

[Cite as *Meador v. Bath Twp.*, 2010-Ohio-2570.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

CARL E. MEADOR, et al.

C. A. No. 25007

Appellants

v.

BATH TOWNSHIP, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2008-06-4572

Appellees

DECISION AND JOURNAL ENTRY

Dated: June 9, 2010

MOORE, Judge.

{¶1} Appellants, Carl and Lucinda Meador, appeal from the judgment of the Summit County Court of Common Pleas dismissing their administrative appeal. This Court affirms.

I.

{¶2} For ease of reference, we refer to the Appellees, Bath Township, the Bath Township Zoning Inspector/Administrator and the Bath Township Board of Zoning Appeals, collectively as “the Township.” The trial court gained jurisdiction over this matter as an administrative appeal from the decision of the Bath Township Board of Zoning Appeals pursuant to Chapters 2505 and 2506 of the Revised Code.

{¶3} On June 25, 2008, the Meadors filed their notice of appeal in the trial court. That same day, the Meadors filed a praecipe requesting transmission of the administrative transcript to the trial court. On August 5, 2008, the parties filed a “Stipulation and Order Extending Time” in which the parties agreed that the Township would file the transcript by September 4, 2008. This

order was prepared by Mr. Meador and signed by the trial judge. On April 9, 2009, the parties stipulated to a second extension of time in which the Township would file the transcript. The parties stipulated that the transcript would be filed by April 9, 2009. This order was also prepared by Mr. Meador and signed by the trial judge. On June 1, 2009, the trial court, sua sponte, entered an order, which stated, in pertinent part: “Appellees have failed to meet every deadline and extension for the filing of the transcript. If the complete transcript is not filed by June 16, 2009, the Court will issue sanctions. No further extensions will be granted.” On June 10, 2009, the Township filed a notice of filing of transcript. On July 10, 2009, the Meadors filed a motion for extension of time to file their brief and assignments of error. On July 16, 2009, the trial court granted the Meadors’ motion and ordered them to file their brief and assignments of error on or before July 27, 2009. On July 22, 2009, the Meadors filed a motion to compel the Township to file a complete transcript on the basis that the Township failed to include the exhibits when it filed the transcript. On August 6, 2009, the trial court entered an order observing that on July 24, 2009, the Township filed the exhibits. The order also contained a briefing schedule providing that, pursuant to Loc.R. 19.03, the Meadors’ brief and assignments of error were due by August 24, 2009, the Township’s briefs and assignments of error were due by September 23, 2009 and the Meadors’ reply brief was due by October 5, 2009. The order further stated that “[f]ailure to comply with this briefing schedule may result in dismissal of the appeal or entry of judgment without further hearing. No further extensions will be granted.”

{¶4} On August 24, 2009, the day the Meadors’ brief and assignments of error were due, the Meadors filed a motion for extension of time requesting seven additional days to prepare their brief and assignments of error. The reason given was that Mr. Meador qualified for the National Senior Olympics to represent Ohio in five swim events beginning August 1, 2009, in

Palo Alto, California and was out of the state for several weeks beginning July 30, 2009.¹ Mr. Meador asserted that he spoke with the Township's counsel on July 29, 2009, and received his verbal permission to sign his name to approve an extension of time to file his brief and assignments of error. Mr. Meador did not, however, sign the name of the Township's counsel as assenting to the extension requested in this motion.

{¶5} On August 26, 2009, the trial court entered an order dismissing the Meadors' appeal for failure to comply with the August 24, 2009 briefing deadline.

{¶6} The Meadors timely filed a notice of appeal, raising one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

“THE TRIAL COURT ERRED AS A MATTER OF LAW AND TO THE PREJUDICE OF THE [MEADORS] BY FAILURE TO GRANT [THE MEADORS'] REQUEST FOR A 7 DAY EXTENSION TO FILE ITS BRIEF AND ASSIGNMENTS OF ERROR AND DISMISSED THE APPEAL.”

{¶7} In their assignment of error, the Meadors contend that the trial court erred when it denied their request for an extension of time in which to file their brief and assignments of error and instead dismissed their administrative appeal. We disagree.

{¶8} In this case, the trial court dismissed the Meadors' appeal due to their failure to comply with Summit County Local Rule 19.03, which required them to file their appellants' brief within 30 days of the filing of the completed transcript. Loc.R. 19.03(a) and (d) of the

¹ The language in the motion regarding Mr. Meador's trip out of state and the permission received from the Township's counsel to sign his name to approve an extension for the Meadors are written in the future tense, as if Mr. Meador drafted these portions of the motion for an extension prior to his trip.

Court of Common Pleas of Summit County, General Division. We review the trial court's interpretation or application of its local rules for an abuse of discretion. *Michaels v. Michaels*, 9th Dist. No. 07CA0058-M, 2008-Ohio-2251, at ¶13. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶9} Pursuant to R.C. 2506.02, upon praecipe filed by the Meadors, the Township bore the burden to file a complete transcript. Once the transcript was filed, Summit County Local Rule 19.03(a) required the Meadors to file their appellants' brief within 30 days. The Township filed the complete transcript including exhibits on July 24, 2009. Therefore, the Meadors' brief was due on August 24, 2009. This due date was confirmed by the trial court's order of August 6, 2009, which provided that the appellants' brief was due August 24, 2009, the Township's brief was due by September 23, 2009, and the Meadors' reply brief was due by October 5, 2009. The trial court's order further provided that "[f]ailure to comply with this briefing schedule may result in dismissal of the appeal[.]" Instead of complying with this order, the Meadors waited until the day the brief was due and filed a motion for an extension of time in which to file the brief.

{¶10} Under Loc.R. 19.03(d), for good cause shown, the trial court may extend the dates by which briefs must be filed. The rule further provides that "[i]f the appellant fails to file its brief and assignments of error within the time provided, the Court may dismiss the appeal[.]" *Id.* For cause, the Meadors cited Mr. Meador's trip to the National Senior Olympics, which took him out of town for "several weeks" beginning July 30, 2009, the apparent approval of an extension

by the Township's counsel prior to Mr. Meador's trip, the fact that the Meadors had never received a continuance, an attribution of all delays in the case to the Township and a claim of new developments in the case that "may require including additional claims under Ohio Law with Appellants [sic] Assignment of Error." We must disregard any claims regarding "new events" as irrelevant to this appeal. The approval of an extension by the Township's counsel as of July 29, 2009, is similarly irrelevant because the trial court, not the parties, has the discretion to extend the time for filing. Loc.R. 19.03(d). In its order denying the requested extension and dismissing the appeal, the trial court observed that on July 10, 2009 (the date the appellants' brief would have been due under Loc.R. 19.03(a) had the Township filed the transcripts), the Meadors moved for an extension. On July 16, 2009, the trial court granted an extension until July 27, 2009. It was only on July 22, 2009, that the Meadors filed a motion to compel the filing of the exhibits after discovering their absence from the transcript 42 days after its initial filing. Further, Mr. Meador prepared and filed at least the first stipulated extension of time for the Township to file the transcript. This is apparent because Mr. Meador signed the document on behalf of the Meadors as well as the name of the Township's counsel "per phone 1 Aug 08." We do not in any way discourage cooperation between counsel for litigants in managing deadlines. To the contrary, we find such cooperation to be admirable. We are constrained to point out, however, that the Meadors were not at the mercy of the Township and could, after a reasonable time, have sought the timely filing of the transcript through such means as a motion for contempt. *Smith v. Chester Twp. Bd. of Trustees* (1979), 60 Ohio St.2d 13, 17-18. After all, a full year passed between the filing of the notice of appeal and the filing of the completed transcript. Under these circumstances, we cannot agree that all of the delays in this matter can be attributed solely to the Township. The trial court's August 6, 2009 order placed the parties on notice that non-

compliance with the briefing schedule could result in dismissal and that no further extensions would be granted. The trial court gave reasonable notice to the parties of the repercussions of not meeting its filing deadlines. It had a duty to manage its docket in a timely manner and did not abuse its discretion in its application of Loc.R. 19.03(a) and (d) to the matter before it. *Blakemore*, 5 Ohio St.3d 219.

{¶11} The Meadors' assignment of error is overruled.

III.

{¶12} The Meadors' assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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 Appellants.

CARLA MOORE
FOR THE COURT

CARR, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

CARL E. MEADOR, pro se, Appellant.

CARL E. MEADOR, Attorney at Law, for Appellant.

ROBERT G. KONSTAND, Attorney at Law, for Appellees.