

[Cite as *Pahoundis v. Beamer*, 2009-Ohio-6881.]

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GEORGE PAHOUNDIS

Plaintiff-Appellee

-vs-

DEBORAH LOU LEONARD BEAMER,
ET AL.

Defendants-Appellants

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Julie A. Edwards, J.

Case No. 09CA017

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Coshocton County Court of
Common Pleas, Case No. 05-CI-703

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

December 28, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendants-Appellants

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Hoffman, J.

{¶1} Defendants-appellants Deborah Lou Leonard Beamer, Julius Dean Pahoundis, Jeffrey Dee Pahoundis, Sr. and Jerry D. Pahoundis appeal the May 8, 2009 Judgment Entry of the Coshocton County Court of Common Pleas in favor of Plaintiff-appellee George D. Pahoundis.

{¶2} Initially, we note, a recitation of the facts and the convoluted procedural history are unnecessary to our disposition of the within appeal.

{¶3} Appellants assign forty-three separate errors on appeal:

{¶4} “Error I. The Coshocton County Common Pleas Court erred to the prejudice of Appellants, in the May 8, 2009 judgment entered in Case No. CG0500660A and CVG0500660B and 05CI703 granting a Dismissal when it determined that:

- a. the Court had jurisdiction of the action even though an appeal of the prior judgment entries of the Court is pending before the Fifth District Court of Appeals under 08CA0027.
- b. The Court had jurisdiction of the action even though the issue of ownership of the real property was at issue in an unrelated case pending in the Fifth District Court of Appeals. (08CA018)
- c. The Court had jurisdiction of the action even though the issue of ownership of the real property was at issue in an unrelated case pending in the United States District Court Southern District Eastern Division.(2:03cv 213)
- d. Plaintiff duly served upon Defendants a copy of the Motion to Dismiss as required by Rules of Civil procedure.

e. The Clerk of Courts duly served upon Defendants the Judgment entry as required by Civil Rule 58 & Atkinson V. Grumman Ohio Corp. (1988). 37 Ohio St. 3d 80.

f. The Coshocton County Common Pleas Court, in its May 8, 2009 judgment entered in case No. CVG0500660A- CVG0500660B and 05CI703, granting a dismissal of the entire case, erred to the prejudice of Appellants in that its decision is unreasonable, arbitrary, capricious, exceeds its power, and is against the manifest weight of the evidence;

{¶15} “Error II. The Coshocton County Common Pleas Court, in its May 8, 2009 judgment entered in case number CVG0500660A- CVG0500660B and 05CI703, granting a dismissal of the entire case, erred to the prejudice of Appellants in that is [sic] decision is an abuse of discretion;

{¶16} “Error III. The Coshocton County Common Pleas Court lacked jurisdiction of the most recent motion to Dismiss CVG0500660A - CVG0500660B and 05CI703 in its entirety due to 05CA0027 which is currently pending before this appellate Court.

{¶17} “Error IV. With respect to the May 8, 2009 Judgment in case No.CVG0500660A- CVG0500660B and 05CI703 granting the Motion for Dismissal in its entirety based on the Motion to Dismiss:

g. The Coshocton County Court of Common Pleas erred to the prejudice of Appellants when it determined, as a matter of law, that evidence in the record established that there was no genuine issue as to any material fact regarding ownership of the real estate at issue, damages to defendants, and liability of plaintiff to defendants as a result of their eviction or attempted eviction;

h. The Coshocton County Court of Common Pleas erred to the prejudice of Appellants when it determined, as a matter of law, that based on the evidence in the record Plaintiff is entitled to a dismissal as a matter of law as ownership of the real estate at issue, damages to defendants, and liability of plaintiff to defendants for damages suffered as a result of the eviction or attempted eviction;

i. The Coshocton County Court of Common Pleas erred to the prejudice of Appellants when it determined, as a matter of law, that based on the evidence before the court reasonable minds can come to but one conclusion: that Plaintiff owned the premises, defendants suffered no damages, and plaintiff had no liability for damages suffered by defendants as a result of their eviction; or attempted eviction;

j. The Coshocton County Court of Common Pleas erred to the prejudice of Appellants when it determined that based on the evidence before the court Plaintiff was entitled to dismissal as a matter of law;

k. The County Court of Common Pleas erred to the prejudice of Appellants when it determined, as a matter of law, that the doctrine of res judicata applied and that an unrelated case determined ownership of the real property at issue even though the two cases at issue involved different parties and issues of fact;

l. County Court of Common Pleas erred to the prejudice of Appellants when it determined, as a matter of law, that Plaintiff's Motion for Dismissal could be

considered even though it was not in the form of an affidavit or similar form permitted by the Ohio Rules of Civil Procedure;

m. County Court of Common Pleas erred to the prejudice of Appellants when it determined, as a matter of law, that Plaintiff's recent Motion For Dismissal could be considered without having it served on each defendant;

n. County Court of Common Pleas erred to the prejudice of Appellants in that its decision is not supported by applicable legal authority and said decision is not based on relevant, credible and reliable facts;

o. County Court of Common Pleas erred to the prejudice of Appellants in that its decision is unreasonable, arbitrary, capricious, exceeds its power, and is against the manifest weight of the evidence; and

p. County Court of Common Pleas erred to the prejudice of Appellants in that its decision is an abuse of discretion;

{¶18} "Error V. County Court of Common Pleas erred by not serving the executor of the Estate of John L. Woodard as the request for Rule 11 Sanctions filed against John Woodard and the executor of the Estate of John Woodard has not been substituted as the proper party.

{¶19} "In case the former appeal 08CA027 is eventually dismissed due to unforeseen reasons, defendants list the following errors also in support of their appeal from that appeal:

{¶10} "Error VI. Coshocton County Court of Common Pleas erred to the prejudice of appellants when it determined as a matter of law that Plaintiff's Addendum to its Motion for Summary Judgment could be considered without having it served on each defendant

{¶11} “Error VII Coshocton County Court of Common Pleas erred to the prejudice of appellants when it determined as a matter of law that Plaintiff’s Addendum to his Motion for Summary Judgment could be considered even though it was not in the form of an affidavit or similar form permitted by the Ohio Rules of Civil Procedure

{¶12} “Error VIII Coshocton County Court of Common Pleas erred to the prejudice of the appellants when it determined as a matter of law that no hearing was required on Defendant’s Motion for Relief from Judgment filed pursuant to rule 60 of the Ohio Rules of Civil Procedure

{¶13} “Error IX Coshocton County Court of Common Pleas erred to the prejudice of appellants when it determined as a matter of law that the doctrine of res judicata applied and that an unrelated case determined ownership of the real property at issue even though the two cases at issue involved different parties and issues of fact

{¶14} “Error X Coshocton County Court of Common Pleas erred to the prejudice of Appellants in that its decision is not supported by applicable legal authority and said decision is not based on relevant, credible and reliable facts

{¶15} “Error XI. Coshocton County Court of Common Pleas erred to the prejudice of Appellants in that its decision is unreasonable, arbitrary, capricious, exceeds its power, and is against the manifest weight of the evidence

{¶16} “Error XII Coshocton County Court of Common Pleas erred to the prejudice of Appellants in that its decision is an abuse of its discretion

{¶17} “Error XIII Coshocton County Court of Common Pleas erred to the prejudice of the Appellants when it determined, as a matter of law, that evidence in the record established that there was no genuine issue as to any material fact regarding ownership of the real estate

at issue, damages to the defendants, and liability of plaintiff to defendants as a result of their eviction or attempted eviction

{¶18} “Error XIV Coshocton County Court of Common Pleas erred to the prejudice of the Appellants when it determined, as a matter of law, that based on evidence in the record Plaintiff is entitled to summary judgment as a matter of law as to ownership of real estate at issue, damages to defendants, and liability of plaintiff to defendants for damages suffered as a result of their eviction or attempted eviction

{¶19} “Error XV Coshocton County Court of Common Pleas erred to the prejudice of the Appellants when it determined, as a matter of law, that based on the evidence before the court reasonable minds can come to but one conclusion: that Plaintiff owned the premises, defendants suffered no damages, and plaintiff had no liability for damages suffered by defendants as a result of their eviction or attempted eviction

{¶20} “Error XVI The Coshocton County Court of Common Pleas erred to the prejudice of the Appellants when it determined, that based on the evidence before the court Plaintiff was entitled to summary judgment as a matter of law

{¶21} “Error XVII The Coshocton County Common Pleas Court, in its January 9, 2006 judgment entered in Case No. 05-CI-703 denying Defendants’ Motion for Temporary Restraining Order, erred to the prejudice of Appellants and its decision is an abuse of discretion in finding that defendants did not show, and could not show, a likelihood or probability of success on the merits, irreparable harm, potential injury that may be suffered by defendants outweigh any potential injury to Plaintiff if an injunction was granted; and the public interest was not served by issuing an injunction

{¶22} “Error XVIII The Coshocton County Common Pleas Court, in its January 9, 2006 judgment entered in Case No. 05-CI-703 denying Defendants’ Motion for Temporary Restraining Order, erred to the prejudice of Appellants in that its decision is unreasonable, arbitrary, capricious, exceeds its power, and is against the manifest weight of the evidence

{¶23} “Error XIX The Coshocton County Common Pleas Court, in its January 9, 2006 judgment entered in Case No. 05-CI-703 denying Defendants’ Motion for Temporary Restraining Order, erred to the prejudice of Appellants in that its decision is an abuse of discretion

{¶24} “Error XX The Coshocton Municipal Court erred to the prejudice of Appellants, in the October 13, 2005 judgment entered in Case No. CVG00660A denying defendants’ Motion requesting a stay of Writ of Restitution, when it determined that the Court had jurisdiction of the action even though the issue of ownership of the real estate was at issue in an unrelated probate court case

{¶25} “Error XXI The Coshocton Municipal Court erred to the prejudice of Appellants, in the October 13, 2005 judgment entered in Case No. CVG00660A denying defendants’ Motion requesting a stay of Writ of Restitution, when it determined that all necessary and indispensable parties were parties to the action even though the real estate at issue was listed as part of the probate estate of an individual not named as a party in case number CVG 0500660A

{¶26} “Error XXII The Coshocton Municipal Court erred to the prejudice of Appellants, in the October 13, 2005 judgment entered in Case No. CVG00660A denying defendants’ Motion requesting a stay of Writ of Restitution, when it determined that the Plaintiff had

standing to bring the action even though Plaintiff [sic] ownership interest in the real estate at issue in case number CVG 0500660A

{¶27} “Error XXIII The Coshocton Municipal Court erred to the prejudice of Appellants, in the October 13, 2005 judgment entered in Case No. CVG00660A denying defendants’ Motion requesting a stay of Writ of Restitution, when it determined that Plaintiff duly served upon Defendants, the notice required by Ohio Revised Code § 1923.04 to vacate the premises, even though Plaintiff failed to satisfy all of the statutory requirements of this

{¶28} “Error XXIV The Coshocton Municipal Court erred to the prejudice of Appellants, in the October 13, 2005 judgment entered in Case No. CVG00660A denying defendants’ Motion requesting a stay of Writ of Restitution, when it determined that Defendants had no authority to remain on the premises, even though Plaintiff ownership interest in the real estate at issue was in dispute

{¶29} “Error XXV The Coshocton Municipal Court erred to the prejudice of Appellants, in the October 13, 2005 judgment entered in Case No. CVG00660A denying defendants’ Motion requesting a stay of Writ of Restitution, when it determined that Defendants by reason of their refusal to relinquish the premises were in violation of Plaintiff’s rights, even though Plaintiff’s rights were at issue

{¶30} “Error XXVI The Coshocton Municipal Court erred to the prejudice of Appellants, in the October 13, 2005 judgment entered in Case No. CVG00660A denying defendants’ Motion requesting a stay of Writ of Restitution, when it determined that Defendants unlawfully and by force detain from Plaintiff the premises, even though Plaintiff’s interest in the real estate at issue was disputed

{¶31} “Error XXVII The Coshocton Municipal Court erred to the prejudice of Appellants, in the October 13, 2005 judgment entered in Case No. CVG00660A denying defendants’ Motion requesting a stay of Writ of Restitution, when it determined that Plaintiff’s Notice to Leave Premise was in the proper form, even though it failed to name all the parties having an interest in the real estate at issue

{¶32} “Error XXVIII The Coshocton Municipal Court erred to the prejudice of Appellants, in the October 13, 2005 judgment entered in Case No. CVG00660A denying defendants’ Motion requesting a stay of Writ of Restitution, erred to the prejudice of Appellants in that its decision is unreasonable, arbitrary, capricious, exceeds its power, and is against the manifest weight of the evidence

{¶33} “Error XXIX The Coshocton Municipal Court erred to the prejudice of Appellants, in the October 13, 2005 judgment entered in Case No. CVG00660A denying defendants’ Motion requesting a stay of Writ of Restitution, erred to the prejudice of Appellants in that its decision is an abuse of its [sic].

{¶34} “Error XXX The Coshocton Municipal Court had jurisdiction of the Complaint filed in Case No. CVG00660A

{¶35} “Error XXXI The Coshocton Municipal Court erred to the prejudice of Appellants in that its decision granting the Writ of Restitution in the October 6, 2005 judgment entered in Case No. CVG00660A is an abuse of discretion

{¶36} “Error XXXII The Coshocton Municipal Court erred to the prejudice of Appellants in that its decision granting the Writ of Restitution in the October 6, 2005 judgment entered in Case No. CVG00660A is unreasonable, arbitrary, capricious, exceeds its power, and is against the manifest weight of the evidence

{¶37} “Error XXXIII The Coshocton County Municipal court erred to the prejudice of Appellants in the October 6, 2005 judgment entered in Case Number CVG0500660A granting a writ of restitution when it determined that the court had jurisdiction of the action even though the issue of ownership of real property was at issue in an unrelated case filed in the Coshocton County Probate Court

{¶38} “Error XXXIV The Coshocton County Municipal court erred to the prejudice of Appellants in the October 6, 2005 judgment entered in Case Number CVG0500660A granting a writ of restitution when it determined that all necessary and indispensable parties were named in Case No. CVG0500660A even though the real estate at issue was listed as part of the probate estate of an individual who was not named as a party in Case No. CVG 0500660A and the administrator of that estate was not named as a party in Case No. CVG0500660A

{¶39} “Error XXXV The Coshocton County Municipal court erred to the prejudice of Appellants in the October 6, 2005 judgment entered in Case Number CVG0500660A granting a writ of restitution when it determined that Plaintiff duly served upon Defendants, the notice required by Ohio Revised Code § 1923.04 to vacate the premises, although not all of the statutory requirements were satisfied

{¶40} “Error XXXVI The Coshocton County Municipal court erred to the prejudice of Appellants in the October 6, 2005 judgment entered in Case Number CVG0500660A granting a writ of restitution when it determined that Defendants had no authority to remain on the premises, even though ownership of the premises was disputed in an unrelated case the merits of which had not been decided

{¶41} “Error XXXVII The Coshocton County Municipal court erred to the prejudice of Appellants in the October 6, 2005 judgment entered in Case Number CVG0500660A granting

a writ of restitution when it determined that Defendants, by reason of their refusal to relinquish the premises were in violation of Plaintiff's rights, even though Plaintiff's ownership of the premises was disputed in an unrelated case the merits of which had not yet been decided

{¶42} "Error XXXVIII The Coshocton County Municipal court erred to the prejudice of Appellants in the October 6, 2005 judgment entered in Case Number CVG0500660A granting a writ of restitution when it determined that Defendants unlawfully and by force detain [sic] from Plaintiff the premises, even though Plaintiff's ownership of the premises was disputed in an unrelated case the merits of which had not been decided

{¶43} "Error XXXIX The Coshocton County Municipal court erred to the prejudice of Appellants in the October 4, 2005 decision in Case Number CVG0500660A to hear the FED action when Plaintiff had just dismissed in February 2005 the same FED action against Jeffrey Dee Pahoundis and Jerry D. Pahoundis that had been pending at Coshocton County Common Pleas Court

{¶44} "Error XL The Coshocton County Municipal court erred to the prejudice of Appellants in the October 4, 2005 decision in Case Number CVG0500660A to hear the FED action when Plaintiff had just dismissed in February 2005 the same FED action against James David Pahoundis that had been pending at Coshocton County Common Pleas Court and knew that he had not been served with a copy of the 2005 complaint

{¶45} "Error XLI The Coshocton County Municipal Court erred to the prejudice of Julius Dean Pahoundis in the October 4, 2005 decision in Case Number CVG0500660A to include Deborah Lou Pahoundis Beamer even though not named as defendant after Plaintiff dismissed the first FED action in February 2005 that had been pending at Coshocton County Common Pleas Court and knew that they were not named as defendants in the 2005 complaint

{¶46} “Error XLII The Coshocton County Common Pleas Court erred to the prejudice of us by not appointing legal representation to defend one or more of us after attorney John Woodard died in March 2006 due to a disability

{¶47} “Error XLIII The Coshocton County Common Pleas Court erred to the prejudice of Deborah Lou Pahoundis Beamer when it determined that the Mansion Mobile home was no longer on the premises as of December 1, 2005

{¶48} “Error XLIV The Coshocton County Municipal court erred to the prejudice of defendants when it failed to require Plaintiff to determine ownership of the five mobile home [sic] or disclose the 2004 appraisals: Marlette Mobile Home; the Pontiac Mobile home; Star Mobile Home; Mansion Mobile Home; or the Camper formerly owned by Judge Evans’ mother”

{¶49} Ohio Rule of Appellate Procedure 16 requires:

{¶50} “The appellant shall include in its brief, under the headings and in the order indicated, all of the following:

{¶51} “(1) A table of contents, with page references.

{¶52} “(2) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where cited.

{¶53} “(3) A statement of the assignments of error presented for review, *with reference to the place in the record where each error is reflected.*

{¶54} “(4) A statement of the issues presented for review, with references to the assignments of error to which each issue relates.

{¶55} “(5) A statement of the case briefly describing the nature of the case, the course of proceedings, and the disposition in the court below.

{¶56} “(6) A statement of facts relevant to the assignments of error presented for review, with appropriate references to the record in accordance with division (D) of this rule.

{¶57} “(7) *An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.*

{¶58} “(8) A conclusion briefly stating the precise relief sought.”

{¶59} (Emphasis added.)

{¶60} Ohio Appellate Rule 12 reads:

{¶61} “(A) Determination

{¶62} “***

{¶63} “(2) The court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A).”

{¶64} The document filed purporting to represent Appellant’s brief does not comply in any substantial fashion whatsoever with the Ohio Rules of Appellate Procedure and the Local Rules of the Fifth Appellate Judicial District.

{¶65} Appellant’s brief asserts forty-three separate assignments of error, followed by eighteen pages of purported facts and allegations with no attempt to relate the arguments to the individual errors assigned. Neither do Appellants set forth their

rationale in support of their contentions, or cite to authorities, statutes and parts of the record relating to the arguments.

{¶66} This court will not assume the role of advocate for the Appellants in attempting to organize and prosecute their arguments on appeal. Appellants' failure to comply with Ohio Appellate Rule 16 is tantamount to failing to file a brief in this matter.¹

{¶67} It appears this appeal represents yet another collateral attack on the judgment rendered by the Coshocton County Probate Court which this Court has previously reviewed and affirmed in *Rodgers v. Pahoundis*, Coshocton Co. App. No. 07 CA 0007, 2008-Ohio-4468.

{¶68} Accordingly, the within appeal is dismissed for want of prosecution.

By: Hoffman, J.

Gwin, P.J. and

Edwards, J. concur

s/ William B. Hoffman

HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin

HON. W. SCOTT GWIN

s/ Julie A. Edwards

HON. JULIE A. EDWARDS

¹ For the same result see this Court's opinion in *Pahoundis v. Beamer*, Coshocton County App. No. 08 CA 0027, 2009-Ohio-6206.

