[Cite as *Carrick v. Bennett*, 2004-Ohio-4949.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

ROSEMARY CARRICK	C.A. No. 21962
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
BOB BENNETT, et al.	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellees	CASE No. CV 2002-06-3117

DECISION AND JOURNAL ENTRY

Dated: September 22, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BOYLE, J.

{¶1} Appellant, Rosemary Carrick, has appealed from the decision of the Summit County Court of Common Pleas granting summary judgment in favor of Appellees.[1] We affirm.

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[1] The following entities and individuals are the Appellees in this matter, and may be separated into the following two groups: (1) Akron Planning Commission, Akron Health Department, Steve Nome, C. Keck, M.D., Edwin Dieringer, Max Rothal, John York and (2) Bob Bennett and Bob Bennett Construction Co. Those individuals and entities in the first group are all connected to the City of Akron, and, for the sake of brevity, will be referred to collectively as "City of Akron" when it is necessary to distinguish between the two groups.

{¶2} The following pertinent facts are not in dispute. On April 17, 2001, following a hearing on the matter, the Akron Housing Appeals Board ("the Board") decided to demolish Appellant's house at 821 Bloomfield Avenue. Appellant appealed from the Board's decision to the Summit County Court of Common Pleas on May 18, 2001. The trial court upheld the administrative ruling on September 14, 2001. Appellant appealed from the trial court's decision to this Court. Upon Appellant's motion, the trial court stayed execution of its judgment pending Appellant's appeal to this Court. This Court affirmed the trial court's decision on April 10, 2002. Appellant appealed this Court's decision to the Ohio Supreme Court on May 13, 2002.

{¶3} Shortly thereafter, Appellant initiated a separate action relating to the Board's decision. On June 5, 2002, Appellant filed a complaint with the Summit County Court of Common Pleas, alleging several claims against Appellees. Each of the claims arose from the Board's decision to demolish Appellant's house. On June 13, 2002, upon Appellees' motion, the trial court stayed the case pending the conclusion of Appellant's appeal of the Board's decision, which was then pending before the Ohio Supreme Court.

{¶4} The City of Akron demolished Appellant's house at 821 Bloomfield Avenue on July 9, 2002. The Ohio Supreme Court dismissed Appellant's appeal on August 8, 2002, and her case before the Summit County Court of Common Pleas was reactivated. Appellant filed an amended complaint on November 11,

2002, adding claims of an unconstitutional taking, theft, fraud, and theft by deception. In support of these claims, Appellant alleged that Appellees demolished her house prematurely and destroyed personal property that she had not yet removed from the house.

{¶5} The City of Akron filed a motion for summary judgment on August 12, 2003. Bob Bennett and Bob Bennett Construction Co. filed a motion for summary judgment on August 14, 2003. The trial court granted both motions on January 12, 2004, finding that "the doctrine of res judicata bars [Appellant's] claims in the instant suit," and that "there was no violation of this Court's order of stay in the demolition of the property at 821 Bloomfield."

{¶6} Appellant timely appealed, raising six assignments of error.

II.

{¶7} As an initial matter, we note the appropriate standard of review. In each of her six assignments of error, Appellant challenges the trial court's grant of summary judgment in favor of Appellees. An appellate court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. We apply the same standard as the trial court, viewing the facts in the case in the light most favorable to the non-moving party and resolving any doubt in favor of the non-moving party. *Viock v. Stowe-Woodward Co.* (1983), 13 Ohio App.3d 7, 12.

{¶8} Pursuant to Civ.R. 56(C), summary judgment is proper if:

> "(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party." *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327.

{¶9} The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and pointing to parts of the record that show the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292. The non-moving party must then present evidence that some issue of material fact remains for the trial court to resolve. Id. at 293.

{¶10} Because Appellant's first and third assignments of error raise closely related issues, we will address them together.

Assignment of Error No. 1

> "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY DISMISSING THE COMPLAINT, AMENDED COMPLAINT ON APPELLEES['] MOTION FOR SUMMARY JUDGMENT WHEN APPELLANT STATED A CLAIM AS A MATTER OF LAW."

Assignment of Error No. 3

> "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT BY NOT CON[S]TRUING THE FACTS AS AN ACTION FOR THE DAMAGES OF HER PROPERTY THAT WAS DESTROYED IN THE HOUSE AT ISSUE BY THE APPELLANT RELYING ON A FACTUAL MISREPRESENTATION, THAT THE APPELLANT RELIED ON SAME WAS MISLEADING, THAT 'CAUSE(D) DETRIMENT

TO THE RELYING PARTY' HESKETT INFRA. THE APPELLANT."

{¶11} In her first and third assignments of error, Appellant maintains that the trial court erred by granting summary judgment in favor of Appellees with respect to her claims of an unconstitutional taking, theft, fraud, and theft by deception. We disagree.

{¶12} In her amended complaint, Appellant alleged that she was taken by surprise by the demolition of her house due to two misrepresentations made by the Appellees. Appellant claimed that Appellees first misled her by persuading the trial court to stay her case against Appellees pending the Ohio Supreme Court's disposition of her appeal of the Board's decision to demolish her house. Appellees misled her again, claimed Appellant, by assuring her on numerous occasions that she would be warned before her house was demolished.

{¶13} Appellant contends that the stay and the assurances given by the Appellees led her to believe that her house would not be demolished before the Ohio Supreme Court had disposed of her appeal and that she would be told when the demolition was to occur. On the basis of these beliefs, Appellant explains, she did not remove certain items of personal property from her house, and they were damaged when the house was razed.

{¶14} We first address Appellant's arguments relating to the stay. In its order granting summary judgment, the trial court determined that it was "not

reasonable for [Appellant] to assume that the stay in this case would stay execution of the judgment ordering demolition." We agree.

{¶15} As the trial court noted, the stay that it issued halted only Appellant's case against Appellees. The trial court did not purport to extend this stay to the judgment ordering the demolition of Appellant's house, which was issued in a separate action. It is true that the judge who affirmed the Board's decision to demolish Appellant's house did issue an order staying execution of this judgment pending Appellant's appeal to this Court. However, this stay was no longer in effect on July 9, 2002, when Appellant's house was demolished, as this Court had disposed of Appellant's appeal of the Board's decision almost three months before that date, on April 10, 2002. Had Appellant wished to stay the demolition of her home pending her appeal to the Ohio Supreme Court, she could have filed a motion to stay this Court's judgment along with her notice of appeal to the Ohio Supreme Court. See S.Ct.R. II, Sec. 2(A)(3)(a).

{¶16} In sum, the only stay in effect on the date that Appellant's house was demolished had no bearing upon the judgment ordering that demolition. Rather, that stay related only to the action initiated by Appellant against Appellees. It was unreasonable for Appellant to conclude that this stay would have any effect beyond suspending her claims against Appellees.

{¶17} We now turn to Appellant's argument that she was led to believe that she would be notified before her house was demolished. Once the Board has

decided to demolish a house, it is required to issue an order that the house must be demolished within thirty days, and to serve that order upon the owner of the house. Akron Municipal Code 150.051. We have reviewed the judgment issued by the trial court in connection with Appellant's administrative appeal. In its order affirming the Board's decision to demolish Appellant's house, the trial court made the following finding of fact, indicating that Appellant received the notice required by Akron Municipal Code 150.051:

> "By a letter dated April 18, 2001, [Appellant] was notified of the Board's ruling, and in particular, that the Bloomfield property was to be razed with the cost of demolition [assessed] as a tax lien. The letter also notified [Appellant] of her appeal rights. The letter was sent to [Appellant] by regular Mail and certified mail."

Appellant has not denied that she received the letter notifying her of the Board's decision to raze her house.

{¶18} Given the fact that Appellant received notice of the Board's decision to demolish her house, and also given the fact that the stay of the demolition expired once this Court disposed of her administrative appeal, Appellant had notice that her house could have been razed at any time after April 10, 2002. Therefore, we find that Appellant's first and third assignments of error are without merit, and that summary judgment in favor of Appellees was properly granted.

{¶19} Appellant's first and third assignments of error are overruled.

Assignment of Error No. 2

"THE TRIAL COURT ERRED IN THEIR DECISION WAS ARBITRARY, CAPRICIOUS AND PREJUDIC[IAL] TO

> APPELLANT WHEN THE CASE DISMISSED ON THE BASIS OF RES JUDICATA, COLLATERAL ESTOPPEL WAS NOT RELIABLE, PROBATIVE AND SUBSTANTIAL WHEN ALLEGATIONS ALLEGED IN THE COMPLAINT, AMENDED COMPLAINT HAVE NEVER BEEN ADDRESSED BY ANY OTHER COURT[.]"

{¶20} In her second assignment of error, Appellant contends that the trial court erred by determining that her claims arising from the demolition of her house are barred by res judicata. The record does not make clear whether or not the trial court did in fact determine that these particular claims are barred by res judicata. Assuming, for the sake of argument, that it did, this Court has already determined that summary judgment on these claims was properly granted, on the grounds provided in our analysis of Appellant's first and third assignments of error. Therefore, Appellant's second assignment of error is without merit, and is overruled.

Assignment of Error No. 4

> "THE TRIAL COURT ERRED IN THEIR DECISION TO GRANT SUMMARY JUDGMENT WAS ARBITRARY, CAPRICIOUS AND PREJUDIC[IAL] TO THE APPELLANT WHEN IT DID NOT ADDRESS THE TWO (2) DEFAULT MOTIONS THAT HAD BEEN FILED BY THE APPELLANT PER [CIV.R. 12], [CIV.R. 55(A)], VIOLATING DUE PROCESS RIGHTS, ART. 1, SEC. 16, OHIO CONSTITUTION; 14TH AMENDMENT OF U.S. CONSTITUTION AND A VIOLATION OF O.R.C. 2506.04."

{¶21} In her fourth assignment of error, Appellant maintains that the trial court erred by granting summary judgment in favor of Bob Bennett and Bob

Bennett Construction Co. without first disposing of Appellant's motion for default judgment against those parties. We disagree.

{¶22} The record reflects that Appellant filed a motion for default judgment against Bob Bennett and Bob Bennett Construction Co. on November 12, 2002, and that she renewed this motion on January 23, 2003. Contrary to Appellant's assertions, the record also reflects that the trial court disposed of the motion for default judgment prior to rendering summary judgment, by denying the motion on January 30, 2003.

{¶23} Appellant's fourth assignment of error is overruled.

Assignment of Error No. 5

> "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY [OPINING] THAT APPELLEES WERE IMMUNE, WHEN PER FACTS ALLEGED THEY VIOLATED CLEARLY ESTABLISHED LAW IN EXERCISING THEIR INDIVIDUAL DISCRETION TO PEREMPTORILY DEMOLISH APPELLANT'S HOUSE (WITH ALL BELONGINGS) WHILE APPEAL WAS PENDING AND TWO (2) STAYS WERE IN EFFECT IN VIOLATION OF HARLOW, VIOLATING DUE PROCESS RIGHTS AND FIFTH AMENDMENT U.S. CONSTITUTION RIGHT TO PROPERTY[.]"

{¶24} In her fifth assignment of error, Appellant maintains that the trial court erred by determining that Appellees were immune from liability. The trial court did not reach the issue of immunity. Appellant's fifth assignment of error is overruled.

Assignment of Error No. 6

"THE COURT ERRED IN THEIR DECISION WAS AN ABUSE OF DISCRETION AND '**IRREPARABLY INJURED**' THE APPELLANT BY GRANTING OF SUMMARY JUDGMENT AND DENYING APPELLANT THE RIGHT TO 'TRIAL BY JURY' GUARANTEED BY THE SEVENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES,[ ] AND ART. 1., SECTION 5 OF THE OHIO CONSTITUTION."

{¶25} In her sixth assignment of error, Appellant maintains that the trial court infringed upon her right to trial by jury by granting summary judgment in favor of Appellees. A proper grant of summary judgment does not violate a party's right to trial by jury. See *Hicks v. Home Centers, Inc.* (Feb. 19, 1992), 9th Dist. No. 15144. Appellant's sixth assignment of error is overruled.

III.

{¶26} Appellant's six assignments of error are overruled, and the judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

Exceptions.

EDNA J. BOYLE
FOR THE COURT

WHITMORE, P. J.
SLABY, J.
CONCUR

APPEARANCES:

ROSEMARY CARRICK, P. O. Box 2346, Stow, Ohio 44224, Appellant.

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