[Cite as *Raccuia v. Kent State Univ.*, 2010-Ohio-3014.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Michael Raccuia, dba Michren Company,	:	
Plaintiff-Appellant/ Cross-Appellee,	:	No. 10AP-71
v.	:	(C.C. No. 2007-06675)
Kent State University,	:	(REGULAR CALENDAR)
Defendant-Appellee/ Cross-Appellant.	:	

D E C I S I O N

Rendered on June 30, 2010

Michael Raccuia, pro se.

Richard Cordray, Attorney General, *William C. Becker* and *Kristin S. Boggs*, for appellee.

APPEALS from the Court of Claims of Ohio.

McGRATH, J.

{¶1} Plaintiff-appellant, Michael Raccuia, dba Michren Company ("appellant"), appeals from a judgment of the Court of Claims of Ohio dismissing his claims, pursuant to Civ.R. 41(B)(2), after a trial to the court.

{¶2} This matter arises out of a purported contract to complete two residential dormitory bathrooms on the campus of defendant-appellee, Kent State University ("appellee"). According to the complaint filed on July 30, 2007, appellee was to pay appellant $226,000 for construction services, and though he had substantially performed,

appellee still owed appellant $140,721. Appellant also sought additional damages in the amount of $352,000.

{¶3} On September 28, 2007, appellee filed an answer denying the allegations in appellant's complaint. Appellee also filed a counterclaim alleging appellant was in breach of the contract for the project identified in appellant's complaint, and as a result sought damages in excess of $40,000.

{¶4} On December 17, 2009, a trial to the court on the issue of liability commenced. At the close of appellant's case, appellee moved for dismissal of the complaint pursuant to Civ.R. 41(B)(2). Finding appellant failed to produce evidence to support his claims, the trial court granted appellee's motion. Specifically, the trial court noted that, even though the action was brought as a contract case, not only was there nothing before the court that it could use to determine whether or not there was a breach by one or both parties, there was no contract before the court. Additionally, the trial court found appellee failed to present evidence pertaining to its counterclaims and sua sponte dismissed the same.

{¶5} This appeal followed and appellant brings the following two assignments of error for our review:

> I. WHETHER THE COURT OF CLAIMS JUDGMENT ENTRY DISMISSING THE COMPLAINT BASED ON INSUFFICIENT EVIDENCE MUST BE REVERSED IN LIGHT OF THE EXCLUSION OF SUFFICENT [SIC] EVIDENCE THAT WAS MADE KNOWN TO THE COURT AND WHICH THE COURT ITSELF ACKNOWLEDGED WAS KNOWN AND PRESENT IN THE COURT THE DAY OF THE HEARING?
>
> II. WHETHER THE COURT OF CLAIMS ERRED BY FAILING TO ADMIT RELEVANT EVIDENCE THAT WOULD SUPPORT A

> FINDING OF THE FULLFILLMENT [SIC] OF THE CONDITION OF FACT PURSUANT TO PLAINTIFF'S CASE?

{¶6} Appellee filed a conditional cross-appeal and assigns the following assignment of error:

> The Court of Claims erred when it sua sponte dismissed KSU's counterclaim following the dismissal of Appellant's complaint.

{¶7} In a trial to the court without a jury, a motion for judgment at the close of a plaintiff's case is a motion for dismissal pursuant to Civ.R. 41(B)(2). *Johnson v. Tansky Sawmill Toyota, Inc.* (1994), 95 Ohio App.3d 164, 167.

{¶8} Civ.R. 41(B)(2) states:

> After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff's evidence, the defendant * * * may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Civ.R. 52 if requested to do so by any party.

{¶9} Pursuant to this rule, the trial court is the trier of fact and is to weigh the evidence. *Johnson* at 167. A dismissal, pursuant to Civ.R. 41(B)(2), will not be set aside unless it is incorrect as a matter of law or is against the manifest weight of the evidence. Id; *Mayville v. Ohio Dept. of Rehab. & Corr.* (Mar. 23, 1999), 10th Dist. No. 98AP-824. Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus.

{¶10} Appellant's assigned errors are brought pursuant to Evid.R. 103 and 104, respectively. However, under his first assigned error, appellant states only that the court erred "by excluding sufficient evidence that was made known to the Court by offer and which the Court itself acknowledged was known and present in the Court the day of the Hearing." (Appellant's brief, 9.) Likewise, under his second assignment of error appellant states only that the trial court erred "by failing to admit relevant evidence that would support a finding of the fulfillment of the condition of fact pursuant to Plaintiff's case." (Appellant's brief, 9.)

{¶11} We note initially that since appellant has failed to set forth specific arguments and failed to direct us to the evidence he broadly references in his assigned errors, we are unclear as to the specific nature of appellant's arguments. App.R. 16(A)(7) states, in relevant part, that an appellant's brief shall include "[a]n 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." App.R. 12(A)(2) states that "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)." *State v. Sutton*, 10th Dist. No. 06AP-708, 2007-Ohio-3792, ¶68. As stated by the Ninth District Court of Appeals: " '[I]t is the duty of the appellant, not this court, to demonstrate his assigned error through an argument that is supported by citations to legal authority and facts in the record.' " *State v. Vinson*, 9th Dist. No. 23739, 2007-Ohio-6045, ¶25, quoting *State v. Taylor* (Feb. 9, 1999), 9th Dist. No. 2783-M.

{¶12} " '[F]ailure to comply with the rules governing practice in the appellate courts is a tactic which is ordinarily fatal.' " *Lias v. Beekman*, 10th Dist. No. 06AP-1134, 2007-Ohio-5737, ¶6, quoting *State ex rel. Petro v. Gold*, 166 Ohio App.3d 371, 2006-Ohio-943, ¶51, appeal not allowed, 110 Ohio St.3d 1439, 2006-Ohio-3862, reconsideration denied, 111 Ohio St.3d 1418, 2006-Ohio-5083. "It is not the duty of [an appellate] court to search the record for evidence to support an appellant's argument as to alleged error." Id. at ¶94, citing *Slyder v. Slyder* (Dec. 29, 1993), 9th Dist. No. 16224; *Sykes Constr. Co. v. Martell* (Jan. 8, 1992), 9th Dist. No. 15034, cause dismissed, 64 Ohio St.3d 1402. See also *State ex rel. Physicians Commt. For Responsible Medicine v. Bd. of Trustees of The Ohio State Univ*., 108 Ohio St.3d 288, 2006-Ohio-903, ¶13. "It is also not appropriate for [an appellate court] to construct the legal arguments in support of an appellant's appeal." *Petro* at ¶94. " 'If an argument exists that can support [an] assignment of error, it is not [an appellate] court's duty to root it out.' " Id., quoting *Cardone v. Cardone* (May 6, 1998), 9th Dist. No. 18349, dismissed, appeal not allowed, 83 Ohio St. 3d 1429.

{¶13} Also, " '[*p*]*ro se* civil litigants are bound by the same rules and procedures as those litigants who retain counsel. They are not to be accorded greater rights and must accept the results of their own mistakes and errors.' " *Lias,* at ¶7, quoting *Delaney v. Cuyahoga Metro. Hous. Auth.* (July 7, 1994), 8th Dist. No. 65714, quoting *Meyers v. First Natl. Bank* (1981), 3 Ohio App.3d 209, 210. See also *Sabouri v. Ohio Dept. of Jobs & Family Servs.* (2001), 145 Ohio App.3d 651, 654, citing *Kilroy v. B.H. Lakeshore Co.* (1996), 111 Ohio App.3d 357, 363, and *Meyers* at 210 (stating that "[i]t is well established

that *pro se* litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel").

{¶14} Nonetheless, we will construe appellant's appeal as an argument that the trial court erred in not admitting three exhibits, namely, M, S, and U, out of the 26 exhibits for which appellant sought admission.

{¶15} The decision to admit or exclude evidence is subject to review under an abuse of discretion standard, and, absent a clear showing that the court abused its discretion in a manner that materially prejudices a party, we will not disturb the trial court's ruling. *Boggs v. The Scotts Co*., 10th Dist. No. 04AP-425, 2005-Ohio-1264, ¶35, citing *Sidenstricker v. Miller Pavement Maintenance, Inc*., 158 Ohio App.3d 356, 2004-Ohio-4653, ¶23, and *Krischbaum v. Dillon* (1991), 58 Ohio St.3d 58, 66.

{¶16} Exhibit M appears to be a proposal from an entity entitled Eurocase, and Exhibits S and U are purported letters from the Hartford Fire Insurance Company to appellee. However, appellant fails to provide any reasoning regarding why it was error for the trial court to not admit these unauthenticated documents or any reasoning regarding their relevance. As such, we cannot find the trial court abused its discretion in this circumstance. Additionally, the record reflects the trial court gave appellant multiple opportunities to present evidence and even advised appellant during the trial that legal representation is recommended so that litigants can present their case in the best light and get the greatest advantage from the testimony and evidence being presented. Moreover, the trial court gave appellant an additional opportunity to speak about each of the 26 presented exhibits despite the fact that during appellant's initial testimony he neither identified nor referenced them whatsoever.

{¶17} Accordingly, we find no abuse of discretion in the trial court's decision to not admit Exhibits M, S, and U, and overrule appellant's two assignments of error. As our disposition of appellant's assignments of error leaves the trial court's judgment entirely intact, we do not address appellee's conditional assignment of error on cross-appeal.

{¶18} In accordance with the foregoing, appellant's two assignments of error are overruled, appellee's cross-assignment of error is moot, and the judgment of the Court of Claims of Ohio is affirmed.

Judgment affirmed.

BRYANT and KLATT, JJ., concur.

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