

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Rusty Eugene Mootispaw,	:	
Plaintiff-Appellant,	:	No. 15AP-885
v.	:	and
Gary Mohr, Director, Ohio Department Of Rehabilitation and Correction et al.,	:	No. 15AP-893 (C.P.C. No. 12CVH-07-8412)
Defendants-Appellees.	:	(ACCELERATED CALENDAR)
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D E C I S I O N

Rendered on March 24, 2016

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*Rusty Eugene Mootispaw, pro se.*

**On brief:** *Michael DeWine*, Attorney General, and *Thomas C. Miller*, for appellees Gary Mohr, Director of the Ohio Department of Rehabilitation and Correction, Cynthia Mausser, former chair of the Ohio Parole Board, and Richard Fitzpatrick, former hearing officer for the Ohio Parole Board.

**On brief:** *Kiger & Kiger, Lawyers*, and *David V. Kiger*, for appellee James A. Kiger, former Fayette County prosecuting attorney.

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APPEALS from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Plaintiff-appellant, Rusty Eugene Mootispaw, appeals judgments of the Franklin County Court of Common Pleas that granted summary judgment to defendants-appellees, Gary Mohr, director of the Ohio Department of Rehabilitation and Correction; Cynthia Mausser, former chair of the Ohio Parole Board; Richard Fitzpatrick, former

hearing officer for the Ohio Parole Board; and James A. Kiger, former Fayette County prosecuting attorney. For the following reasons, we affirm the trial court's judgments.

{¶ 2} On May 22, 1981, a Fayette County Grand Jury indicted Mootispaw on three counts of aggravated burglary, one count of complicity in aggravated burglary, and one count of aggravated murder. Pursuant to a plea bargain, Mootispaw pleaded guilty to a reduced charge of murder, and the remaining counts were dismissed. On September 25, 1981, the Fayette County Court of Common Pleas sentenced Mootispaw to imprisonment for 15 years to life.

{¶ 3} Mootispaw initiated the instant case on July 2, 2012, when he filed a complaint against Mohr, Mausser, and Kiger. Mootispaw later amended his complaint to add Fitzpatrick as a defendant. In his complaint and amended complaint, Mootispaw alleged that the Ohio Parole Board had considered him for parole multiple times, but had denied him parole each time. Mootispaw claimed that, during one parole hearing, Fitzpatrick told him that the parole board probably would have granted him parole years ago if Kiger had not written letters to the parole board requesting that it consider all the offenses contained in Mootispaw's indictment. Mootispaw also claimed that the parole board had changed his sentence from 15 years to life to life without the possibility of parole at Kiger's request. Finally, Mootispaw asserted that the parole board treated him differently than all other inmates eligible for parole. Mootispaw identified three individuals who had been convicted of more serious crimes after Mootispaw's conviction, but nevertheless, received parole.

{¶ 4} Based on the above factual allegations, Mootispaw claimed that defendants had denied him the due process and equal protection that the United States and Ohio Constitutions entitled him. Mootispaw requested that the trial court (1) order the parole board to give him a meaningful parole hearing and (2) preclude Kiger from submitting letters regarding him to the parole board.

{¶ 5} On August 1, 2013, defendants Mohr, Mausser, and Fitzpatrick moved for summary judgment. The three defendants argued that Mootispaw's due process claim failed because he lacked any protected liberty interest upon which he could base such a claim. Additionally, the three defendants asserted that, given the myriad of factors the parole board must consider in making parole decisions, Mootispaw could not raise an

equal protection claim on the basis that the parole board treated other inmates differently than him.

{¶ 6} When defendants Mohr, Mausser, and Fitzpatrick moved for summary judgment, they had not yet responded to the discovery requests Mootispaw had submitted to them on or around July 15, 2013. The three defendants acknowledged in their motion that they owed Mootispaw responses to his discovery requests by August 12, 2013. When Mootispaw filed his memorandum in opposition to summary judgment on August 15, 2013, he had yet to receive the discovery responses. Mootispaw referred to the lack of response in his memorandum in opposition, and, in a separate but simultaneous filing, he moved to compel responses.

{¶ 7} In a judgment entered April 16, 2015, the trial court granted summary judgment to defendants Mohr, Mausser, and Fitzpatrick. Defendant Kiger then moved for summary judgment. In response to Kiger's motion, Mootispaw argued that Kiger had moved for summary judgment to avoid responding to discovery requests. The trial court granted summary judgment to Kiger in a judgment entered August 27, 2015. That judgment also denied all pending motions, which included Mootispaw's motion to compel.

{¶ 8} Mootispaw now appeals the April 16, 2015 and August 27, 2015 judgments, and he assigns the following errors:

[1.] THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT DISCOVERY[.]

[2.] THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DELAYED RULING ON MOTIONS[.]

[3.] THE TRIAL COURT ERRED IN GRANTING DEFENDANT[']S MOTION([S]) FOR SUMMARY JUDGMENT WHEN IT FAILED TO GIVE APPELLANT "NOTICE OF UNDERSTANDABILITY OF THE SUMMARY JUDGMENT RULES[.]"

{¶ 9} By his first assignment of error, Mootispaw argues that the trial court erred in granting summary judgment when he had not completed his discovery. We disagree.

{¶ 10} Generally, Civ.R. 56(F) provides the sole remedy for a party who must respond to a motion for summary judgment prior to the completion of adequate

discovery.<sup>1</sup> *Morantz v. Ortiz*, 10th Dist. No. 07AP-597, 2008-Ohio-1046, ¶ 20; *Rarden v. Dept. of Rehab. & Corr.*, 10th Dist. No. 12AP-225, 2012-Ohio-5667, ¶ 33. Pursuant to Civ.R. 56(F), a party may request that the trial court defer ruling on the motion for summary judgment pending the completion of discovery. *Moore v. Kroger Co.*, 10th Dist. No. 10AP-431, 2010-Ohio-5721, ¶ 23; *McGowan v. Stoyer*, 10th Dist. No. 02AP-263, 2002-Ohio-5410, ¶ 16. When a party fails to move for a Civ.R. 56(F) continuance, a trial court may grant summary judgment to the moving party even if discovery remains incomplete. *Fifth Third Mtge. Co. v. Salahuddin*, 10th Dist. No. 13AP-945, 2014-Ohio-3304, ¶ 18; *Rarden* at ¶ 33. Moreover, the party that fails to move for a Civ.R. 56(F) continuance does not preserve his right to challenge the adequacy of discovery on appeal. *Morantz* at ¶ 21; *McGowan* at ¶ 16.

{¶ 11} Filing a motion to compel, rather than a Civ.R. 56(F) motion, does not preclude the trial court from ruling on a motion for summary judgment. "Even if a party files a motion to compel discovery, a trial court does not err when it rules on the motion for summary judgment without ruling on the motion to compel when the party has failed to file a Civ.R. 56(F) motion." *Moore* at ¶ 23; *accord Boulder Capital Group, Inc. v. Lawson*, 2d Dist. No. 2014-CA-58, 2014-Ohio-5797, ¶ 33 (because the defendant never invoked Civ.R. 56(F), the trial court could grant summary judgment to the plaintiff without explicitly ruling on the defendant's motion to compel).

{¶ 12} Here, Mootispaw did not move for relief under Civ.R. 56(F). Consequently, the trial court did not err in deciding the motions for summary judgment, even though defendants had not responded to Mootispaw's discovery requests and Mootispaw had filed a motion to compel. Accordingly, we overrule Mootispaw's first assignment of error.

{¶ 13} By Mootispaw's second assignment of error, he argues that we must reverse because the trial court violated Sup.R. 40(A)(3) when it delayed ruling on his motion to compel and the summary judgment motion filed by defendants Mohr, Mausser, and Fitzpatrick. We disagree.

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<sup>1</sup> There is one exception to this rule. A Civ.R. 56(F) motion is not necessary if (1) the nonmoving party is allotted insufficient time to discover the essential facts of the case, and (2) the non-moving party asks the trial court for more discovery in its memorandum in opposition to the motion for summary judgment. *Tucker v. Webb Corp.*, 4 Ohio St.3d 121, 122-23 (1983). This exception is not applicable here. Mootispaw had approximately 11 months in which to conduct discovery, and he did not ask for more time in his memoranda in opposition to summary judgment.

{¶ 14} Pursuant to Sup.R. 40(A)(3), "[a]ll motions shall be ruled upon within one hundred twenty days from the date the motion was filed, except as otherwise noted on the report forms." This rule serves as a guideline for Ohio courts. *Gardner v. Bisciotti*, 10th Dist. No. 10AP-375, 2010-Ohio-5875, ¶ 26. It does not create substantive rights that a litigant may invoke. *Id.* Thus, a court's failure to comply with the deadline set forth in Sup.R. 40(A)(3) is not a basis on which a party may seek reversal of the court's judgment. *Id.*

{¶ 15} Here, while the trial court ruled on the motions at issue well after the 120-day deadline, the delay does not justify a reversal of the court's rulings. Accordingly, we overrule Mootispaw's second assignment of error.

{¶ 16} By Mootispaw's third assignment of error, he argues that the trial court erred by not explaining to him the rules related to summary judgment. We disagree.

{¶ 17} Ohio courts presume that pro se litigants have knowledge of the law and legal procedures, and they generally hold pro se litigants to the same standard as represented litigants. *Collins v. Ohio Adult Parole Auth.*, 10th Dist. No. 02AP-1161, 2003-Ohio-2952, ¶ 28. Consequently, a pro se litigant "cannot expect or demand special treatment." *Kessler v. Kessler*, 10th Dist. No. 09AP-740, 2010-Ohio-2369, ¶ 8. Because a trial court would not explain procedural rules to a lawyer, it does not err by failing to explain them to a pro se litigant. *Bostic v. Davis*, 10th Dist. No. 14AP-635, 2015-Ohio-1968, ¶ 12. The trial court, therefore, did not owe Mootispaw any explanation of Civ.R. 56, and it did not err by failing to give Mootispaw such an explanation. Accordingly, we overrule Mootispaw's third assignment of error.

{¶ 18} For the foregoing reasons, we overrule each of Mootispaw's three assignments of error, and we affirm the judgments of the Franklin County Court of Common Pleas.

*Judgments affirmed.*

SADLER and BRUNNER, JJ., concur.

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