

[Cite as *Palmer v. O'Brien*, 2004-Ohio-5365.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DAVID D. PALMER

Plaintiff-Appellant

-vs-

DANIEL L. O'BRIEN

Defendant-Appellee

JUDGES:

Hon. John W. Wise, P. J.

Hon. Julie A. Edwards, J.

Hon. John F. Boggins, J.

Case No. 04 CA 38

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Case No. 2003 CV 1135 H

JUDGMENT:

Affirmed in Part; Reversed in Part and
Remanded

DATE OF JUDGMENT ENTRY:

October 4, 2004

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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Wise, P. J.

{¶1} Appellant David Palmer appeals the decision of the Richland County Court of Common Pleas that dismissed his complaint for lack of subject matter jurisdiction and improper venue. The following facts give rise to this appeal.

{¶2} Appellant alleges he paid Appellee Daniel O'Brien \$7,000 to perform certain legal work for him. However, appellee allegedly failed to perform the requested work. As such, on November 24, 2003, appellant filed a complaint, for legal malpractice, against appellee. Thereafter, on April 5, 2004, pursuant to a motion filed by appellee, the trial court dismissed appellant's complaint for legal malpractice on the basis that it lacked subject matter jurisdiction and venue was improper.

{¶3} Appellant timely filed a notice of appeal and sets forth the following assignments of error for our consideration:

{¶4} "I. THE TRIAL COURT COMMITS PLAIN ERROR TO (SIC) PREJUDICE OF THE APPELLANT WHERE THE DECISION IS CONTRARY TOO (SIC) THE LAW AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶5} "II. WHERE APPELLANT'S ACTION IS COMMENCED IN THE WRONG COUNTY, THE TRIAL COURT SHALL TRANSFER THE CAUSE TO THE PROPER VENUE.

{¶6} "III. THE APPELLANT WAS DENIED DUE COURSE OF LAW BY THE COURT WHERE HE A LAYMAN WAS NOT APPOINTED COUNSEL."

II

{¶7} We will first address appellant's Second Assignment of Error. Appellant maintains the trial court should have transferred this action to the proper venue rather than dismissing his complaint. We agree.

{¶8} Civ.R. 3(C) addresses change of venue and provides, in pertinent part:

{¶9} "(1) When an action has been commenced in a county other than stated to be proper in division (B) of this rule, upon timely assertion of the defense of improper venue as provided in Civ.R. 12, the court shall transfer the action to a county stated to be proper in division (B) of this rule."

{¶10} In *Durse v. Mossie* (Mar. 16, 2000), Columbiana App. No. 98 CO 12, the Seventh District Court of Appeals explained that:

{¶11} "The issue of improper venue is governed by Civ.R. 3. Civ.R. 3 provides a variety of procedures to be utilized to transfer a case to a county where proper venue lies, but conspicuously does not include dismissal as an alternative. Indeed, the law in Ohio is quite clear that if a case is maintained in an improper venue, the appropriate judicial response is to transfer the action to the correct forum; not an outright dismissal of the complaint. *State ex rel. Ohio State Racing Comm. v. Welton* (1988), 37 Ohio St.3d 246, 247; *Romanchik v. Lucak* (1988), 44 Ohio App.3d 215, at syllabus." *Id.* at 3.

{¶12} Accordingly, the trial court erred when it dismissed appellant's complaint. Instead, the trial court should have transferred appellant's action to Montgomery County.

{¶13} Appellant's Second Assignment of Error is sustained.

III

{¶14} Appellant contends, in his Third Assignment of Error, that he should have been appointed counsel to represent him in this matter. We disagree.

{¶15} There exists no constitutional right to appointed counsel, in a civil case, between individual litigants. *Scott v. Scott*, Franklin App. No. 03AP-411, at ¶ 31, 2004-Ohio-1405. In the *Scott* case, the Tenth District Court of Appeals cited the case of *Roth v. Roth* (1989), 65 Ohio App.3d 768, 776, which held:

{¶16} “The Sixth Amendment to the United States Constitution provides a right to effective assistance of counsel in a criminal proceeding. *Strickland v. Washington* (1984), 466 U.S. 668, 686, 104 S.Ct. 2052, 2063, 80 L.Ed.2d 674, 692. The right to be represented by counsel in a civil (sic) [criminal] proceeding where the state seeks to take the defendant’s life, liberty, or property is guaranteed by the Fifth Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment. However, in a civil case between individual litigants, there is no constitutional right to representation. The state does provide a forum, via the judicial system, in which litigants can resolve disputes. * * *”

{¶17} Therefore, the trial court did not err when it declined to appoint counsel on appellant’s behalf.

{¶18} Appellant’s Third Assignment of Error is overruled. We will not address the merits of appellant’s First Assignment of Error as it is moot based upon our disposition of appellant’s Second Assignment of Error.

{¶19} For the foregoing reasons, the judgment of the Court of Common Pleas, Richland County, Ohio, is hereby affirmed in part and reversed in part. This matter is remanded for further proceedings consistent with this opinion.

By: Wise, P. J.

Edwards, J., and

Boggins, J. concur.

JUDGES

JWW/d 831

