[Cite as *Progressive Direct Ins. Co. v. Harrison*, 2017-Ohio-8981.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Progressive Direct Insurance Company,	:	
Plaintiff-Appellee,	:	No. 17AP-344
v.	:	(C.P.C. No. 16CV-4738)
Stanley Harrison,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on

On brief: *Keis George LLP* and *Matthew C. Workman*, for appellee.

On brief: *Cooper & Pennington Co., LPA* and *Christopher M. Cooper*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

HORTON, J.

{¶ 1} Defendant-appellant, Stanley Harrison, appeals from the April 12, 2017 decision of the Franklin County Court of Common Pleas granting plaintiff-appellee's, Progressive Direct Insurance Company, motion for summary judgment. For the following reasons, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} As pertinent to this appeal, this matter arises from an automobile accident that occurred on December 2, 2014, involving appellee's insured and appellant. Appellee filed a complaint on May 17, 2016, asserting a claim of negligence against appellant and seeking to recover $20,000 it paid to its insured for their personal injuries, medical expenses, pain and suffering, and wage loss pursuant to its insurance policy.

{¶ 3} On July 5, 2016, appellee electronically served appellant with discovery requests, including requests for admissions ("RFAs") pursuant to Civ.R. 36, and provided him with 28 days to respond. In the RFAs, appellee requested appellant to admit that: (a) an accident occurred on December 2, 2014 between appellant and appellee's insured, (b) appellee insured the vehicle being driven by appellee's insured, (c) appellee's insured's vehicle was damaged and the three occupants were injured, (d) the reasonable value of the property damage and injuries was $20,000, (e) appellee paid $20,000 to its insureds, (f) appellee became subrogated to the rights of its insured to the extent of its payment, (g) the damages and injuries were the result of appellant's negligence, and (h) appellee's insureds were not comparatively negligent.

{¶ 4} Responses to the RFAs were due by August 2, 2016. However, appellant failed to respond. On August 9, 2016, appellee granted an extension to appellant until August 31, 2016 to respond to the discovery, including the RFAs. Again, appellant did not respond. On October 24, 2016, appellant provided partial responses to interrogatories and requests for production of documents, but no responses to the RFAs. That same day, counsel for appellee emailed appellant's attorney explaining that responses to the RFAs had not been received and giving an additional extension until November 4, 2016 to respond, or appellee would be filing a motion to deem the admissions admitted. Appellant did not respond to the email or the RFAs.

{¶ 5} On November 22, 2016, appellee filed a motion to deem the request for admissions admitted. Appellant filed a memorandum contra and, on December 3, 2016, appellant attempted to respond to the RFAs. On December 14, 2016, the trial court granted appellee's motion finding that, because appellant did not timely reply to the appellee's RFAs under Civ.R. 36(A), the matters set forth therein were automatically deemed admitted.

{¶ 6} On December 30, 2016, appellee filed a motion for summary judgment based on the admissions that laid out each element of negligence, including damages. Appellee argued that no genuine issues of material fact remained and that it was entitled to judgment as a matter of law. Appellant filed a memorandum contra. On April 12, 2017, the trial court granted appellee's motion for summary judgment. Appellant filed a timely notice of appeal.

II. ASSIGNMENTS OF ERROR

{¶ 7} Appellant assigns the following two assignments of error:

> [I.] THE TRIAL COURT ABUSED IT'S [SIC] DISCRETION WHEN IT ADMITTED THE REQUEST FOR ADMISSION OR DENIALS.
>
> [II.] THE TRIAL COURT ABUSED IT'S [SIC] DISCRETION WHEN IT GRANTED THE MOTION FOR SUMMARY JUDGMENT.

III. ASSIGNENT OF ERROR ONE—NO ABUSE OF DISCRETION

{¶ 8} Appellant alleges that, because he responded to the RFAs on December 3, 2016 specifically denying any admission to liability for the automobile accident, the trial court abused its discretion in deeming the admissions admitted. Civ.R. 36 governs RFAs and states in relevant part:

> (A) Availability; Procedures for use. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Civ.R. 26(B) set forth in the request, that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. * * * The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. * * *
>
> (1) Each matter of which an admission is requested shall be separately set forth. * * * The matter is admitted unless, within a period designated in the request, not less than twenty-eight days after service of the request or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.
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> * * *
>
> (B) Effect of admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing modification of a pretrial

> order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining his action or defense on the merits.

{¶ 9} Thus, according to Civ.R. 36(A), the failure of a party to timely respond to RFAs with an answer or objection constitutes a conclusive admission of the matter contained in the request, and becomes facts of record the trial court must recognize. *Cleveland Trust Co. v. Willis*, 20 Ohio St.3d 66, 67 (1985); *Mulhollen v. Angel*, 10th Dist. No. 03AP-1218, 2005-Ohio-578, ¶ 14; *Paasewe v. Wendy Thomas 5 Ltd.*, 10th Dist. No. 09AP-510, 2009-Ohio-6852, ¶ 20; *Cach v. Alderman*, 10th Dist. No. 15AP-980, 2017-Ohio-5597, ¶ 23. Stated differently, "Civ. R. 36 is self-enforcing, and the failure to timely respond to requests for admissions results in admissions." *Farah v. Chatman*, 10th Dist. No. 06AP-502, 2007-Ohio-697, ¶ 10.

{¶ 10} We have stated that "[p]ursuant to the express language of Civ.R. 36(A), requests for admissions are 'self-executing; if there is no response to a request or an admission, the matter is admitted.' " *Samaan v. Walker*, 10th Dist. N0. 07AP-767, 2008-Ohio-5370, ¶ 8, quoting *Palmer-Donavin v. Hanna*, 10th Dist. No. 06AP-699, 2007-Ohio-2242, ¶ 10. Unlike other discovery matters, the admission is made automatically and the party requesting the admission is not required to take further action. *Samaan* at ¶ 8. "Thus, once a party fails to timely respond to the requests for admissions, the defaulted admissions become facts, and a motion seeking confirmation of those admissions is not necessary." *Id.*

{¶ 11} However, even after a party has failed to timely respond to the RFAs and, therefore, the admissions are deemed to be admitted, Civ.R. 36(B) still permits the trial court, *upon motion of the party*, to allow "withdrawal or amendment of the admission. * * * [T]he court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining his action or defense on the merits." As the Supreme Court of Ohio stated in *Willis* at 67:

> Any matter admitted under Civ. R. 36 is conclusively established unless the court on motion permits withdrawal or

> amendment of the admission. Civ. R. 36(B). The court may permit the withdrawal if it will aid in presenting the merits of the case and the party who obtained the admission fails to satisfy the court that withdrawal will prejudice him in maintaining his action. *Balson v. Dodds* (1980), 62 Ohio St. 2d 287 [16 O.O.3d 329], paragraph two of the syllabus. This provision emphasizes the importance of having the action resolved on the merits, while at the same time assuring each party that justified reliance on an admission in preparation for trial will not operate to his prejudice.

{¶ 12} The *Farah* case is similar to the present case. In *Farah* at ¶ 10, we stated:

> Appellant first contends that the trial court erred when it deemed the requests for admission admitted even though he responded to the requests on January 19, 2006. * * * Second, assuming appellant did respond on January 19, 2006, the response was not timely. The admissions already were deemed admitted. Civ.R. 36 is self-enforcing, and the failure to timely respond to requests for admissions results in admissions. *Gwinn v. Dave Dennis Volkswagen* (Feb. 8, 1988), Greene App. No. 87-CA-56, 1988 Ohio App. LEXIS 450; *Sciranka v. Hobart Internatl., Inc.* (Sept. 4, 1992), Miami App. No. 91 CA 61, 1992 Ohio App. LEXIS 4515; *Hoffman v. Mayse* (Sept. 20, 1995), Wayne App. No. 95 CA 0006, 1995 Ohio App. LEXIS 4152. Once a party fails to timely respond to the requests for admissions, the defaulted admissions become facts, and a motion seeking confirmation of those admissions is not necessary, although as a practical matter, such a motion brings the substance of the admissions to the trial court's attention and makes the admissions part of the record. See *Natl. City Bank, NE v. Moore* (Mar. 1, 2000), Summit App. No. 19465, 2000 Ohio App. LEXIS 723; *Vilardo v. Sheets*, Clermont App. No. CA2005-09-091, 2005 Ohio 3473, at P21-22; *Natl. Mut. Ins. Co. v. McJunkin* (May 3, 1990), Cuyahoga App. No. 58458, 1990 Ohio App. LEXIS 1730 (motion to deem matters admitted superfluous). Appellant's responses to appellees' requests were initially due on or about October 17, 2005. After two extensions, they were to be completed by December 23, 2005. Appellant failed to respond by any of these dates. Thus, appellees' requests for admissions were deemed admitted. Appellant's alleged tardy response did nothing to change this result.

{¶ 13} The reasoning stated in *Farah* applies to the present case. On December 3, 2016, appellant attempted to file responses to appellee's RFAs. However, because he did

not timely reply to the RFAs under Civ.R. 36(A), the matters were automatically deemed admitted. We also note that appellant did not seek a protective order or other relief from the duty to respond to the requests, nor did he move the trial court to accept an untimely response, or to withdraw or amend the admissions pursuant to Civ.R. 36(B). Thus, the trial court did not abuse its discretion in granting appellee's motion to deem the requests admitted under Civ.R. 36(A). Appellant's first assignment of error is overruled.

IV. ASSIGNMENT OF ERROR TWO—SUMMARY JUDGMENT PROPERLY GRANTED

{¶ 14} Appellant argues that the trial court abused its discretion in granting appellee's motion for summary judgment. First, we note that our review of summary judgment motions is de novo. *Helton v. Scioto Cty. Bd. of Commrs.*, 123 Ohio App.3d 158, 162 (4th Dist.1997). "When reviewing a trial court's ruling on summary judgment, the court of appeals conducts an independent review of the record and stands in the shoes of the trial court." *Mergenthal v. Star Banc Corp.*, 122 Ohio App.3d 100, 103 (12th Dist.1997). Civ.R. 56(C) provides that summary judgment may be granted when the moving party demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made. *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183 (1997).

{¶ 15} In addition. where an individual fails to respond to a Civ.R. 36(A) request for admissions, the admissions could be relied on to grant a Civ.R. 56 motion for summary judgment. *Mulhollen* at ¶ 14, citing *Am. Std. Ins. Co. of Ohio v. Sealey*, 10th Dist. No. 03AP-1210, 2004-Ohio-4308, ¶ 10.

{¶ 16} Having overruled appellant's first assignment of error, our review shows that appellant's admissions establish appellee's allegations in the complaint. Specifically, the admissions show that appellant was involved in an automobile accident with appellee's insureds and his negligence was the direct and proximate cause of appellee's insureds' injuries and damages, and the reasonable value of their property damage and injuries was $20,000, which appellee has paid to its insureds. Appellant also admitted that appellee was properly subrogated to its insureds' claims.

{¶ 17} Based on appellant's admissions, we agree with the trial court that no genuine issue of fact remains and appellee is entitled to judgment as a matter of law on the allegations in its complaint. The trial court properly deemed the admissions admitted and properly granted appellee's motion for summary judgment. Appellant's second assignment of error is overruled.

V. DISPOSITION

{¶ 18} Having overruled appellant's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

DORRIAN and BRUNNER, JJ., concur.
