

[Cite as *Coleman v. Cleveland School Dist. Bd. of Edn.*, 2003-Ohio-880.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 81674 & 81811

KATHY W. COLEMAN,	:	
	:	
Plaintiff-Appellant	:	JOURNAL ENTRY
	:	
v.	:	AND
	:	
CLEVELAND SCHOOL DISTRICT	:	OPINION
BOARD OF EDUCATION, ET AL.,	:	
	:	
Defendants-Appellees	:	

DATE OF ANNOUNCEMENT
OF DECISION: FEBRUARY 27, 2003

CHARACTER OF PROCEEDING: Civil Appeal from
Common Pleas Court,
Case No. CV-457657.

JUDGMENT: REVERSED AND REMANDED.

DATE OF JOURNALIZATION:

APPEARANCES:

For Plaintiff-Appellant: Kathy W. Coleman, pro se
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For Defendant-Appellee: Margaret A. Cannon
[Cleveland School District] Laurie H. Goetz
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For Defendants-Appellees: David K. Smith
[East Cleveland City School Scott C. Peters
District Board of Education, Matthew J. Markling
Elvin Jones, Richard Jenkins, Britton, McGown, Smith, Peters & Kalail
Barbara Henry, Alvin Fulton, Summit One, Suite 540

Sandra Brown, Jill Gaines, 4700 Rockside Road
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Gregg Mossberger]

TIMOTHY E. McMONAGLE, J.:

{¶1} Plaintiff-appellant, Kathy W. Coleman, appeals, inter alia, an order of the Cuyahoga County Common Pleas Court that dismissed her case for failing to comply with its order requiring appellant to provide a more definite statement under Civ.R. 12(E). For the reasons that follow, we reverse and remand.

{¶2} The record reveals that appellant filed a multi-count complaint against the Cleveland School District, East Cleveland School District and several East Cleveland School District employees (collectively referred to as "School Districts") in December 2001. In response, the School Districts jointly filed a motion to strike the complaint or, in the alternative, for a more definite statement. Appellant thereafter moved to strike the joint motion, arguing, inter alia, that it violated Civ.R. 11.

{¶3} On May 15, 2002, the trial court granted the School Districts' motion for a more definite statement and ordered appellant to comply within fourteen days, or by May 29, 2002. Appellant's motion to strike was denied. On May 29, 2002, appellant moved for a 14-day extension of time, or until June 12, 2002, within which to comply with the court's May 15th order. In an order journalized June 27, 2002, the trial court granted the motion stating:

{¶4} "[Appellant's] motion for an extension of time to file a more definite statement is granted until July 5, 2002. Failure to submit a more definite statement by July 5, 2002 will result in the court striking the complaint and dismissing the case in accordance with Civ.R. 12(E)."

{¶5} On July 5, 2002, appellant yet again moved for an extension of time within which to comply, which the trial court denied. The trial court thereafter dismissed her case with prejudice on July 22, 2002. On August 1, 2002, appellant requested findings of fact and conclusions of law under Civ.R. 52 and, on August 21, 2002, filed her notice of appeal. Also on August 21, 2002, appellant filed a motion to correct the record under Civ.R. 60(A). On August 26, 2002, the trial court denied this motion as well as her request for findings of fact and conclusions of law. Appellant filed a second notice of appeal on September 25, 2002. We consolidated the cases for purposes of this appeal.

{¶6} Appellant is now before this court and assigns four errors for our review.¹

I.

{¶7} In her first assignment of error, appellant contends that the trial court abused its discretion in dismissing her case for

¹Appellee, Cleveland School District, contends that appellant fails to separately argue her assignments of error as is required under App.R. 16(A)(7). While we agree that appellant's arguments are inartfully presented, we are able to glean from her discussion of facts those arguments that pertain to her assignments of error. We will, therefore, address those assigned errors that are necessary to dispose of this appeal. See App.R. 12(A)(2).

failure to comply with its order for a more definite statement. Relying on *Sazima v. Chalko* (1999), 86 Ohio St.3d 151, appellant argues that the court failed to give her prior notice as required by Civ.R. 41 before it dismissed her case.

{¶8} The law favors the disposition of cases on their merits and, as such, reviewing courts have been reluctant to uphold an exercise of discretion by a trial court when dismissing a case on purely procedural grounds. *Jones v. Hartranft* (1997), 78 Ohio St.3d 368, 371. We, therefore, review a trial court's dismissal of a complaint with prejudice under a heightened abuse of discretion standard. "Although reviewing courts espouse an ordinary 'abuse of discretion' standard of review for dismissals with prejudice, that standard is actually heightened when reviewing decisions that forever deny a plaintiff a review of a claim's merits." *Sazima v. Chalko*, 86 Ohio St.3d at 158, quoting *Jones v. Hartranft*, 78 Ohio St.3d at 372. Abuse of discretion has been defined as any action on the part of the trial court that could be construed as arbitrary, unreasonable, or unconscionable. See *State ex rel. The V Cos. v. Marshall* (1998), 81 Ohio St.3d 467, 469.

{¶9} Appellant contends that she did not receive notice of the trial court's July 27th order before the July 5th compliance date. Attached to her motion was a copy of the docket she obtained online on July 2, 2002 supporting that the June 27th order had not yet been docketed. She further contends, and the School Districts do not dispute, that the June 27th order was not docketed until July 5th.

{¶10} A dismissal on the merits is a harsh remedy requiring the due process guarantee of prior notice. "The purpose of notice is to give the party who is in jeopardy of having his or her action or claim dismissed one last chance to comply with the order or to explain the default." *Sazima v. Chalko*, 86 Ohio St.3d at 155; see, also, *Logsdon v. Nichols* (1995), 72 Ohio St.3d 124, 128, quoting McCormac, *Ohio Civil Rules Practice* (2nd Ed. 1992) 357, Section 13.07. Notice, however, need not be actual but may be implied under the circumstances. *Sazima*, 86 Ohio St. 3d at 155. As long as the party has been informed that dismissal of the action or claim is a possibility and has a reasonable opportunity to defend against the dismissal, then a court does not abuse its discretion in dismissing the action. *Quonset Hut, Inc. v. Ford Motor Co.* (1997), 80 Ohio St.3d 46, 49. An opposing party's motion to dismiss is sufficient to constitute implied notice. *Id.*

{¶11} The School Districts maintain that it is the journalization date that controls, not the docketing date, and, therefore, appellant had sufficient *actual* notice that the trial court expected appellant's more definite statement by July 5th or her case would be dismissed. Ordinarily we would agree that the trial court's June 27th order constitutes actual notice and, therefore, would have sufficiently apprised appellant of what she needed to do in order to avoid the dismissal of her case *had this order been appropriately notated on the docket before the date within which she was to comply*. See *Johnson v. Meridia Euclid Hosp.* (Mar. 28, 2002), Cuyahoga App. No. 80072, 2002 Ohio App.

Lexis 1399. “[N]otice shall be deemed to have been provided once the clerk has served notice of the entry and made the appropriate notation on the docket.” *Id.*, quoting *Atkinson v. Grumman Ohio Corp.* (1988), 37 Ohio St.3d 80, paragraph two of the syllabus. Hence, it is not the *receipt* of the notice that is controlling but whether a party would have been able to discover the court’s order in the course of that party’s duty to check the docket. *Id.*

{¶12} Here, despite the June 27th journalization date, the order was not docketed until July 5th, the court’s required compliance date. Under the facts and circumstances of this case, we cannot say that appellant received notice, actual or otherwise, that her case was to be dismissed if she failed to file a more definite statement by a date certain. The trial court’s action in dismissing her case without such notice was, therefore, an abuse of its discretion.

{¶13} This court acknowledges a trial court’s frustration when confronted with a litigant whose conduct appears to be dilatory and contumacious. Nonetheless, the procedural due process guarantee of notice protects not only the parties involved but upholds the integrity of the court as well. The trial court certainly has at its disposal the tools within which it can control contentious and recalcitrant litigants and on remand may wish to employ them as the need arises. See *Stanek v. Sommerville* (July 5, 2001), Cuyahoga App. No. 78473, 2001 Ohio App. Lexis 3026.

{¶14} Appellant’s first assignment of error is well taken and is sustained.

II.

{¶15} In her second assignment of error, appellant contends that the trial court erred in denying her motion to strike the School Districts' joint motion for, inter alia, a more definite statement. In particular, appellant claims that appellee, Cleveland School District, did not sign the motion and, therefore, violated Civ.R. 11. The School Districts maintain that they had collaborated on the motion and each had approved the final draft although the signature line for the Cleveland School District contained "Per Phone Approval" in place of the signature of its attorney.

{¶16} Civ.R. 11 provides, in relevant part:

{¶17} "Every *** motion *** of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, *** . *** The signature of an attorney *** constitutes a certificate by the attorney *** that the attorney *** has read the document; that to the best of the attorney's *** knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. *** If a document is not signed or is signed with intent to defeat the purpose of this rule, it *may* be stricken as sham and false and the action may proceed as though the document had not been served." (Emphasis added.)"

{¶18} The East Cleveland School District contends that the motion, though not signed, was not filed with the intent to defeat the purpose of Civ.R. 11. The Cleveland School District, on the

other hand, maintains that when its attorney gave her phone approval for the motion, she was acknowledging that she had read the motion and otherwise met the requirements of Civ.R. 11.

{¶19} We note initially that the relevant portion of Civ.R. 11 at issue here is written in the disjunctive; i.e., a trial court is authorized to strike an unsigned document or a document signed with intent to defeat the purpose of the rule. Thus, contrary to the East Cleveland School District's argument, a party's lack of intent to defeat the rule is immaterial if the document is unsigned. Nonetheless, even though authorized to do so, the trial court is not required to strike an unsigned document. See, e.g., *Harris v. Southwest Gen. Hosp.* (1992), 84 Ohio App.3d 77, 85. If a trial court decides, in the exercise of this discretion, not to strike a document, a reviewing court will not reverse that finding absent an abuse of that discretion.

{¶20} We see no abuse of discretion. The East Cleveland School District as well as the Cleveland School District both acknowledged that they collaborated in preparing the motion and that the Cleveland School District approved the document ultimately filed with the trial court. Consequently, the trial court did not err in denying appellant's motion to strike.

{¶21} Appellant's second assignment of error is not well taken and is overruled.

III.

{¶22} In appellant's third and fourth assignments of error, she contends that the trial court erred when it denied her

motion to correct the record under Civ.R. 60(A) and when it denied her request for findings of fact and conclusions of law under Civ.R. 52. Due to our disposition of appellant's first assignment of error, we need not discuss these assigned errors. See App.R. 12(A)(1)(c).

Reversed and remanded.

This cause is reversed and remanded for further proceedings consistent with the opinion herein.

It is, therefore, ordered that appellant recover from appellee costs herein.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

TIMOTHY E. McMONAGLE
JUDGE

PATRICIA A. BLACKMON, P.J., AND

JAMES J. SWEENEY, J., CONCUR

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).