

[Cite as *Fodor v. Baur*, 2010-Ohio-4466.]

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JARED A. FODOR, et al.

Plaintiffs-Appellants

-vs-

JOSHUA C. BAUR, et al.

Defendants-Appellees

JUDGES:

Hon. Julie A. Edwards, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 10 CA 2

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Case No. 08 PI01-0058

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

September 22, 2010

APPEARANCES:

For Plaintiffs-Appellants

CHRISTOPHER J. BURCHINAL
Post Office Box 412
Delaware, Ohio 43035

For Defendants-Appellees

C. JOSEPH MCCULLOUGH
ANTHONY B. HOLMAN
WHITE, GETGEY & MEYER
8977 Columbia Road, Suite A
Loveland, Ohio 45140

Wise, J.

{¶1} Appellants Jared A. Fodor and Scott A. Fodor appeal the decision of the Knox County Court of Common Pleas, which awarded summary judgment in favor of Appellee Kerry L. Dobbins, in a negligence action. The relevant facts leading to this appeal are as follows.

{¶2} On January 18, 2006, Appellant Jared Fodor (hereinafter “Jared”), then age seventeen, was operating a 2000 Jeep Cherokee on State Route 657 in Knox County, when his Jeep was allegedly struck at an intersection by a vehicle driven by Appellee Joshua Barr.

{¶3} On January 24, 2008, Jared filed an action in the Knox County Court of Common Pleas alleging negligence and negligence per se against Appellee Baur and negligent entrustment against Appellee Kerry L. Dobbins (the owner of Baur’s vehicle).

{¶4} On February 25, 2008, Appellee Dobbins filed an answer to Jared’s complaint.¹

{¶5} On March 10, 2009, Jared filed a “Motion for Leave to Substitute Real Party in Interest and/or Motion for Leave to Amend Complaint.” Jared therein maintained that “through discovery” it had been determined that the titled owner of Jared’s Jeep Cherokee was actually Scott Fodor, his father. Jared thus urged that Scott should be added to the case either as a real party in interest or a co-plaintiff.

{¶6} In the meantime, on March 26, 2009, Appellee Dobbins filed a request for leave and a proposed motion for summary judgment. The trial court granted Dobbins leave to file same on April 8, 2009.

¹ Appellee Baur does not appear to have filed an answer; however, he did file a motion to dismiss the claims against him on December 24, 2009.

{¶17} On March 27, 2009, Dobbins filed a response to Jared's motion for leave to substitute real party in interest and/or motion for leave to amend complaint.

{¶18} On April 15, 2009, the trial court denied Jared's said motion to substitute/amend. Jared thereupon sought a direct appeal to this Court, but we dismissed the appeal for want of a final appealable order.

{¶19} The trial court thereafter reassumed jurisdiction, and on October 6, 2009, issued a judgment entry granting summary judgment in favor of Dobbins and dismissing all claims against him, finding no just reason for delay under Civ.R. 54(B). The clerk of courts sent notice of the judgment entry on or about January 7, 2010.

{¶10} Appellants timely appealed and herein raise the following three Assignments of Error:²

{¶11} "I. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANTS JARED A. FODOR AND SCOTT A. FODOR IN GRANTING SUMMARY JUDGMENT IN FAVOR OF APPELLEE KERRY L. DOBBINS BECAUSE APPELLEES JOSHUA C. BAUER (SIC) AND KERRY L. DOBBINS WERE NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW.

{¶12} "II. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANTS JARED A. FODOR AND SCOTT A. FODOR IN GRANTING SUMMARY JUDGMENT IN FAVOR OF APPELLEE KERRY L. DOBBINS SINCE APPELLEE WAS NOT ENTITLED TO SUMMARY JUDGMENT UNDER CIVIL RULE 56 BECAUSE GENUINE

² In the interest of judicial economy, we will label Scott Fodor as a "Plaintiff-Appellant" in this matter, even though he never became a party. We note that both parties and proposed intervenors have standing to appeal a trial court decision. *Davis v. Border*, 170 Ohio App.3d 758, 869 N.E.2d 46, ¶ 32, citing *In re Rundio* (Sept. 8, 1993), Pickaway App.No. 92 CA 35, 1993 WL 379512. Cf., also, *In re Fell*, Guernsey App.No. 05 CA 9, 2005-Ohio-5299, ¶13-¶15.

ISSUES OF MATERIAL FACT WERE PRESENTED FOR DETERMINATION BY THE JURY.

{¶13} “III. THE TRIAL COURT’S ACTION IN GRANTING THE MOTION FOR SUMMARY JUDGMENT OF APPELLEE KERRY L. DOBBINS ABRIDGED THE CONSTITUTIONAL RIGHTS OF APPELLANTS JARED A. FODOR AND SCOTT A. FODOR TO A REMEDY AND TO JUSTICE AS GUARANTEED BY ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.”

I, II, III

{¶14} In their First, Second, and Third Assignment of Error, appellants present various challenges to the trial court’s grant of summary judgment in favor of Appellee Dobbins. However, on September 1, 2010, appellants filed a motion to dismiss the present appeal. See App.R. 28. As an appellate court, we are not required to issue an advisory or merely academic ruling. See, e.g., *In re Merryman/Wilson Children*, Stark App.Nos. 2004 CA 00056 and 2004 CA 00071, 2004-Ohio-3174, ¶ 59, citing *State v. Bistricky* (1990), 66 Ohio App.3d 395, 584 N.E.2d 75.³

{¶15} We therefore will not reach the merits of appellants’ First, Second, and Third Assignments of Error.

³ Ordinarily, we would not issue a dismissal decision of this nature in a memorandum opinion. See App.R. 12(A). However, in this instance appellants did not formally move to dismiss the appeal until several weeks after the scheduled oral argument.

{¶16} For the reasons stated in the foregoing opinion, the appeal of the decision of the Court of Common Pleas, Knox County, Ohio, is hereby dismissed.

By: Wise, J.

Edwards, P. J., and

Farmer, J., concur.

JUDGES

JWW/d 0830

