

[Cite as *Helms v. Juersivich*, 2015-Ohio-1919.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

JOEL HELMS

Appellant

v.

MICHAEL JUERSIVICH

Appellee

C.A. No. 27543

APPEAL FROM JUDGMENT
ENTERED IN THE
BARBERTON MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 14 CVG 1351

DECISION AND JOURNAL ENTRY

Dated: May 20, 2015

HENSAL, Presiding Judge.

{¶1} Joel Helms appeals an order of the Barberton Municipal Court dismissing his action against Michael Juersivich. For the following reasons, this Court reverses.

I.

{¶2} Mr. Helms filed a pro se complaint for forcible entry and detainer against Mr. Juersivich. He also sought damages for several months of unpaid rent. The municipal court scheduled an eviction hearing, but Mr. Helms failed to appear for it. The court, therefore, dismissed his complaint. Mr. Helms moved for reconsideration, alleging that he had simply written the wrong date on his calendar, but the trial court denied his motion. Mr. Helms also sought clarification about whether both of his causes of action were dismissed or only the forcible entry and detainer action. The court replied that the entire case had been dismissed but without prejudice. Mr. Helms has appealed the dismissal of his complaint, assigning two errors, which this Court will address together.

II.

ASSIGNMENT OF ERROR I

NO NOTICE OF IMPENDING DISMISSAL

ASSIGNMENT OF ERROR II

DISMISSAL BEFOR[E] TIMELY VENUE OF SECOND CLAIM

{¶3} Mr. Helms argues that the municipal court should have provided him with notice that his claims might be dismissed. He also argues that his failure to appear for the eviction hearing should not have affected his claim for damages.

{¶4} Civil Rule 41(B)(1) provides that, if “the plaintiff fails to prosecute, * * * the court upon motion of a defendant or on its own motion may, after notice to the plaintiff’s counsel, dismiss an action or claim.” This Court has explained that the requirement in Rule 41(B)(1) that a court provide “notice to the plaintiff’s counsel” provides a party with an opportunity to avoid dismissal. *Capital One Bank v. Jones*, 9th Dist. Medina No. 13CA0038-M, 2014-Ohio-2229, ¶ 9. Thus, inherent in the rule is a notice requirement. *Britt v. Miskovic*, 9th Dist. Summit No. 25142, 2010-Ohio-4637, ¶ 20. If a party is pro se, the notice must be provided to the party instead of counsel. *Id.* It is error for a trial court to dismiss a plaintiff’s case without notice for failure to prosecute. *Logsdon v. Nichols*, 72 Ohio St.3d 124, 128 (1995).

{¶5} The record does not contain any indication that the municipal court gave Mr. Helms notice of its intent to dismiss his action for not appearing at the eviction hearing. We, therefore, conclude that it erred when it dismissed his complaint. *Watts v. Rodgers*, 5th Dist. Muskingum No. 01-50, 2001 WL 1524397, *1 (Nov. 28, 2001). Mr. Helms’s first assignment of error is sustained. In light of our resolution of the first assignment of error, we conclude that

Mr. Helms's second assignment of error is moot, and it is overruled on that basis. *See* App.R. 12(A)(1)(c).

III.

{¶6} The trial court was required to provide Mr. Helms with notice before dismissing his action for want of prosecution. The judgment of the Barberton Municipal Court is reversed, and this matter is remanded for proceedings consistent with this decision.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Barberton Municipal Court, 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(C). 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 Appellee.

JENNIFER HENSAL
FOR THE COURT

WHITMORE, J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

JOEL A. HELMS, pro se, Appellant.

MICHAEL JUERSIVICH, pro se, Appellee.