[Cite as *National/RS, Inc. v. Huff*, 2010-Ohio-6530.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

National/RS, Inc. et al.,	:	
Plaintiffs-Appellants,	:	
		No. 10AP-306
v.	:	(C.P.C. No. 04CVH-10-11294)
Ronald A. Huff et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on December 30, 2010

Wiles, Boyle, Burkholder & Bringardner Co., L.P.A., James M. Wiles and *Dale D. Cook*, for appellants.

Schottenstein, Zox & Dunn Co., L.P.A., James E. Davidson and *Nicole R. Woods*, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Plaintiffs-appellants, National/RS, Inc., National Realty Services, Inc., and NRS Equities, Inc. (collectively "NRS"), appeal from the judgment of the Franklin County Court of Common Pleas granting summary judgment in favor of defendants-appellees, William M. Kahn ("Kahn"), David W. Farnsworth ("Farnsworth"), Northland Associates LLC, Realty Finance Partners LLC, Apollo Realty Finance Holding Company II LLC, ARFO Westbelt LLC, ARFO Northeast LLC, ADFO Northeast II LLC, and Continent Village LLC (collectively "National Realty"), and Ronald A. Huff ("Huff").

{¶2} The facts as relevant to this appeal are as follows. In 1991, Ronald Scherer, Sr. ("Scherer"), and Huff formed NRS to manage and develop properties through its two subsidiaries, National Realty Services Inc. and NRS Equities, Inc. Huff was an officer and director of NRS until approximately March 2003.

{¶3} In October 1997, Kahn and Farnsworth formed Realty Finance Partners, LLC ("RF Partners"), to invest in undervalued commercial properties, rehabilitate them, and sell them at a profit above the market appreciation rate. In January 1998, Kahn and Farnsworth elected Huff, a member of RF Partners, with a one-third ownership interest in the business. This information was not disclosed to Scherer.

{¶4} In 1998, Huff identified nearly $34 million in property that was purchased by RF Partners and Apollo Real Estate Advisors ("Apollo"), a New York-based investment firm. In 2001, RF Partners and Apollo invested over $18 million to buy The Continent, a 50-acre development in north Columbus, through four limited liability companies. While NRS performed services assisting in the acquisition of the Continent, NRS was not paid a commission relative to this transaction, as there was no commission agreement in place. However, NRS was paid sums as compensation for its services related to the development, redevelopment, management, and leasing of the Continent properties.

{¶5} In May 2000, Kahn agreed to buy Huff's one-third interest in RF Partners, and, therefore, after May 30, 2000, Huff was neither a member nor partial owner of RF Partners. In 2001, Scherer learned of Huff's involvement with RF Partners, and in 2002, Huff was replaced as president of NRS by Ronald Scherer, Jr. ("Scherer, Jr.").

{¶6} According to Huff, he learned that Retail Ventures, d.b.a. Value City, was looking for a new site for its corporate headquarters. Therefore, on January 6, 2003, NRS

entered into an Agreement of Purchase and Sale ("purchase agreement") with Columbus Urban Growth ("Columbus Growth") for an option contract to buy the former Lazarus store at Northland Mall. On January 15, 2003, NRS entered into an assignment of the purchase agreement with Northland Associates, LLC ("Northland Associates"). Concurrently, NRS and Northland Associates also executed a Registration and Commission Agreement ("commission agreement"). The commission agreement provides, in pertinent part:

> It is understood and agreed that if, on or prior to February 1, 2004, a lease is executed between [Realty Ventures] and [Northland Associates] for the Property, [Northland Associates] will pay [NRS] a real estate commission, with respect to said transaction, in the following amounts and under the following terms and conditions:
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> * * *
>
> (b) Payment of said real estate commissions, if any, for leasing the Property shall be earned only if such lease is fully executed within the terms of this Agreement and all conditions to the effectiveness thereof have been satisfied within the term of this Agreement and, if earned one-half of such commission shall be payable within 30 days after mutual execution of said lease and satisfaction of such conditions and the balance of such commission shall be payable within thirty (30) days after [Retail Ventures] commences its business operations at the Property. No commission shall be earned or payable with respect to any extension term.

{¶7} On September 30, 2003, Northland Associates and Retail Ventures entered into a conditional lease agreement for the lease of the property for an initial 20-year term. However, at the time the lease was signed, Columbus Growth still owned the property. During the latter part of 2003, there were nine written amendments extending the purchase agreement between Columbus Growth and Northland Associates, which

pushed back the lease's full execution past the February 1, 2004 deadline provided for in the commission agreement. After the February 11, 2004 closing, NRS presented Northland Associates with an invoice for $2,534,400 in commissions, which Northland Associates refused to pay because the lease was not fully executed on or before February 1, 2004.

{¶8} On October 27, 2004, NRS filed a 17-count complaint asserting breach of contract, unjust enrichment, tortious interference, and fraud/misrepresentation. A motion for partial summary judgment was filed on March 17, 2006. The trial court granted the motion on September 26, 2008, as to all counts in the complaint, except for counts V, VI, VIII, XI, and XIV, which remained pending. The following month, a motion for leave to file a second summary judgment motion as to the five remaining counts was filed. After review, the trial court agreed that summary judgment was appropriate as to the remaining counts and on March 5, 2010, entered judgment in favor of appellees on all counts of the complaint.

{¶9} This appeal followed and appellants bring the following four assignments of error[1] for our review:

> I. The trial court erred in granting summary judgment on the breach of contract claims on the Northland Project.
>
> II. The trial court erred in granting summary judgment on the fraudulent misrepresentation claims on the Northland Project.
>
> III. The trial court erred in granting summary judgment as the unjust enrichment claims for the Continent.

[1] Though the trial court granted summary judgment on all claims in favor of all appellees, NRS raises only selected claims on appeal. Therefore, our discussion focuses likewise.

IV. The trial court abused its discretion in refusing to allow the deposition of Richard Mack and in denying Plaintiff's motion to amend their complaint.

{¶10} Summary judgment under Civ.R. 56(C) may be granted only when there remains no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to but one conclusion, that conclusion being adverse to the party opposing the motion. *Tokles & Son, Inc. v. Midwestern Indem. Co.* (1992), 65 Ohio St.3d 621, 629, citing *Harless v. Willis Day Warehousing Co*. (1978), 54 Ohio St.2d 64. Additionally, a moving party cannot discharge its burden under Civ.R. 56 simply by making conclusory assertions that the nonmoving party has no evidence to prove its case. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. Rather, the moving party must point to some evidence that affirmatively demonstrates that the nonmoving party has no evidence to support his or her claims. Id.

{¶11} An appellate court's review of summary judgment is de novo. *Koos v. Cent. Ohio Cellular, Inc*. (1994), 94 Ohio App.3d 579, 588; *Bard v. Society Natl. Bank, nka KeyBank* (Sept. 10, 1998), 10th Dist. No. 97APE11-1497. Thus, we conduct an independent review of the record and stand in the shoes of the trial court. *Jones v. Shelly Co*. (1995), 106 Ohio App.3d 440, 445. As such, we must affirm the trial court's judgment if any of the grounds raised by the movant at the trial court are found to support it, even if the trial court failed to consider those grounds. See *Dresher; Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶12} The construction of a written contract is a matter of law. *Alexander v. Buckeye Pipe Line Co*. (1978), 53 Ohio St.2d 241, paragraph one of the syllabus. Common words in a contract must be given their ordinary meaning unless manifest

absurdity results, or unless some other meaning is clearly intended, based upon the face or overall contents of the document. Id. at paragraph two of the syllabus.

{¶13} The purpose of contract construction is to realize and give effect to the intent of the parties. *Graham v. Drydock Coal Co*., 76 Ohio St.3d 311, 313, 1996-Ohio-393. The intent of the parties is evidenced by the contractual language. *Skivolocki v. E. Ohio Gas Co*. (1974), 38 Ohio St.2d 244, 247. See also *Saunders v. Mortensen*, 101 Ohio St.3d 86, 2004-Ohio-24, ¶9 (it is presumed that the intent of the parties to the contract lies within the language used in the contract); *Kelly v. Med. Life Ins. Co*. (1987), 31 Ohio St.3d 130, 132 (the intent of the parties is presumed to reside in the language they chose to use in the agreement).

{¶14} When parties to a contract dispute the meaning of the contract language, courts must first look to the four corners of the document to determine whether or not an ambiguity exists. *Buckeye Corrugated, Inc. v. DeRycke*, 9th Dist. No. 21459, 2003-Ohio-6321. "[I]f the contract terms are clear and precise, the contract is not ambiguous and the trial court is not permitted to refer to any evidence outside of the contract itself." *Ryan v. Ryan* (Oct. 27, 1999), 9th Dist. No. 19347.

{¶15} When the language of a contract is unclear or ambiguous, or when the circumstances surrounding the agreement give the plain language special meaning, extrinsic evidence can be used to ascertain the intent of the parties. *Shifrin v. Forest City Ent., Inc*., 64 Ohio St.3d 635, 638, 1992-Ohio-28. Contract language is ambiguous if its meaning cannot be determined from the four corners of the contract or if the contract language is susceptible to two or more conflicting, yet reasonable, interpretations. *Covington v. Lucia*, 151 Ohio App.3d 409, 2003-Ohio-346. A court construes a contract

against the drafter, but when the terms are unambiguous and clear on their face, the court need not go beyond the plain language of the contract to determine the rights and obligations of the parties. *EFA Assoc., Inc. v. Dept. of Adm. Serv.*, 10th Dist. No. 01AP-1001, 2002-Ohio-2421, ¶31.

{¶16} In the first assignment of error, NRS contends the trial court erred in granting summary judgment on the breach of contract claims because there are issues of fact surrounding the same. Because there were a number of amendments to the purchase agreement that delayed the closing, and because the final amendment moved the closing date from January 4, 2004, yet utilized the pre-closing documents of December 19, 2003, NRS argues there is an inference that the transaction was manipulated by Northland Associates and constitutes a breach of the duty of good faith that is implied in all contracts. NRS also argues that because "fully executed" was not defined in the commission agreement, there is an issue of fact as to whether the September 30, 2003 lease agreement satisfied the "fully executed" requirement of the commission agreement.

{¶17} As stated previously, the commission agreement between NRS and Northland Associates provided that in order for the real estate commission to be paid, all conditions had to be met, including that the lease be fully executed by February 1, 2004. The commission agreement also expressly provided that "no commission shall be earned or payable with respect to any extension term." As the trial court found, this language is clear and unambiguous.

{¶18} Indeed, NRS is correct that every contract includes an implied duty of good faith. The Supreme Court of Ohio has described the general duty, implied in all contracts,

to exercise good faith and fair dealing as "[a] compact reference to an implied undertaking not to take opportunistic advantage in a way that could not have been contemplated at the time of drafting, and which therefore was not resolved explicitly by the parties." *Ed Schory & Sons, Inc. v. Society Natl. Bank*, 75 Ohio St.3d 433, 443-44, 1996-Ohio-194. As found by the trial court, because of the variables clearly known at the time of drafting, it was reasonable to contemplate the February 1, 2004 deadline might need to be extended. In fact, the contract between Northland Associates and Retail Ventures anticipated the potential for an extension and provided for it. The contract between NRS and Northland Associates, for which NRS expressly bargained, did not provide for such potential but, instead, expressly prohibited commission payment for any extension term.

{¶19} Moreover, as stated by the Supreme Court of Ohio in *Hamilton Ins. Servs. v. Nationwide Ins. Cos.*, 86 Ohio St.3d 270, 1999-Ohio-162 "[t]here can be no implied covenants in a contract in relation to any matter specifically covered by the written terms of the contract itself." Id. at 274, citing *Kachelmacher v. Laird* (1915), 92 Ohio St. 324, paragraph one of the syllabus. The commission agreement expressly prohibits paying the commission if the February 1, 2004 deadline is extended. Thus, to the extent NRS's causes of action alleging breach of contract of the implied covenant of good faith and fair dealing pertain to matters specifically covered by the written terms of the agreement, we find no implied covenants lie as to these matters. *Interstate Gas Supply, Inc. v. Calex Corp.*, 10th Dist. No. 04AP-980, 2006-Ohio-638, ¶101.

{¶20} Additionally, we find the commission agreement's failure to define "fully executed" renders no relief to NRS. As aptly found by the trial court, the commission agreement required "all conditions to the effectiveness of the lease" to have been

satisfied, including approval of final construction plans by Retail Ventures, Northland Associates getting a guaranteed maximum price construction contract, and Northland Associates obtaining title in fee simple, all of which undisputedly were not satisfied before February 1, 2004. NRS alleges the amendments to the purchase agreements were manipulated by Northland Associates in order to delay the closing to avoid payment of the real estate commission. However, NRS's conclusory allegation is not supported by anything in the record. The affidavit of general counsel for Retail Ventures states the closing date had to be moved beyond February 1, 2004 because final construction plans had not been approved. Also according to this affidavit, the commission agreement played no role in Retail Ventures' decision to approve the final construction plans. NRS provided no evidence to the contrary.

{¶21} Our review of the record demonstrates appellees met their burden under Civ.R. 56 of establishing no genuine issue of material fact remained with respect to the breach of contract claims, and NRS's conclusory allegations were insufficient to satisfy their reciprocal burden under Civ.R. 56(E). Accordingly, the trial court properly granted summary judgment to appellees on these claims, and NRS's first assignment of error is overruled.

{¶22} In the second assignment of error, NRS contends the trial court erred in granting summary judgment on the claims for fraudulent misrepresentation as they pertained to the Northland project. In order to prevail on a fraudulent misrepresentation claim, plaintiffs are obligated to establish all of the following elements: " '(1) a representation, or where there is a duty to disclose, concealment of a fact, (2) which is material to the transaction at hand, (3) made falsely, with knowledge of its falsity, or with

such other disregard and recklessness as to whether it is true or false that knowledge may be inferred, (4) with the intent of misleading another into relying on it, (5) justifiable reliance upon the representation or concealment, and (6) a resulting injury proximately caused by the reliance.' " *Fifth Third Bank v. Cope,* 162 Ohio App.3d 838, 2005-Ohio-4626, ¶25, citing *Cardi v. Gump* (1997), 121 Ohio App.3d 16, 22.

{¶23} The basis of NRS's claim is that it was "repeatedly assured" that it would be paid a commission for the Northland project regardless of any expiration date set forth in the commission agreement. Even accepting this as true, as must be done for purposes of summary judgment, it matters not, because, as the trial court found, "the fact remains that the conditions upon which commissions would be paid on the Northland project were memorialized in a fully integrated written agreement by sophisticated parties of equal bargaining strength." (Sept. 26, 2008 Dec. at 23-24.)

{¶24} "The parol evidence rule is a rule of substantive law that prohibits a party who has entered into a written contract from contradicting the terms of the contract with evidence of alleged or actual agreements." *Ed Schory & Sons* at 440. The parol evidence rule states that " 'absent fraud, mistake or other invalidating cause, the parties' final written integration of their agreement may not be varied, contradicted or supplemented by evidence of prior or contemporaneous oral agreements, or prior written agreements.' " *Galmish v. Cicchini* (2000), 90 Ohio St.3d 22, 27, quoting 11 Williston on Contracts (4 ed.1999) 569-70, Section 33:4. The principal purpose of the parol evidence rule is to protect the integrity of written contracts. Id., citing *Ed Schory & Sons* at 440. By prohibiting evidence of parol agreements, the rule seeks to ensure the stability, predictability, and enforceability of finalized written instruments. " 'It reflects and

implements the legal preference, if not the talismanic legal primacy, historically given to writings. It effectuates a presumption that a subsequent written contract is of a higher nature than earlier statements, negotiations, or oral agreements by deeming those earlier expressions to be merged into or superseded by the written document.' " (Footnotes omitted.) Id., quoting 11 Williston on Contracts, at 541-48, Section 33:1.

{¶25} However, the parol evidence rule does not prohibit a party from introducing parol or extrinsic evidence for the purpose of proving fraudulent inducement. Id., citing *Drew v. Christopher Constr. Co., Inc*. (1942), 140 Ohio St. 1, paragraph two of the syllabus. Nevertheless, the parol evidence rule may not be avoided "by a fraudulent inducement claim which alleges that the inducement to sign the writing was a promise, the terms of which are directly contradicted by the signed writing. Accordingly, an oral agreement cannot be enforced in preference to a signed writing which pertains to exactly the same subject matter, yet has different terms." *Marion Production Credit Assn. v. Cochran* (1988), 40 Ohio St.3d 265, paragraph three of the syllabus.

{¶26} In the present case, the oral promises sought to be considered contradict the contract's clearly expressed terms. Moreover, the commission agreement itself states that it may only be modified in writing signed by the party to be charged, which means even accepting the oral representations as true, they cannot modify the contract.

{¶27} Accordingly, the trial court did not err in granting summary judgment in favor of appellees on NRS's claims for fraudulent misrepresentation, and NRS's second assignment of error is overruled.

{¶28} In the third assignment of error, NRS contends the trial court erred in granting summary judgment in favor of appellees on its claims for unjust enrichment as

they pertained to the project at the Continent. Unjust enrichment is a doctrine derived from the natural law of equity. *U.S. Health Practices, Inc. v. Byron Blake, M.D., Inc*. (Mar. 22, 2001), 10th Dist. No. 00AP-1002, citing *Loyer v. Loyer* (Aug. 16, 1996), 6th Dist. No. H-95-068. A plaintiff must establish the following three elements to prove unjust enrichment: (1) a benefit conferred by the plaintiff upon the defendant, (2) knowledge by the defendant of the benefit, and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment. *Hambleton v. R.G. Barry Corp*. (1984), 12 Ohio St.3d 179, 183. In the absence of bad faith or fraud, an equitable action for unjust enrichment will not lie when the subject of the claim is governed by an express contract. *Kucan v. Gen. Am. Life Ins. Co*., 10th Dist. No. 01AP-1099, 2002-Ohio-4290, ¶39, citing *Rumpke v. Acme Sheet & Roofing, Inc*. (Nov. 12, 1999), 2d Dist. No. 17654.

{¶29} There is no evidence in the record that a commission agreement exists with respect to this transaction. Instead, the record reflects that NRS neither agreed nor expected to be a paid a commission but was fully compensated for its services as it was paid a significant sum for leasing, development, and redevelopment of the Continent properties. Though NRS argues it should have been paid a six percent commission for this transaction, there is no evidence in the record to support the same. Because the evidence in the record establishes that NRS, while not paid a six percent commission it now asserts it was entitled, was indeed fully compensated for its services, its claims for unjust enrichment clearly fails. Accordingly, the trial court did not err in granting summary judgment in favor of appellees on these claims, and NRS's third assignment of error is overruled.

{¶30} In the final assignment of error, NRS contends the trial court erred in refusing to allow the deposition of Richard Mack and in denying NRS's motion to amend the complaint.

{¶31} "A trial court enjoys considerable discretion in the regulation of discovery matters." *Callander v. Callander,* 10th Dist. No. 07AP-746, 2008-Ohio-2305, ¶43, citing *Akers v. Ohio State Univ. Med. Ctr.,* 10th Dist. No. 04AP-575, 2005-Ohio-5160, ¶7, citing *Manofsky v. Goodyear Tire & Rubber Co.* (1990), 69 Ohio App.3d 663, 668. As well, the decision whether or not to grant a motion to compel discovery lies squarely within the trial court's discretion and will not be reversed absent an abuse of such discretion. *Deutsche Bank Natl. Trust Co. v. Doucet*, 10th Dist. No. 07AP-453, 2008-Ohio-589, ¶19; *Watley v. Dept. of Rehab. & Corr.,* 10th Dist. No. 06AP-1128, 2007-Ohio-1841, ¶23. An abuse of discretion is more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Callander* citing *Tracy v. Merrell Dow Pharmaceuticals, Inc.* (1991), 58 Ohio St.3d 147, 152.

{¶32} Civ.R. 15(A) provides that a party may seek leave of court to amend its pleading and that leave "shall be freely given when justice so requires." While Civ.R. 15(A) encourages liberal amendment, "motions to amend pleadings pursuant to Civ.R. 15(A) should be refused if there is a showing of bad faith, undue delay, or undue prejudice to the opposing party." *Turner v. Central Loc. School Dist*., 85 Ohio St.3d 95, 99, 1999-Ohio-207. In considering a plaintiff's request to amend its complaint, " 'a trial court's primary consideration is whether there is actual prejudice to the defendants because of the delay.' " *Darby v. A-Best Products Co*., 102 Ohio St.3d 410, 2004-Ohio-3720, ¶20, quoting *Helman v. EPL Prolong, Inc*. (2000), 139 Ohio App.3d 231, 251, 2000-

Ohio-2593. Because the decision of whether to grant or deny a motion to amend is within the trial court's discretion, an appellate court reviews such a ruling under an abuse of discretion standard. *Turner* at 99; *Wilmington Steel Prods., Inc. v. Cleveland Elec. Illuminating Co*. (1991), 60 Ohio St.3d 120, 122.

{¶33} On September 6, 2006, the trial court rendered a decision denying both the motion to amend complaint and the motion to compel. In that decision, the trial court set forth a detailed occurrence of events leading up to its denial of the motions, and we reproduce it as follows. The complaint in the case sub judice was filed on October 27, 2004, and the discovery cutoff as per the original case scheduling order was August 17, 2005. By agreement of the parties, this date was extended to November 15, 2005, and at a November 18, 2005 status conference, the trial court granted, over objection, NRS's request to extend this date to March 17, 2006. At this November conference, the trial court indicated it would not grant further discovery extension requests.

{¶34} On March 17, 2006, both parties filed motions to compel discovery, and NRS filed a motion to amend the complaint seeking to add new parties and contending it needed to conduct discovery to support the motion to amend. A status conference was held on June 13, 2006, at which time the trial court granted, over objection, NRS a limited discovery opportunity to produce within 30 days "tangible evidence to support any new allegations in order to warrant the addition of any new parties or claims." (Sept. 6, 2006 Dec. at 2-3.) Arguing it needed time to obtain counsel in New York in order to serve subpoenas, NRS requested, and the trial court granted until August 1, 2006 to conduct discovery. NRS again sought an extension and at a status conference held on August 10, 2006, the trial court was informed that a deposition was noticed for August 30,

2006. Over objection, the trial court stated the deposition could go forward but that no additional discovery would be permitted after that date. NRS, however, then informed the trial court that the deposition had been rescheduled for September 6, 2006.

{¶35} In denying the motion to compel, the trial court noted that the complaint itself readily identified Richard Mack as a person whose testimony could reasonably be expected to lead to the discovery of admissible evidence. Based on this, the trial court found that NRS's assertion that the need to depose Mack was not known until March 2006 was disingenuous. The court held that, while the parties may continue to conduct discovery as they agreed, the time to seek court involvement with discovery had passed. The trial court then went on to state that the motion to amend the complaint, "which seeks to add a party who was identified in exhibits to the complaint as an officer of several corporate defendants, and was not sought until after discovery closed and for eighteen months after the complaint was filed, is overruled." (Sept. 6, 2006 Decision at 6.)

{¶36} We find no abuse of the trial court's discretion in this case. Quite to the contrary of establishing an abuse of discretion, the record instead reveals the trial court gave NRS multiple chances to complete discovery and granted its requests, often over objection, to extend the discovery deadline on a number of occasions. Further, a finding that the trial court abused its discretion in denying a motion for leave to amend a complaint may be made if the motion was timely filed and stated a claim upon which relief could be granted. *CSFB 1998-C2 Park Mill Run, LLC v. Garden Ridge Hilliard Delaware Business Trust*, 10th Dist. No. 05AP-746, 2006-Ohio-1535, ¶18. In the present case, the trial court did not act arbitrarily or unconscionably in denying the motion for leave to amend. We note appellant filed his motion to amend on March 17, 2006—18 months after

the filing of the complaint, the same day a motion for partial summary judgment was filed, and only three months prior to the scheduled trial date; therefore, we do not find appellant's motion to amend the complaint was timely. The trial court's conduct in this case does not constitute an abuse of discretion and, instead, demonstrates an effort by the trial court to give full weight to both the discovery requests and the proposed amendments. Accordingly, we find no abuse of discretion on the part of the trial court, and we overrule appellants' fourth assignment of error.

{¶37} Based on the foregoing, appellants' four assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

FRENCH and CONNOR, JJ., concur.

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