[Cite as *Holschuh v. Newcomb*, 2011-Ohio-6205.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

KAREN A. HOLSCHUH,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2010-T-0129**
- vs -	:	
THOMAS L. NEWCOMB,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2010 CV 01419.

Judgment: Affirmed.

Timothy H. Snyder, 12373 Kinsman Road, Suite 105, P.O. Box 386, Burton, OH 44021-0386 (For Plaintiff-Appellant).

William J. Meola, Davis & Young, L.P.A., 972 Youngstown-Kingsville Road, P.O. Box 740, Vienna, OH 44473-8618 (For Defendant-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Karen A. Holschuh, appeals from the judgment entered by the Trumbull County Court of Common Pleas, dismissing her personal injury action for failure to timely file her complaint. We affirm.

{¶2} On January 14, 2009, appellant filed her initial complaint, sounding in tort, against appellee, Thomas L. Newcomb. On May 21, 2009, appellant filed a "Notice of Voluntary Dismissal Without Prejudice," pursuant to Civ.R. 41(A). On May 27, 2009, for

reasons unknown, appellant filed a second, duplicate notice of dismissal. On June 2, 2009, the trial court filed an order of dismissal without prejudice.

{¶3} On May 26, 2010, appellant re-filed the lawsuit. On August 25, 2010, appellee filed a motion for judgment on the pleadings or motion to dismiss. Appellee's motion alleged appellant failed to re-file the action within the one-year timeframe set forth in R.C. 2305.19, Ohio's "saving statute." Appellee asserted appellant's complaint was filed beyond a year from appellant's May 21, 2009 "Notice of Dismissal Without Prejudice" and was therefore untimely. On September 22, 2010, appellant filed her memorandum in opposition to appellee's motion, asserting her re-filing complied with R.C. 2305.19 because her complaint was filed within a year of the May 27, 2009 notice of dismissal.

{¶4} On November 24, 2010, the trial court issued its ruling. The court observed that although the existence of two separately time-stamped notices proved confusing, it could find no legal basis for disregarding the initial, May 21, 2009 dismissal. As a result, the court granted appellee's motion to dismiss.

{¶5} Appellant now appeals asserting the following assignment of error:

{¶6} "The trial court erred to the prejudice of appellant by granting appellee's motion for judgment on the pleadings or motion to dismiss based upon Ohio Revised Code Section 2305.19."

{¶7} "'An appellate court's standard of review for a trial court's actions regarding a motion to dismiss is de novo.'" *Bliss v. Chandler*, 11th Dist. No. 2006-G-2742, 2007-Ohio-6161, at ¶91, quoting *State ex rel. Malloy v. Girard*, 11th Dist. No. 2006-T-0019, 2007-Ohio-338, at ¶8.

{¶8} Civ.R. 41(A)(1) states as follows:

{¶9} "Subject to the provisions of Rule 23(E), Civ.R. 23.1, and Civ.R. 66, a plaintiff *without order of the court* may dismiss all claims asserted by the Plaintiff against a defendant by doing either of the following:

{¶10} "(a) filing a notice of dismissal at any time before the commencement of trial ***;

{¶11} "(b) filing a stipulation of dismissal signed by all parties who have appeared in the action." (Emphasis added.)[1]

{¶12} Under (A)(1), therefore, a plaintiff seeking the voluntary dismissal files either a notice of dismissal, or a stipulation of dismissal, which is signed by all parties. Neither of the notices of dismissal were premised upon the parties' stipulation. Hence, Civ.R. 41(A)(1)(b) is not implicated in this matter.

{¶13} With this in mind, this court has observed:

{¶14} "Dismissals under Civ.R. 41(A)(1)(a) are self-executing. *Selker & Furber v. Brightman* (2000), 138 Ohio App.3d 710, 714. Furthermore, these dismissals are fully and completely effectuated upon the filing of a notice of voluntary dismissal by plaintiff, and the mere filing of the notice of dismissal automatically terminates the case without intervention by the court. Id. Because a Civ.R. 41(A)(1)(a) dismissal is self-executing, 'the trial court's discretion is not involved in deciding whether to recognize the dismissal.' Id. Hence, when a Civ.R. 41(A)(1)(a) dismissal is filed, the time-

1. Neither party attaches any significance to the trial court's June 2, 2009 judgment entry. As a result, both parties appear to concede the notice of dismissal was filed pursuant to R.C. 41(A)(1)(a), not Civ.R. 41(A)(2) (which contemplates dismissal by order of the court being obtained by virtue of a *motion* to dismiss). As the dismissal was filed pursuant to subsection (A)(1)(a), the court's June 2, 2009 entry, while perhaps perfunctory, was a completely inconsequential act.

stamped date on that document is controlling, not a subsequent court entry. ***" *Thornton v. Montville Plastics & Rubber, Inc.*, 11th Dist. No. 2006-G-2744, 2007-Ohio-3475, at ¶3.

{¶15} Concordant with these points, appellee asserts that since appellant's May 21, 2009 "notice of dismissal" in the first action did not require approval of the court, it became effective as of the date of filing. Therefore, appellee concludes, the trial court properly granted his motion to dismiss the action with prejudice.

{¶16} Alternatively, appellant contends the remedial nature of R.C. 2305.19 requires a court to liberally construe ambiguities or confusions in the record in favor of deciding the merits of a case rather than resolving matters on procedural technicalities. Appellant therefore maintains this court should deem the underlying complaint timely based upon the filing of the May 27, 2009 notice of dismissal.[2]

{¶17} R.C. 2305.19, Ohio's "saving statute," provides, in relevant part:

{¶18} "(A) In any action that is commenced or attempted to be commenced, if in due time a judgment for the plaintiff is reversed or if the plaintiff fails otherwise than upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff's representative may commence a new action within one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later. This division applies to any claim asserted in any pleading by a defendant."

2. Appellant also contends that the trial court's judgment was a result of its reliance upon an electronically-generated copy of the docket relating to the first case. Although the court may have cross-referenced an electronic docket, appellee appended an actual copy of appellant's May 21, 2009 "Notice of Voluntary Dismissal Without Prejudice" to his motion to dismiss for failure to timely re-file the cause. Thus, appellant's claim that the trial court erroneously relied merely on the electronic docket to resolve the issue is erroneous.

{¶19} Appellant is correct that R.C. 2305.19(A) is a remedial statute and, as such, should be construed liberally so that cases may be decided upon their merits, rather than upon technicalities or procedure. *King v. Ricerca Biosciences, LLC*, 11th Dist. No. 2005-L-068, 2006-Ohio-2146, at ¶12, citing *Cero Realty Co. v. Am. Mfrs. Mut. Ins. Co.* (1960), 171 Ohio St. 82, syllabus. Nevertheless, "[a] direction to liberally construe a statute in favor of certain parties will not authorize a court to read into the statute something which cannot reasonably be implied from the language of the statute." *Szekely v. Young* (1963), 174 Ohio St. 213, paragraph two of the syllabus; see, also, *State ex rel. Williams v. Colasurd*, 71 Ohio St.3d 642, 644, 1995-Ohio-236.

{¶20} R.C. 2305.19 unequivocally permits a party to re-file an action within one year of the date of appellant's notice of voluntary dismissal, i.e., a disposition "*** otherwise than on the merits." See, e.g., *Beil v. Key Bank*, 11th Dist. No. 2007-L-193, 2007-Ohio-7118, at ¶2. The language of the statute does not, however, reasonably imply a party may re-file an action outside of the one-year saving window. Because appellant's May 21, 2009 "Notice of Dismissal Without Prejudice" was properly filed in the first case, it was self-executing on that date and acted to terminate the litigation. Although it is unclear why appellant filed a second notice of dismissal, that pleading, as well as the trial court's June 2, 2009 judgment entry, were nullities. Regardless of appellant's beliefs regarding the later notice, a party, whether acting pro se or represented by counsel, has a "general duty to check the docket and *** keep [her]self current regarding the status of the case." *Thomas v. Target Stores,* 11th Dist. No. 2009-G-2906, 2010-Ohio-1158, at ¶21. As of May 21, 2009, the first case was dismissed without prejudice and appellant had one year to re-file. Because appellant

failed to file the second case within that time frame and the statute of limitations on the underlying cause of action had passed, the trial court properly dismissed the underlying action with prejudice.

{¶21} Appellant's assignment of error lacks merit.

{¶22} For the reasons discussed above, the judgment of the Trumbull County Court of Common Pleas is hereby affirmed.

DIANE V. GRENDELL, J.,

THOMAS R. WRIGHT, J.,

concur.