LAW UNDER THE 1ST AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTIONS [SIC] WHEN (1) THE TRIAL COURT DID NOT HOLD ANY TYPE OF HEARING OR INVESTIGATION ON [HILLMAN'S] CONTEMPT CHARGES AGAINST [EDWARDS], WHICH ALSO VIOLATED [SECTION 16, ARTICLE I, OHIO CONSTITUTION,] AND WHEN (2) THE TRIAL COURT IN DENYING THE CONTEMPT SHOW CAUSE ORDER DEFIED THE LEGISLATURE'S INTENT AND CREATED A SEP[A]RATION OF POWER.
>
> [II.] [HILLMAN] CONTENDS THAT HE WAS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW UNDER THE 1ST, 5TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTIONS [SIC] WHEN THE TRIAL COURT ERRONEOUSLY RULED TO DISMISS [HILLMAN'S] COMPLAINT UNDER THE DOCTRINE OF RES JUDICATA, AND WHEN THE TRIAL COURT

> MISAPPLIED SAID DOCTRINE. SAID DEFENSE WAS WAIVED.
>
> [III.] [HILLMAN] CONTENDS THAT THE TRIAL COURT DENIED HIM DUE PROCESS AND EQUAL PROTECTION OF LAW UNDER THE 1ST, 5TH, AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTIONS [SIC] WHEN IT VIOLATED RULES OF CIVIL PROCEDURES, [SIC] AND [HILLMAN'S] RIGHTS TO DEFAULT JUDGMENT, AND RIGHTS TO A DEFAULT JUDGMENT HEARING WHEN (1) [EDWARDS'] INSURANCE COMPANY NEVER DEFENDED AGAINST THE COMPLAINT, (2) WHEN THE TRIAL COURT REFUSED TO GRANT DEFAULT JUDGMENT TO [HILLMAN] AS A DISCOVERY SANCTION PURSUANT TO CIVIL RULE 37 (B).
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> [IV.] [HILLMAN] CONTENDS THAT HE WAS DENIED DUE PROCESS AND EQUAL PROTECTION OF LAW UNDER THE 1ST, AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTIONS [SIC] WHEN THE TRIAL COURT GRANTED THE ET. AL DEFENDANT[S'] SUMMARY JUDGMENT PURSUANT TO CIVIL RULE 56 WITHOUT DEFENDANT'S HAVING NEVER [SIC] ANSWERED THE COMPLAINT, OR PRODUCING EVIDENCE TO CONTRADICT [HILLMAN'S] EVIDENCE AND ALLEGATIONS CONTAINED WITHIN THE ACTUAL COMPLAINT ITSELF.

{¶9} Because the trial court based its decision solely on the doctrine of res judicata, we begin with Hillman's second assignment of error, by which he argues that the trial court erred in applying that doctrine in this case. Although the second assignment of error states that the trial court erred in dismissing the complaint, the trial court did not dismiss this action, but instead granted summary judgment in favor of Edwards.

{¶10} We review a summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.*

(1993), 87 Ohio App.3d 704, 711. When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio App.3d 103, 107; *Brown* at 711. We must affirm the trial court's judgment if any grounds the movant raised in the trial court support it. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶11} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

{¶12} "Res judicata operates to preclude the relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction." *Reasoner v. Columbus*, 10th Dist. No. 04AP-800, 2005-Ohio-468, ¶5, citing *State ex rel. Kroger Co. v. Indus. Comm.*, 80 Ohio St.3d 649, 651, 1998-Ohio-174. The doctrine of res judicata provides that "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out

of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, syllabus. A party asserting res judicata must establish the following elements: "(1) there was a prior valid judgment on the merits; (2) the second action involved the same parties as the first action; (3) the present action raises claims that were or could have been litigated in the prior action; and (4) both actions arise out of the same transaction or occurrence." *Reasoner* at ¶5.

{¶13} Hillman argues that the claims in this action were not ruled upon in his earlier actions and are, therefore, not barred by res judicata. He further argues that Edwards waived the defense of res judicata by not raising it as an affirmative defense in his answer. We first address the issue of waiver.

{¶14} Res judicata is an affirmative defense. Civ.R. 8(C); *State ex rel. Freeman v. Morris* (1991), 62 Ohio St.3d 107, 109. Pursuant to Civ.R. 8(B), a defendant's answer "shall state in short and plain terms the party's defenses to each claim asserted." Additionally, "a party shall set forth affirmatively * * * res judicata * * * and any other matter constituting an avoidance or affirmative defense." Civ.R. 8(C). Because Civ.R. 12(B) does not list res judicata among the defenses that may be raised by a motion to dismiss, a defendant may not raise res judicata in a Civ.R. 12(B) motion. *Freeman* at 109. The necessity of relying on matters outside the pleadings to establish res judicata also precludes the use of a Civ.R. 12(B)(6) motion to dismiss for raising that defense. See *Musa v. Gillett Communications, Inc.* (1997), 119 Ohio App.3d 673, 680. The Supreme Court of Ohio has stated, "[a]ffirmative defenses other tha[n] those listed in Civ.R. 12(B) are waived if not raised in the pleadings or in an amendment to the pleadings." *Jim's Steak House, Inc. v. Cleveland*, 81 Ohio St.3d 18, 20, 1998-Ohio-440.

{¶15} The Supreme Court of Ohio has, at least twice, considered attempts to raise the defense of res judicata other than in an answer or amended pleading. In *Freeman*, the appellee, who did not file an answer to the appellant's mandamus complaint, filed an untimely motion to dismiss based on res judicata. The appellee supported his motion with court filings from previous actions brought by the appellant against the appellee. Based on those documents, the court of appeals found that the issues before it had been previously litigated and dismissed the action. The Supreme Court, in addition to holding that a party may not raise the defense of res judicata through a motion to dismiss under Civ.R. 12(B), noted that, by relying on matters outside the pleadings, the court of appeals treated the matter as if it were converting the appellee's motion to dismiss into a motion for summary judgment. The court expressly concurred with the Third District Court of Appeals that "the affirmative defense of *res judicata* [may] be raised by motion for summary judgment." *Freeman* at 703, citing *Johnson v. Linder* (1984), 14 Ohio App.3d 412.[3] By relying on *Johnson*, the Supreme Court suggested that a motion for summary judgment is a proper vehicle for raising the defense of res judicata, even where, as in *Freeman*, that defense has not been asserted in a responsive pleading. Nevertheless, because the documents attached to the appellee's motion to dismiss did not constitute proper evidence for consideration under Civ.R. 56, the court held that the case was not eligible for summary judgment. Accordingly, the Supreme Court reversed the court of appeals' dismissal.

[3] In *Johnson*, the defendants filed an answer to the plaintiff's complaint but did not raise the affirmative defense of res judicata in their answer. Instead, they first raised res judicata in a motion for summary judgment.

{¶16} The Supreme Court of Ohio again considered relevant issues regarding the doctrine of res judicata in *Jim's Steak House*. There, the defendant, the city of Cleveland, did not file an answer to the plaintiff's amended complaint. The day before trial was scheduled to commence, the city moved for dismissal on the grounds of res judicata. The trial court denied the motion to dismiss as untimely and ultimately entered judgment in favor of the plaintiff. On appeal, the city argued that the trial court erred by not finding in its favor as a matter of law on res judicata grounds and the court of appeals reversed. In its review, the Supreme Court reiterated that res judicata is an affirmative defense under Civ.R. 8(C) and held that the city waived that defense by failing to raise it in a responsive pleading or by amendment to a responsive pleading.

{¶17} Although the Supreme Court's opinion in *Jim's Steak House* suggests that res judicata *must* be raised in an answer or amended answer, neither that case nor *Freeman* involved a defendant attempting to first raise res judicata through a motion for summary judgment. The Sixth District Court of Appeals, however, addressed this precise scenario in *Internatl. EPDM Rubber Roofing Sys., Inc. v. GRE Ins. Group* (May 4, 2001), 6th Dist. No. L-00-1293. Relying on *Freeman*, the Sixth District stated as follows:

> By citing to the *Johnson v. Linder* decision in a case where no answer was filed, but the defense of *res judicata* was raised for the first time in a motion that was converted to a motion for summary judgment, the Supreme Court of Ohio lent support to the belief that it has recognized an exception to the general rule that a party waives an affirmative defense if no answer is filed. The exception to the rule is that the affirmative defense of *res judicata* can be raised in a motion for summary judgment.

The court then went on to discuss *Jim's Steak House*, noting that the Supreme Court did not consider whether the defense of res judicata could be raised for the first time by motion for summary judgment in that case. Despite language that "seems to create a broad rule that *res judicata* can never be raised in a document other than an answer or an amended answer," the Sixth District concluded that, in *Jim's Steak House*, "the Supreme Court had no intent to reverse its earlier recognition that the affirmative defense of *res judicata* can be raised for the first time in a motion for summary judgment, even when no answer has been filed in the case."

{¶18} Other Ohio courts have also held, or at least suggested, that a party may initially raise the defense of res judicata in a motion for summary judgment. For example, just months after *Jim's Steak House*, this court found that the state waived the defense of res judicata where it had not raised the defense *either* in a responsive pleading to a petition for postconviction relief or in a motion for summary judgment. See *State v. Lelux* (June 11, 1998), 10th Dist. No. 97APA10-1308. More recently, the Sixth and Eighth District Courts of Appeal have recognized that a motion for summary judgment is an appropriate vehicle for initially raising res judicata. See *Thayer v. Diver*, 6th Dist. No. L-07-1415, 2009-Ohio-2053, ¶34 ("the affirmative defense of res judicata may be raised for the first time in a motion for summary judgment"); *E.B.P., Inc. v. 623 W. St. Clair Ave., LLC*, 8th Dist. No. 93587, 2010-Ohio-4005, ¶29.

{¶19} Unlike the defendants in *Freeman* and *Jim's Steak House*, Edwards filed a timely answer to Hillman's complaint, but, like the defendants in *Johnson*, Edwards did not raise the affirmative defense of res judicata in his answer. When Edwards filed his answer, however, the defense of res judicata was not yet available to him because

Hillman's earlier actions remained pending in the trial court on remand. Thus, there was then no valid, final judgment on the merits in the earlier cases. Accordingly, Edwards moved the trial court to consolidate this action with those earlier cases. Although Edwards could have requested leave to amend his answer to add a res judicata defense after Judge Pfeiffer reentered summary judgment, we do not believe his failure to do so amounts to a waiver. Upon review of the relevant authorities, we agree with the Sixth District's analysis in *Internatl. EPDM Rubber Roofing Sys.* and conclude that Edwards was entitled to raise the defense of res judicata in his motion for summary judgment.

{¶20} Because Edwards was permitted to argue that the doctrine of res judicata entitled him to summary judgment, we must next consider whether the trial court correctly determined that res judicata bars Hillman's claims in this case.

{¶21} In support of his motion for summary judgment, Edwards submitted Judge Pfeiffer's two decisions and judgment entries granting Edwards summary judgment in the prior, consolidated cases, as well as this court's decision in *Hillman I*, substantively affirming that Edwards was entitled to summary judgment in those cases. Those decisions, which are not incorporated into a properly-framed affidavit, do not fall within the types of evidence listed in Civ.R. 56(C) for consideration on summary judgment. The Supreme Court stressed the significance of Civ.R. 56(C) in *Freeman*, where it held that a motion to dismiss was not eligible for conversion into a motion for summary judgment where the documents submitted in support of the motion did not fall within Civ.R. 56(C). Nevertheless, the Supreme Court has held that a court may consider evidence other than the types enumerated in Civ.R. 56(C) where the opposing party

does not object to the submitted evidence on that basis. See *State ex rel. Gilmour Realty, Inc. v. Mayfield Hts.*, 122 Ohio St.3d 260, 2009-Ohio-2871, ¶17. Here, Hillman did not object to the documents Edwards submitted in support of his motion for summary judgment based on noncompliance with Civ.R. 56(C). As a result, we conclude that it was within the trial court's discretion to consider those documents.

{¶22} Three of the four elements necessary for application of res judicata are plainly established here. See *Reasoner* at ¶5. There is no dispute that the claims raised by Hillman's earlier, consolidated actions were finally and validly adjudged on their merits, as Judge Pfeiffer twice entered summary judgment in favor of Edwards, and this court affirmed that judgment. A summary judgment determines an action on the merits, and res judicata bars the refiling of an action that has been decided on summary judgment. *Stuller v. Price*, 10th Dist. No. 03AP-30, 2003-Ohio-6826, ¶19. Additionally, the judgment entries attached to Edwards' motion for summary judgment establish that the parties to both the prior, consolidated cases and this case are identical, namely Hillman and Edwards. Further, it is clear from those judgment entries and Hillman's complaint in this case that all three actions arise out of the same transaction – Edwards' representation of Hillman on appeal from his burglary conviction. Indeed, Hillman admits in his appellate brief that this action stems from Edwards' court-appointed representation of him in his direct appeal.

{¶23} The only remaining requirement for application of res judicata is that the claims here were or could have been litigated in the prior actions. See *Reasoner* at ¶5. Other than waiver, which we have already discussed, Hillman's argument against the applicability of res judicata is that the claims he raises in this action were not litigated

and determined in the prior actions. Hillman argues that no court has decided whether Edwards misrepresented material facts to the court in his representation of Hillman. Judge Pfeiffer's initial decision and judgment entry granting Edwards' motion for summary judgment indicates that Hillman argued, in his earlier cases, that Edwards submitted an appellate brief on behalf of Hillman, misstating material facts to this court. The trial court determined that the complaint here raises the same claims of legal malpractice that were litigated in the prior actions or that, at least, could have been litigated in the prior actions. The trial court rejected any other claims purportedly asserted in the complaint as "claims for which no private cause of action exists."[4]

{¶24} We agree that Hillman's claims stemming from Edwards' appellate representation were raised or could have been raised in the prior actions. While neither the trial court nor this court expressly determined whether Edwards misrepresented or misstated facts in his appellate brief on Hillman's behalf, this court stated in *Hillman I*, at ¶26, as follows:

> Because [Hillman] was given the opportunity to submit a pro se supplemental brief in his criminal appeal to correct any misstatements [Edwards] made, and because the appellate court in [Hillman's] appeal of his criminal conviction considered not only all assignments of error presented but the full record as well, we cannot conclude, in the absence of an expert witness so averring, that any misstatements [Edwards] made affected the outcome of the case.

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[4] While Hillman states that he was not attempting to assert claims based on his allegations that Edwards committed criminal violations and violations of professional codes, he has not argued that the trial court erred in stating that no private cause of action exists for any other claims Hillman may have attempted to assert in his third complaint. The trial court's determination in this regard has no effect on the court's conclusion that Hillman's claims of legal malpractice are barred by res judicata.

Thus, this court affirmed the trial court's judgment in favor of Edwards on Hillman's claim based on the alleged misrepresentations.

{¶25} " 'When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar * * *, the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.' " *Grava* at 382, quoting Restatement (Second) of Judgments (1982), Former Adjudication: The Effects Of A Judicial Judgment, Section 24(1). To the extent that Hillman's claims for relief arising out of Edwards' representation, or the remedies Hillman seeks now, differ from those in the earlier actions, there is no doubt that Hillman could have raised those claims or sought those remedies in the earlier actions. Accordingly, we discern no error in the trial court conclusion that Hillman's claims are barred by the doctrine of res judicata and that Edwards was entitled to summary judgment. For these reasons, we overrule Hillman's second assignment of error.

{¶26} We now briefly turn to Hillman's remaining assignments of error.

{¶27} In his first assignment of error, Hillman states that the trial court erred by not holding a hearing on his motion for contempt and by failing to hold Edwards in contempt of court. In his February 16, 2010 motion for an order holding Edwards in indirect contempt, Hillman vaguely alleged that Edwards committed an act of fraud upon the court, which he claimed qualified as an act of contempt under R.C. 2705.02(B).[5] Hillman did not specify any allegedly fraudulent act or provide any factual support for his

[5] R.C. 2705.02(B) states that "[m]isbehavior of an officer of the court in the performance of official duties, or in official transactions" may be punishable as contempt.

allegation. The trial court summarily denied Hillman's motion in its final decision and judgment entry. A reviewing court will not reverse the trial court's decision in a contempt proceeding unless the decision amounts to an abuse of discretion. *State ex rel. Celebrezze v. Gibbs* (1991), 60 Ohio St.3d 69, 75. To constitute an abuse of discretion, a trial court's determination must be unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶28} Contempt proceedings are intended " 'to secure the dignity of the courts and the uninterrupted and unimpeded administration of justice.' " *Denovchek v. Bd. of Trumbull Cty. Commrs.* (1988), 36 Ohio St.3d 14, 16, quoting *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55, paragraph two of the syllabus. Because the primary interest involved is the court's authority and proper functioning, "great reliance should be placed upon the discretion of the trial judge." *Denovchek* at 16. In exercising its discretion, a trial court may decline a finding of contempt even though a party has violated a court order. See *Benfield v. Benfield* (Nov. 7, 2003), 2d Dist. No. 19363, ¶9; *Ryncarz v. Ryncarz* (Feb. 13, 1997), 9th Dist. No. 17856. Absent a showing of prejudice by the party alleging contempt, there is no right of appeal from the denial of a contempt motion. *Denovchek* at 17; see also *Natl. Equity Title Agency, Inc. v. Rivera*, 147 Ohio App.3d 246, 2001-Ohio-7095, ¶27 (absent prejudice to the movant, "if the trial court did not believe that its authority required vindication, [the movant] could not force the court to assert its own authority").

{¶29} In cases of alleged contempt under R.C. 2705.02, "a charge in writing shall be filed with the clerk of the court, an entry thereof made upon the journal, and an opportunity given to the accused to be heard, by himself or counsel." R.C. 2705.03.

Pursuant to that statute, an individual charged with indirect contempt must be provided with the following minimum constitutional due process protections: (1) notice of the charge of indirect contempt; (2) a hearing; (3) defense counsel; and (4) an opportunity to testify and call other witnesses. See *Courtney v. Courtney* (1984), 16 Ohio App.3d 329, 332, citing *In re Oliver* (1948), 333 U.S. 257, 275, 68 S.Ct. 499, 508. The purpose of a contempt hearing is to provide the accused with the opportunity to explain his actions. *Fant v. Bickerstaff* (July 1, 1999), 8th Dist. No. 72124. In contempt proceedings, the statutory provisions and due process require that the accused be provided an opportunity to be heard, but it is within the trial court's discretion whether to give the complainant a hearing. *Taylor v. Taylor* (May 27, 1993), 8th Dist. No. 62249, citing *Perry v. Emmett* (June 16, 1988), 8th Dist. No. 53997. We discern no prejudice suffered by Hillman as a result of the trial court's denial of his motion for contempt, and, coupled with the trial court's contemporaneous determination that Hillman's claims are barred as a matter of law, we conclude that the trial court did not abuse its discretion, either by not affording Hillman a hearing or by denying Hillman's motion for contempt. Accordingly, we overrule Hillman's first assignment of error.

{¶30} Much of Hillman's argument in support of his third and fourth assignments of error stems from his mistaken belief that Edwards' professional liability insurer is a party to this lawsuit. In his motion for default judgment, Hillman argued that Edwards' insurance company was in default and requested an order of default judgment "AGAINST THE DEFENDANT AKA ET[.] AL INSURER'S OR INSURANCE COMPANY WHO BONDS THE CO-DEFENDANT [EDWARDS]." In his third assignment of error, Hillman contends that he was entitled to default judgment because Edwards' insurance

company did not answer and defend against his complaint. In his fourth assignment of error, Hillman asserts that the trial court erred by granting summary judgment in favor of the "ET. AL DEFENDANT[S']", who did not answer the complaint. As previously stated, however, Edwards is the only defendant in this action. Edwards is the only person or entity named as a defendant in Hillman's complaint, and Hillman did not request leave to file an amended pleading so as to name additional parties. Accordingly, Edwards' insurance company was never made a party to the action, and the trial court did not err in denying Hillman's motion for default judgment against that non-party. Neither did the trial court purport to enter summary judgment in favor of that non-party; the trial court granted Edwards' motion for summary judgment and entered judgment solely in favor of Edwards.

{¶31} Hillman's remaining arguments stem from discovery concerns. On January 15, 2010, Hillman filed a motion for an order compelling Edwards to disclose the name and address of his insurance company. The trial court denied that motion in its final decision and judgment entry, having concluded that Hillman's claims were barred by res judicata. In his third assignment of error, Hillman argues that the trial court erred by not awarding him default judgment as a discovery sanction.

{¶32} While default judgment is available as a discovery sanction under Civ.R. 37, it, along with dismissal, is a most severe sanction. Trial courts have great latitude in determining discovery abuses and crafting sanctions to fit those abuses. See *Nakoff v. Fairview Gen. Hosp.*, 75 Ohio St.3d 254, 256, 1996-Ohio-159. We review the trial court's resolution of discovery matters, including the decision whether to grant sanctions, under an abuse-of-discretion standard. *State ex rel. Keller v. Columbus*, 164

Ohio App.3d 648, 2005-Ohio-6500, ¶39; *Toney v. Berkemer* (1983), 6 Ohio St.3d 455, 458. Here, we conclude that the trial court, having determined that Hillman's claims against Edwards failed as a matter of law, did not abuse its discretion in either denying Hillman's motion to compel discovery or his request for default judgment as a discovery sanction. For these reasons, we overrule Hillman's third and fourth assignments of error.

{¶33} Having overruled each of Hillman's assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and DORRIAN, JJ., concur.