APPENDIX

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

ANN KARNOFEL,	:	**OPINION**
Plaintiff-Appellant,	:	
- vs -	:	**CASE NO. 2018-T-0055**
SUPERIOR WATERPROOFING, INC.,	:	
Defendant-Appellee.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2015 CV 01162.

Judgment: Affirmed.

Ann Karnofel, pro se, 1528 Greenwood Avenue, Girard, OH 44420 (Plaintiff-Appellant).

Ned C. Gold, Jr., Ford, Gold, Kovoor & Simon, Ltd., 8872 East Market Street, Warren, OH 44484 (For Defendant-Appellee).

MARY JANE TRAPP, J.

{¶1} Appellant, Ann Karnofel, appeals the judgment of the Trumbull County Court of Common Pleas denying her motion for relief from judgment for newly discovered evidence and fraud against appellee, Superior Waterproofing, Inc. Finding this appeal barred by the doctrine of res judicata, we affirm.

Substantive and Procedural Law

APPENDIX A

{¶2} The matter before us has a convoluted history because the same underlying facts and claims have been before this court in a myriad of cases from both the Trumbull County Court of Common Pleas as well as the Girard Municipal Court. Ann Karnofel and her daughter, Delores Karnofel, a vexatious litigator, have employed a variety of creative, yet fundamentally flawed and spurious legal theories, to continue to litigate a contract matter for years after it was finally resolved by two trial courts, this court, and the Supreme Court of Ohio.

{¶3} In sum, on June 27, 2013, Ann Karnofel ("Ann") contracted with Superior Waterproofing, Inc. ("Superior") for waterproofing work and other improvements to the home in which she lives with her two daughters who own the home, Delores Karnofel ("Delores") and Donna Jean Beck. The contract was submitted to Delores and approved by Ann in Delores' presence.

{¶4} Superior commenced work on September 16, 2013. At this time, Delores Karnofel, with her mother's consent, asked for additional work to be performed at additional cost. Before work was completed, on October 1, 2013, Delores cancelled the contract, objecting to the additional cost and the quality of the work. Since money was owed on the work already performed, Superior filed an action against Delores in the Girard Municipal Court, Case No. 2014 CVF 01065 (the "Girard case").

Girard Municipal Court Case

{¶5} A synopsis of the Girard case is necessary because the same parties and arguments are present in this case, as is the underlying issue of Delores' status as a vexatious litigator. (Pursuant to R.C. 2323.52, a vexatious litigator is required to file for leave or permission of the court in which he or she was found to be vexatious every time

he or she is seeking to proceed in a civil action at the trial court level. Similarly, he or she must file for leave with a court of appeals in order to institute a proceeding at the appellate level. *See*, R.C. R.C. 2323.52(F)(1) and (2).)

{¶6} After Superior filed a complaint against Delores for money owed under the contract, attaching both the contract (entitled "Proposal" dated June 23, 2013) and an "invoice" dated October 3, 2014. Delores, who was first declared a vexatious litigator by the Trumbull County Court of Common Pleas on October 6, 2008, moved the Girard Municipal Court for permission to file an answer, counterclaim, and motion for summary judgment. The court granted these separately filed motions. Then four days after Superior's motion for summary judgment was filed, the motion was granted. Delores subsequently appealed.

{¶7} We vacated this judgment and remanded in *Superior Waterproofing v. Kamofel*, 11th Dist. Trumbull No. 2015-T-0113, 2016-Ohio-6992 ("*Kamofel I*"). In relevant part, this court concluded that Delores was not required to file leave of the Trumbull County Court of Common Pleas to file an answer and other responsive pleadings despite her status as a vexatious litigator. She was, however, required to obtain leave of the Trumbull County Court of Common Pleas to proceed in the Girard case on any claim requesting an order or other relief, such as her counterclaim or summary judgment. *Id.* at ¶20.

{¶8} On remand, the summary judgment proceedings continued. Delores filed a response to Superior's motion for summary judgment, but she failed to seek leave from the Trumbull County Court of Common Pleas to file a counterclaim or summary judgment motion.

{¶9} A review of the matters addressed in the summary judgment exercise is important to the understanding of the disposition of this appeal and the various other cases and appeals that followed this first action.

{¶10} Incorporated into Superior's motion for summary judgment were two affidavits of Frank Kiepper ("Mr. Kiepper,") the owner of Superior. His averments were supported by a copy of the original signed contract and the itemized invoice. Mr. Kiepper claimed the additional work requested was to (1) install new downspouts to the street, (2) install additional waterproofing on a back wall and (3) replace a French drain with solid PVC pipe. Delores claimed that the only additional work she approved was the French drain.

{¶11} The invoice set out the contract price at $9,500, and the additional work requested at $1,600, $1,200, and $200, respectively, for a total amount of $12,500. The invoice indicated $6,000 had been paid, leaving a balance due of $6,500.

{¶12} Mr. Kiepper averred that $1,500 of the remaining balance was work that was contracted but not completed because Delores halted the work. The $5,000 remaining was due for the additional work already completed.

{¶13} Attached to Delores' response in opposition to Superior's motion for summary judgment were pictures of her residence and copies of contracts with other contractors she hired "to correct the problems left uncompleted" in the amount of $1,303. She admitted she instructed Mr. Keipper not to return to the property but claims it was because of a "sex stunt" Mr. Keipper performed on her back porch.

{¶14} The Girard Municipal Court granted Superior's motion for summary judgment in the amount of $5,000 plus post-judgment interest at the rate of 3 percent per annum and costs.

{¶15} This court granted Delores' application for leave to file an appeal of the summary judgment order. We affirmed the lower court's judgment in *Superior Waterproofing Inc. v. Karnofel*, 11th Dist. Trumbull No. 2017-T-0010, 2017-Ohio-7966 ("*Karnofel II*"), finding Delores' assignments of error without merit. We agreed with the trial court that Delores failed to carry her burden to demonstrate a genuine issue of material fact supporting her arguments that she had no knowledge of the additional work requested and that Mr. Keipper was using these additional items as hidden costs to gain a profit. *Id.* at ¶25-26. No further appeal was taken.

{¶16} Despite this final resolution, Delores then filed a motion for leave to file a counterclaim in the Girard case with the Trumbull County Court of Common Pleas. On the same day, the court denied her motion finding her counterclaim to have no merit. Delores then filed in this court a motion for leave to proceed with a notice of appeal of the Trumbull County Court of Common Pleas' judgment. By way of a judgment entry in Case No. 2019-T-0008, we denied this motion for leave because, pursuant to R.C. 2323.52(G), a decision that denies a vexatious litigator leave to proceed is not appealable.

Trumbull County Court of Common Pleas Case

{¶17} While the Girard case proceeded through the various courts, including our own, Delores' mother, Ann, pro se, filed a complaint against Superior in the Trumbull County Court of Common Pleas, Case No. 2015 CV 01162, for breach of contract and negligent workmanship, raising the same allegations of the additional work Delores

denied contracting for in the Girard case. Extensive motion practice followed with both the trial court magistrate and Superior rebuking Delores for effectively acting as counsel for her pro se mother. Delores had been handwriting all of Ann's briefs and appearing in court on Ann's behalf.

{¶18} Attached to Superior's answer to Ann Karknofel's complaint and its counterclaim was a copy of Superior's complaint against Delores in the Girard case, which contained copies of the original June 23, 2013 contract (entitled "Proposal") and the October 3, 2014 "Invoice" that itemized the account-the original bid, the additional work requested after work began, and the total payments received.

{¶19} Attached to Superior's motion for summary judgment was: Mr. Kiepper's affidavits, a copy of the original June 23, 2013 "Proposal," followed most importantly by, an untitled, handwritten document that contains the following information: "additional 1200 for digging around sunroom. Paid 3000.00 downpayment [sic] 9-24-13. Balance 7,700." The document then itemizes what is owed and what was paid, delineating what was left to be paid for the different services: "waterproofing: [$]9,500.00, downspouts 1,600.00, sunroom 1,200.00, extra French drain, 200.00 for a total of 12,500.00 – 3,000.00 downpayment [sic] paid on 9-24-13 – 3,000 payment on 9-30-13, for a remainder balance of 6,500.00."

{¶20} This is the same document Ann Karnofel claims in her motion for relief from judgment was just discovered.

{¶21} The trial court granted Superior's motion for summary judgment, concluding that Ann's claims were compulsory counterclaims in the Girard case and that Ann and Delores were in privity. Consequently, the trial court concluded that the new case filed

by Ann was barred by the doctrine of res judicata resulting from the final determination of the issues in the Girard case.

{¶22} Ann appealed the trial court's judgment, contending the court erred in finding Delores in privity with her and in ruling in Superior's favor on the merits. We affirmed in *Karnofel v. Superior Waterproofing, Inc.*, 11th Dist. Trumbull No. 2017-T-0026, 2017-Ohio-9346 ("*Karnofel III*"), finding no error in the trial court's determination that Ann and Delores were in privity inasmuch as they are mother and daughter, they live together in the same house, and Delores' attempted counterclaim against Superior in the Girard case alleged breach of contract and negligent workmanship. *Id.* at ¶18.

{¶23} Ann then filed a Civ.R. 60(B) motion for relief from judgment with the trial court alleging newly discovered evidence and fraud. Ann claimed that Mr. Keipper's handwritten notes on the back of the contract that detail the amounts paid and owed, which she describes as a "falsified change order," is newly discovered evidence. Ann claims she only recently discovered this "evidence" in her daughter Delores' file "since" the suit on account was filed against her daughter.

{¶24} Ann not only claimed that this evidence could not have been discovered sooner because it was in "her daughter's file" in the Girard case, but she further claimed that because it was on the backside of the parties' contract, "it was hard to discover" and constituted evidence of fraud. Ann alleged that Superior purposefully hid the back of the contract despite the most crucial fact that Superior had attached the handwritten document to its motion for summary judgment in this case in the Trumbull County Court of Common Pleas.

{¶25} The trial court denied Ann's motion from relief from judgment, and Ann filed the instant appeal. Superior filed its merit brief and a motion for sanctions and attorney fees.

{¶26} Ann Karnofel raises three assignments of error:

{¶27} "[1.] The Trial Court overlooked the newly discovered evidence, because I am a pro se litigant.

{¶28} "[2.] The Appellee participated in fraud upon the court.

{¶29} "[3.] The Trial Court issued a biased decision."

Motion for Relief from Judgment

{¶30} "In order to prevail on a motion for relief from judgment pursuant to Civ.R. 60(B), the movant must demonstrate: (1) a meritorious claim or defense; (2) entitlement to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) timeliness of the motion." *Karnofel v. Nye*, 11th Dist. Trumbull No. 2016-T-0119, 2017-Ohio-7027, ¶13, citing *Rose v. Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20 (1988), citing *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 147 Ohio St.2d 146 (1976), paragraph two of the syllabus.

{¶31} "The applicable grounds for relief contained in Civ.R. 60(B) include: '(1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; * * * or (5) any other reason justifying relief from the judgment.'" *Id.* at ¶14, quoting Civ.R. 60(B). "A motion under

Civ.R. 60(B) 'shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken.'" *Id.*

{¶32} "A motion for relief from judgment under Civ.R. 60(B) is addressed to the sound discretion of the trial court, and that court's ruling will not be disturbed on appeal absent a showing of abuse of discretion." *Id.* at ¶15, quoting *Griffey v. Rajan*, 33 Ohio St.3d 75, 77 (1987).

{¶33} Ann argues that the handwritten invoice on the back of the contract detailing the work performed and monies owed is evidence of Superior's fraudulent attempt to include and charge for additional work. She contends this evidence could not have been previously discovered because a copy of the contract was attached to Superior's complaint filed in the Girard case "against her daughter." She also argues that the trial court denied her motion for relief from judgment because he is biased against her as a "female, pro se litigant who is an elderly senior citizen."

{¶34} "When issues raised in a Civ.R. 60(B) motion have already been ruled upon at the appellate court level, their consideration is barred by the doctrine of res judicata." *Nye*, *supra*, at ¶20, citing *Streetsboro v. Encore Homes,* 11th Dist. Portage No. 2002-P-0018, 2003-Ohio-2109, ¶10; *Blasco v. Mislik*, 69 Ohio St.2d 684, 686 (1982) (a Civ.R. 60(B) motion is not a substitute for an appeal).

{¶35} As we noted in *Karnofel III* regarding Ann's appeal of the trial court's summary judgment decision, *all* of Ann Karnofel's claims are barred by res judicata because she is in privity with Delores, and these claims were either already raised or could have been raised in the Girard case. *Id.* at ¶22 (finding a privity of interest as explained above and a "logical relation" pursuant to Civ.R. 13(A) between Ann's case and

Delores' intended counterclaim in the Girard Municipal Court because they involve the same contract and the same opposing party). By extension, our previous res judicata determination also applies to the present appeal regarding Ann's motion for relief for judgment.

{¶36} Assuming arguendo, res judicata did not apply, Ann's "newly discovered evidence" as grounds for relief under Civ. R.60(B)(2) set out in her first assignment of error must fail because a Civ.R. 60(B)(2) motion must be made "not more than one year after the judgment * * * was entered or taken." Ann's May 7, 2018 motion for relief from judgment was filed more than one year after the trial court awarded Superior summary judgment on April 7, 2017.

{¶37} And in any event, and most fundamentally, Ann failed to demonstrate why she was precluded from discovering a copy of the handwritten document in this case. The handwritten document was attached to Superior's February 1, 2017 motion for summary judgment.

{¶38} Nor does Ann even attempt to explain or support with authority her argument in the second assignment of error that "concealing" this "newly discovered evidence" constitutes fraud, misrepresentation, or misconduct entitling her to relief under Civ.R.60(B)(3) or the broader Civ.R. 60(B)(5). "App.R. 12(A)(2) states that an appellate 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.'" *Parkman Properties, Inc. v. Tanneyhill*, 11th Dist. Trumbull No. 2007-T-0098, 2008-Ohio-1502, ¶43, quoting App.R. 12(A)(2). "App.R. 16(A)(7) further states that an appellant's brief must

contain '[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, with citations to the authorities, statutes, and parts of the record on which appellant relies." *Id.*, quoting App.R. 16(A)(7).

{¶39} Accordingly, this court may disregard an assignment of error that fails to comply with App.R. 12(A) or App.R. 16(A)(7). *Id.* at ¶44, quoting *Village South Russell v. Upchurch*, 11th Dist. Geauga No. 2001-G-2395 and 2001-G-2396, 2003-Ohio-2099, ¶9. Because Ann has failed to comply with App.R. 12(A) and App.R. 16(A)(7), we disregard this assignment of error pursuant to App.R. 12(A)(2).

{¶40} Lastly, we note that Ann raises many of the same arguments Delores has raised in many of Delores' previous cases before this court.

{¶41} In her third assignment error Ann claims the trial court was biased against her as a pro se, female, elderly litigant.

{¶42} We previously rejected this argument in *Karnofel v. Nye*, 11th Dist. Trumbull No. 2015-T-0126, 2016-Ohio-3406, a case in which Delores was the appellant, where we aptly stated: "[w]hile it is true that judicial bias or favoritism can violate an individual's due process rights, * * * Karnofel provides absolutely no basis for asserting such a claim against the lower court." *Id.* at ¶25, quoting *State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, ¶34. Ann again provides no examples or evidence on which to base a claim of bias, and her argument is without supporting authority. In the absence of any proof supporting her argument, we reject the contention that the lower court was biased. *Id.*

{¶43} Finally, "'*[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.'" (Emphasis sic.) *Karnofel v. Cafaro Mgt. Co.*, 11th Dist. Trumbull No. 97-T-0072, 1998 WL 553491, 2 (June 26, 1998), quoting *Meyers v. First Natl. Bank of Cincinnati*, 3 Ohio App.3d 209, 210 (1st Dist.1981).

{¶44} For the foregoing reasons, Ms. Karnofel's assignments of error are not well-taken and are frivolous. The judgment of the Trumbull County Court of Common Pleas is affirmed.

THOMAS R. WRIGHT, P.J.,

TIMOTHY P. CANNON, J.,

concur.

STATE OF OHIO	)	**IN THE COURT OF APPEALS**
	)SS.	
COUNTY OF TRUMBULL	)	**ELEVENTH DISTRICT**

ANN KARNOFEL,

Plaintiff-Appellant,

- vs -

SUPERIOR WATERPROOFING, INC.,

Defendant-Appellee.

JUDGMENT ENTRY

CASE NO. 2018-T-0055

For the reasons stated in the opinion of this court, it is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas is affirmed. Further, Superior Waterproofing Inc. ("Superior") filed a motion for sanctions and attorney fees, combined with its merit brief. In response, Ann Karnofel filed a "Motion to Strike [Superior's] Motion for Sanctions-Including Attorney Fees," and later, Ms. Karnofel filed a second "Motion to Strike Brief (Appellee's)." We grant Superior's motion for the following reasons.

Specifically, Superior argues "[t]his entire matter has gone beyond any bounds of propriety. Between both the Delores and Ann Karnofel cases, the matter has reached the point where it is beyond harassment." Thus, Superior requests an order from this court (1) sanctioning both Ann and Delores Karnofel to preclude them from ever filing anything in this court "or any other Court again in regard to this case," (2) ordering Delores Karnofel not to further attempt to represent her mother, (3) reporting Delores Karnofel to the Supreme Court of Ohio for engaging in the unauthorized practice of law, (4) ordering both Delores

and Ann Karnofel to pay attorney's fees in this case and the companion cases of 2017-T-0026 and 2017-T-0010, and (5) granting any other appropriate sanctions.

App.R. 23 provides that "[i]f a court of appeals shall determine that an appeal is frivolous, it may require the appellant to pay reasonable expenses of the appellee including attorney fees and costs."

"In *Rome Rock Assoc., Inc. v. Warsing*, 11th Dist. Ashtabula No. 98-A-0051, 1999 WL 1313618, 25 (Dec. 17, 1999), this court stated that '[a]lthough App.R. 23 provides that reasonable expenses may be assessed against an appellant who brings a frivolous appeal, it does not define what constitutes such frivolity. Ohio courts, however, have construed a frivolous appeal as one which presents no reasonable question for review." *Cominsky v. Malner*, 11th Dist. Lake No. 2005-L-108, 2006-Ohio-6205, ¶45. (Citations omitted.) "This court has likewise endorsed this interpretation of App.R. 23." *Id.*, *see, e.g. Nozik v. Mentor Lagoons Yacht Club*, 112 Ohio App.3d 321, 326 (11th Dist.1996).

"'[T]he decision of whether to award [appellee] the requested attorney fees rests within the sound discretion of this court.' We believe that appellant's appeal is not reasonably well grounded in fact, and, therefore, is frivolous." (Internal citations omitted.) *Cominsky* at ¶46.

This thinly veiled attempt by Delores Karnofel to relitigate her own case through her mother is reprehensible. But Delores Karnofel is not before this court in this case; her mother is. Thus, we may only consider Ann Karnofel's conduct.

Given the number of times the same arguments and unsupported allegations have been considered and rejected by four different courts at all

levels of our judicial system, we must find that this appeal is a frivolous appeal, presenting no reasonable question for review. Ann Karnofel is held to the same standard as any other litigant who has counsel; therefore, she is charged with the knowledge of all earlier proceedings relative to this contract claim, and most certainly knowledge of the pleadings, motions, briefs, affidavits, and supporting evidentiary material in her own case in the common pleas and her earlier appeal. Accordingly, Superior's motion for sanctions is granted.

Pursuant to App.R. 23, Superior is entitled to reasonable expenses, including attorney fees and costs incurred in the defense of this appeal. In accordance with Civ.R. 53(D)(1)(a), this matter is referred to this court's magistrate for a determination of the amount of reasonable expenses to be assessed against appellant. *See, e.g., Bank of America v. Telerico*, 11th Dist. Portage No. 2015-P-0026, 2015-Ohio-4544, ¶41.

The parties are hereby ordered to appear at an evidentiary hearing to determine the amount of reasonable expenses and attorney fees incurred in the defense of this appeal, which shall be conducted by Magistrate Shibani Sheth-Massacci at a time and date determined by the magistrate.

All other pending motions are hereby overruled as moot.

Mary Jane Trapp
JUDGE MARY JANE TRAPP

FOR THE COURT

STATE OF OHIO	)	**IN THE COURT OF APPEALS**
	)SS.	
COUNTY OF TRUMBULL	)	**ELEVENTH DISTRICT**

ANN KARNOFEL,

Plaintiff-Appellant,

- vs -

SUPERIOR WATERPROOFING, INC.

Defendant-Appellee.

JUDGMENT ENTRY

CASE NO. 2018-T-0055

Appellant, Ann Karnofel, asks this court to reconsider its decision in *Karnofel v. Superior Waterproofing, Inc.*, 11th Dist. Trumbull No. 2018-T-0055, 2019-Ohio-1409. For the following reasons, Ms. Karnofel's motion is denied.

In *Karnofel,* this court upheld the trial court's judgment denying Ms. Karnofel's Civ.R. 60(B) motion because she demonstrated none of the grounds necessary for relief from judgment.

We found that consideration of all issues raised in her motion to vacate were barred by the doctrine of res judicata. *Id.* at ¶34-35. We also found her claim of newly discovered evidence under Civ.R. 60(B)(2) was time-barred. *Id.* at ¶36. We further found Ms. Karnofel failed to demonstrate why she was precluded from discovering a copy of the handwritten document, which is her "newly discovered evidence" and the focus of her argument in her motion for reconsideration, because it was there to be seen. It was a document filed in the

APPENDIX B

trial court below in support of the appellee's motion for summary judgment. *Id.* at ¶37.

We also found Ms. Karnofel failed to explain or support with any authority her assertion that "concealing" this so-called "newly discovered evidence" constituted a fraud upon the court. *Id.* at ¶38. And we rejected her claim that the trial court was biased against her as a pro se, female, elderly litigant, again because she failed to provide any evidence or authority to support this claim. *Id.* at ¶42. Finally, we found her appeal to be frivolous. *Id.* at ¶44.

In evaluating Ms. Karnofel's motion, we must consider whether it "calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been." (Citation omitted.) *State v. Jones*, 11th Dist. Ashtabula No. 2001-A-0027, 2003-Ohio-621, ¶5.

An application for reconsideration is not designed to be used in situations where a party simply disagrees with the logic employed or conclusions reached by an appellate court, but it is meant to provide "a mechanism by which a party may prevent miscarriages of justice that could arise when an appellate court makes an obvious error" or renders a decision that is not supported by law. *State v. Owens*, 112 Ohio App.3d 334, 336 (11th Dist.1996).

Ms. Karnofel primarily reasserts statements and arguments that she made either in her appellate brief in this matter or in her prior appeal or the prior appeal of her daughter, Delores Karnofel, which arose out of the same transaction at issue—a waterproofing contract. We decline to address these arguments again,

because the bases for this court's decisions have been clearly stated in three prior opinions. Ms. Karnofel merely disagrees with this court's decisions regarding the waterproofing contract at issue, which does not provide a valid ground for reconsideration.

While we agree that our last opinion failed to correct an error in an earlier opinion, which mistakenly identified one of the owners of the subject property, Donna Jean Beck, Ann Karnofel's daughter, as also being an occupant, this fact is irrelevant to the issues on appeal.

Further, Ms. Karnofel's factual and legal arguments relating to the invoice, work order and/or "change order," together with her "res judicata," "due process" and "privity" arguments have already been fully considered and rejected in our latest decision and in our previous judgment denying her motion to reconsider our earlier decision in *Karnofel v. Superior Waterproofing, Inc.*, 11th Dist. No. 2017-T-0026, 2017-Ohio-9346.

Finally, we address Ms. Karnofel's request that we reconsider our decision on appellee's motion for sanctions. Ms. Karnofel asserts that our decision granting appellee's motion for sanctions for a frivolous appeal was based upon this court "favoring" appellee's counsel, Attorney Gold, over a pro se litigant because he is a member of a firm that once included a retired judge of this court, Donald Ford, Sr., deceased. Her assertion is baseless and without support of any facts appearing in this record or, for that matter, facts dehors the record.

Judge Ford retired from this court in 2007 and passed away in 2014. No member of this panel served with him as a judge.

We find that Ms. Karnofel has not demonstrated any obvious error or omission which would necessitate reconsidering this court's opinion. She has failed to identify any relevant fact or any relevant law we did not consider; therefore, Ms. Karnofel's motion for reconsideration is denied.

JUDGE MARY JANE TRAPP

FOR THE COURT

IN THE COURT OF COMMON PLEAS
- GENERAL DIVISION –
TRUMBULL COUNTY, OHIO

ANN KARNOFEL — **CASE NUMBER: 2015 CV 01162**

PLAINTIFF

VS. — **JUDGE W WYATT MCKAY**

SUPERIOR WATERPROOFING INC

DEFENDANT — **JUDGMENT ENTRY**

Plaintiff's Motion for Relief from Judgment is hereby denied.

JUDGE W WYATT MCKAY

Date: 5/10/19

KAREN INFANTE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY
2018 MAY 16 AM 9:49
TRUMBULL COUNTY
CLERK OF COURTS

June 8 2018
This is a true and correct copy of the original Entry
KAREN INFANTE ALLEN
Clerk of Courts

APPENDIX C

2015 CV 01162
00072794044

The Supreme Court of Ohio

Ann Karnofel

v.

Superior Waterproofing, Inc.

Case No. 2019-0792

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Trumbull County Court of Appeals; No. 2018-T-0055)

Maureen O'Connor
Chief Justice

APPENDIX D

The Supreme Court of Ohio

Ann Karnofel

v.

Superior Waterproofing, Inc.

Case No. 2019-0792

RECONSIDERATION ENTRY

Trumbull County

It is ordered by the court that the motion for reconsideration in this case is denied.

(Trumbull County Court of Appeals; No. 2018-T-0055)

Maureen O'Connor
Chief Justice

APPENDIX E

STATE OF OHIO)
) SS.
COUNTY OF TRUMBULL)

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

ANN KARNOFEL,

Plaintiff-Appellant,

- vs -

SUPERIOR WATERPROOFING, INC.,

Defendant-Appellee.

MAGISTRATE'S ORDER

CASE NO. 2018-T-0055

On April 15, 2019, this court determined that appellee was entitled to reasonable expenses, including attorney fees and costs, related to the instant appeal pursuant to App.R. 23.

Counsel for appellee shall have fifteen (15) days from the date of this order to file evidentiary material, including affidavits and/or other documentary materials, demonstrating reasonable expenses, costs, and attorney fees, particularly addressing the factors set forth in Rule 1.5 of the Ohio Rules of Professional Conduct. Counsel for appellee shall also identify any expert witness, who will be called at the evidentiary hearing to corroborate the claim for attorney fees. Once filed, appellant shall file a response no later than seven (7) days thereafter.

The matter is set for an evidentiary hearing on Wednesday, June 19, 2019, at 9:30 a.m., at the Eleventh District Court of Appeals, 111 High Street, N.E., Warren, Ohio 44481. It is mandatory that you appear fifteen (15) minutes prior to the scheduled hearing time.

FILED
COURT OF APPEALS

MAY 16 2019

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

MAGISTRATE SHIBANI SHETH-MASSACCI

APPENDIX F

STATE OF OHIO	)	**IN THE COURT OF APPEALS**
	) SS.	
COUNTY OF TRUMBULL	)	**ELEVENTH DISTRICT**

ANN KARNOFEL,

Plaintiff-Appellant,

- vs -

SUPERIOR WATERPROOFING, INC.,

Defendant-Appellee.

JUDGMENT ENTRY

CASE NO. 2018-T-0055

In a magistrate's order dated May 16, 2019, this court ordered counsel for appellee within fifteen (15) days from that date to "file evidentiary material, including affidavits and/or other documentary materials, demonstrating reasonable expenses, costs, and attorney fees, particularly addressing the factors set forth in Rule 1.5 of the Ohio Rules of Professional Conduct" and to "identify any expert witness, who will be called at the evidentiary hearing to corroborate the claim for attorney fees."

To date, counsel for appellee has submitted no material to this court.

Therefore, the evidentiary hearing scheduled for Wednesday, June 19, 2019, at 9:30 a.m. is cancelled.

Counsel for appellee has seven (7) days from the date of this entry to show cause as to why this court should not determine that he is not entitled to any monetary expenses, including attorney fees and costs, related to the instant appeal pursuant to App.R. 23.

Mary Jane Trapp
JUDGE MARY JANE TRAPP

APPENDIX B

IN THE COURT OF COMMON PLEAS
- GENERAL DIVISION –
TRUMBULL COUNTY, OHIO

CASE NUMBER: 2015 CV 01162

ANN KARNOFEL
PLAINTIFF

VS. **JUDGE W WYATT MCKAY**

SUPERIOR WATERPROOFING INC
DEFENDANT **JUDGMENT ENTRY**

This matter is before the Court on the Defendant's Motion for Summary Judgment. The Court has reviewed the motion, any response, the evidence and the applicable law.

This matter arises out of a dispute between Plaintiff Ann Karnofel and Defendant Superior Waterproofing Inc., a contractor. Ann alleges that she entered into a contract with Defendant whereby Defendant was to perform waterproofing services and was also to install a new porch on her residence at 1528 Greenwood Ave. Girard, Ohio 44420, but that the services were either not performed or were performed negligently. Although Ann resides in the residence, the home is actually owned by her daughters, Delores Karnofel and Donna Jean Beck. Delores also lives in the residence with Ann.

The Contract which was signed on June 27, 2013, contains the name of Delores Karnofel under the heading entitled "Proposal Submitted To" but the "Acceptance of Proposal" was actually signed by Ann Karnofel.

Defendant alleges that this case is barred by res judicata because the matter has already been adjudicated by the Girard Municipal Court in Case No. 2014 CV 1065. In that case, Defendant brought suit against Delores Karnofel for breach of contract.

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Defendant now essentially claims that any claims of Ann would have had to been brought in that action as a compulsory counterclaim, as Ann is in privity with Delores.

Civil Rule 13 (A), which governs compulsory counterclaims, provides: "A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." This rule has been interpreted as requiring a defendant to raise any issues arising out of the same transaction in the original suit or have the claim barred by the doctrine of res judicata. *Rettig Ent. Inc. v. Koehler*, 68 Ohio St.3d 274, 626 N.E.2d 99 (1994).

According to the Complaint in the Girard Municipal Court action, Superior alleged a breach of the June 27, 2013 construction contract by Delores Karnofel. (The Court notes that it is permitted to take judicial notice of the complaint contained in Defendant's answer and counterclaim since the complaint was incorporated into the pleadings. See *Hammerschmidt v. Wyant Woods Care Center* (Dec. 27, 2000), Summit App. No. 19779, 2000 WL 1875401 citing U.S. v. Wood, (C.A.7, 1991), 925 F.2d 1580, 1582.) Therefore, any claim of Delores Karnofel for her own allegations of a breach of that contract would be a compulsory counterclaim in that matter, and her claims in this matter are barred by res judicata.

This does not end our analysis, however. The Court must determine whether the failure to present all claims in the first lawsuit precludes Ann Karnofel from asserting these claims in the present lawsuit. In order to invoke res judicata, one of the

requirements is that the parties to the subsequent action must be identical to or in privity with those in the former action. *Johnson's Island, Inc. v. Danbury Twp. Bd. of Trustees*, 69 Ohio St.2d 241, 243, 431 N.E.2d 672, (1982). The Ohio Supreme Court has previously stated that "[w]hat constitutes privity in the context of res judicata is somewhat amorphous." *Brown v. Dayton,* 89 Ohio St.3d 245, 248, 730 N.E.2d 958, (2000). The Supreme Court has further applied a broad definition to determine whether the relationship between the parties is close enough to invoke the doctrine. *Id.* "A mutuality of interest, including an identity of desired result," may create privity. *Id.*

The Court notes that Delores Karnofel was declared a vexatious litigator by the Court of Common Pleas and cannot bring any actions on her own without leave of Court. The names of both Delores and Ann appear on the relevant contract. They both reside in the house that is the subject of the contract. Therefore, the Court finds that although the Girard suit named Delores as a Defendant and this suit was brought by Ann as Plaintiff, there is sufficient mutuality of interest, including an identity of desired result so that Delores and Ann are in privity for purposes of res judicata.

Defendant's Motion for Summary Judgment is hereby GRANTED. Case concluded. Costs to Plaintiff. This is a final appealable order and there is no just cause for delay.

JUDGE W WYATT MCKAY

Date: 3/7/17

TO THE CLERK OF COURTS:
YOU ARE ORDERED TO SERVE COPIES OF THIS JUDGMENT
ON ALL COUNSEL OF RECORD OR UPON THE PARTIES
WHO ARE UNREPRESENTED FORTHWITH
BY ORDINARY MAIL.

JUDGE W. WYATT McKAY

IN THE GIRARD MUNICIPAL COURT
TRUMBULL COUNTY, OHIO

Superior Waterproofing	)	**Case No. 2014 CVF 1065**
	)	
Plaintiff	)	**HON. JEFFREY D. ADLER**
	)	
v.	)	
	)	**JUDGMENT ENTRY**
Delores M. Karnofel	)	
	)	
Defendant	)	

This matter comes before the Court upon the Plaintiff's Motion for Summary Judgment. The standard of review for summary judgment motions is well settled in Ohio.

In **Dresher v. Burt (1996) 75 Ohio St.3d 280,** the Ohio Supreme Court stated:

Under Rule 56(c), summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

This case arose out of the complaint of the Plaintiff alleging that Plaintiff was retained by the Defendant to perform waterproofing services at her residence located at 1528 Greenwood Avenue Girard, Ohio. The Defendant admits the existence of a contractual relationship with the Plaintiff in her answer. The total consideration to be paid to the Plaintiff for services rendered was $9,500.00. The Defendant requested additional work to be performed at an additional cost of $3,000.00 bringing the total price for services rendered to $12,500.00. Attached to the

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complaint of the Plaintiff and its motion for summary judgment are copies of the original contract and change order. The Defendant paid the Plaintiff a total of $6,000.00 leaving a balance of $6.500.00. However, the Plaintiff only requests a judgment of $5,000.00 in his affidavit supporting his motion for summary judgment. The Court has reviewed all of the pleadings, briefs, and exhibits in favor of, and in response to the motion for summary judgment. The Defendant's argument and the exhibits attached to her response to the Plaintiff's motion for summary judgment do not show that there are any genuine issues for trial. Likewise, the Plaintiff's motion for summary judgment also shows that there is no genuine issue as to any material fact and that the Plaintiff is entitled to summary judgment as a matter of law.

Judgment is hereby granted in favor of the Plaintiff and against the Defendant in the amount of $5,000.00 with interest at the rate of 3% per annum from the date of judgment and costs. This is a final appealable order. There is no just cause for delay.

Date 1/20/17

Hon. Jeffrey D. Adler

cc: Plaintiff's Counsel
Defendant

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

ANN KARNOFEL,	:	**OPINION**
Plaintiff-Appellant,	:	
		CASE NO. 2017-T-0026
- vs -	:	
SUPERIOR WATERPROOFING, INC.,	:	
Defendant-Appellee.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2015 CV 01162.

Recommendation: Affirm.

Ann Karnofel, pro se, 1528 Greenwood Avenue, Girard, OH 44420 (Plaintiff-Appellant).

Ned Gold, Jr., Ford, Gold, Kovoor & Simon, Ltd., 8872 East Market Street, Warren, OH 44484 (For Defendant-Appellee).

COLLEEN MARY O'TOOLE, J.

{¶1} Ann Karnofel appeals from the grant of summary judgment by the Trumbull County Court of Common Pleas to Superior Waterproofing, Inc., in her action for breach of contract and negligent workmanship. Finding no reversible error, we affirm.

{¶2} Ann Karnofel lives at 1528 Greenwood Avenue, Girard, Ohio, with her daughters, Delores Karnofel and Donna Jean Beck, who own the residence. On or

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about June 27, 2013, Superior submitted a contract to Delores Karnofel for waterproofing work and other improvements to the house. While submitted to Delores, the contract was approved by Ann, in Delores' presence. Work commenced September 16, 2013. October 1, 2013, Delores cancelled the contract before work was completed. Money was owed on the work actually done.

{¶3} Superior filed an action against Delores in the Girard Municipal Court, that being Case No. 2014 CVF 01065. Delores Karnofel is a vexatious litigator, so she moved the Girard Municipal Court for leave to file an answer, counterclaim, and motion for summary judgment. *Superior Waterproofing, Inc. v. Karnofel*, 11th Dist. Trumbull No. 2015-T-0113, 2016-Ohio-6992, ¶2. That court granted her leave. *Id.* Superior moved for summary judgment. *Id.* at ¶4. The trial court granted Superior's motion prior to the filing of any response. *Id.*

{¶4} Delores appealed. In relevant part, this court concluded that, since she was responding to an action, she did not require leave of court to file an answer even though she is a vexatious litigator. *Superior Waterproofing, Inc.*, 2016-Ohio-6992, ¶15, 20. However, we further concluded she did require leave of the Trumbull County Court of Common Pleas – the court which designated her a vexatious litigator – to proceed in the Girard Municipal Court case, on any claim requesting an order or other relief, such as her counterclaim. This court vacated the judgment of the Girard Municipal Court, and remanded for further proceedings. *Id.* at ¶21.

{¶5} On remand, Delores filed a response to Superior's motion for summary judgment. However, a review of the docket in Case No. 2014 CVF 01065 reveals she never applied for leave to proceed with her counterclaim from the Trumbull County

Court of Common Pleas, and did not ultimately file a counterclaim. By a judgment entry filed January 20, 2017, the Girard Municipal Court once again granted Superior's motion for summary judgment. Delores timely noticed appeal from that judgment, having obtained this court's leave to do so. The matter is presently pending as Case No. 2017-T-0010.

{¶6} In the meantime, on or about June 23, 2015, Ann Karnofel filed her complaint in this case, alleging breach of contract and negligent workmanship by Superior, arising from the same contract as that subject of the Girard Municipal Court case. Superior answered. Extensive motion practice ensued. Superior moved for summary judgment, which Ann opposed. By a thoughtful and incisive judgment entered March 2, 2017, the trial court granted Superior's motion. The trial court concluded that Ann's claims were compulsory counterclaims in the Girard Municipal Court case, and that Ann and Delores were in privity. Consequently, the trial court concluded that the Girard Municipal Court case constituted res judicata, binding in this case.

{¶7} Ann timely noticed this appeal, assigning two errors:

{¶8} "[1.] The trial court erred when it failed to see that appellant's daughter, Delores Karnofel's leave to proceed was not valid, when summary judgment was granted to defendant-appellee.

{¶9} "[2.] The trial court erred when it ruled in defendant-appellee's favor for summary judgment."

{¶10} Being interrelated, we treat the assignments of error together.

{¶11} "Summary judgment is a procedural tool that terminates litigation and thus should be entered with circumspection. *Davis v. Loopco Industries, Inc.*, 66 Ohio St.3d

64, 66 (1993). Summary judgment is proper where (1) there is no genuine issue of material fact remaining to be litigated; (2) the movant is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and, viewing the evidence in the non-moving party's favor, that conclusion favors the movant. *See e.g.* Civ.R. 56(C).

{¶12} "When considering a motion for summary judgment, the trial court may not weigh the evidence or select among reasonable inferences. *Dupler v. Mansfield Journal Co.*, 64 Ohio St.2d 116, 121 (1980). Rather, all doubts and questions must be resolved in the non-moving party's favor. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 359 (1992). Hence, a trial court is required to overrule a motion for summary judgment where conflicting evidence exists and alternative reasonable inferences can be drawn. *Pierson v. Norfork Southern Corp.*, 11th Dist. No. 2002-A-0061, 2003-Ohio-6682, ¶36. In short, the central issue on summary judgment is, 'whether the evidence presents sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.' *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-252 (1986). On appeal, we review a trial court's entry of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996)." (Parallel citations omitted.) *Meloy v. Circle K Store*, 11th Dist. Portage No. 2012-P-0158, 2013-Ohio-2837, ¶5-6.

{¶13} The trial court concluded that Ann and Delores Karnofel were in privity, thus binding Ann to the results of the Girard Municipal Court case.

{¶14} "At the outset, we must determine whether there is an identity of parties in the two actions. *Res judicata* operates as '"a complete bar to any subsequent action on

the same claim or cause of action *between the parties or those in privity with them.*'" (Emphasis added.) *Johnson's Island, Inc. v. Danbury Twp. Bd. of Trustees* (1982), 69 Ohio St.2d 241, 243, * * *, quoting *Norwood v. McDonald* (1943), 142 Ohio St. 299, * * * paragraph one of the syllabus. * * *.

{¶15} "What constitutes privity in the context of *res judicata* is somewhat amorphous. A contractual or beneficiary relationship is not required:

{¶16} "'In certain situations (* * *) a broader definition of "privity" is warranted. As a general matter, privity "is merely a word used to say that the relationship between the one who is a party on the record and another is close enough to include that other within the *res judicata*." *Bruszewski v. United States* (C.A.3, 1950), 181 F.2d 419, 423 (Goodrich, J., concurring).' *Thompson v. Wing* (1994), 70 Ohio St.3d 176, 184, * * *." (Emphasis sic.) (Parallel citations omitted.) *Brown v. Dayton*, 89 Ohio St.3d 245, 247-248 (2000).

{¶17} Consequently, privity may be found between two parties when there is a mutuality of interest, or an identity of desired results. *Id. Accord Godale v. Chester Twp. Bd. of Trustees*, 11th Dist. Geauga No. 2004-G-2571, 2005-Ohio-2521, ¶43; *Kessler v. Tuus Tutus, L.L.C.*, 185 Ohio App.3d 240, 2009-Ohio-6376, ¶30 (11th Dist.).

{¶18} The trial court did not err in finding privity between Ann and Delores Karnofel. They are mother and daughter; they live together in the same house. Delores' counterclaim in the Girard Municipal Court case alleged breach of contract and negligent workmanship by Superior, as did Ann's claims in this case. Thus, there is a mutuality of interest and identity of desired result.

{¶19} Further, the trial court also concluded correctly that Ann's claims in this case were compulsory counterclaims in the Girard Municipal Court case.

{¶20} "1. All existing claims between opposing parties that arise out of the same transaction or occurrence must be litigated in a single lawsuit pursuant to Civ.R. 13(A), no matter which party initiates the action.

{¶21} "2. The 'logical relation' test, which provides that a compulsory counterclaim is one which is logically related to the opposing party's claim where separate trials on each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts, can be used to determine whether claims between opposing parties arise out of the same transaction or occurrence." *Rettig Ent., Inc. v. Koehler*, 68 Ohio St.3d 274 (1994), paragraphs one and two of the syllabus.

{¶22} There is a "logical relation" between Delores' intended counterclaim in the Girard Municipal Court case, and Ann's claims in this case: each involve the same contract, and the same opposing party. The claims had to be brought by way of counterclaim in the Girard Municipal Court case. We may take judicial notice of another court's docket. *Hutz v. Gray*, 11th Dist. Trumbull No. 2008-T-0100, 2009-Ohio-3410, ¶40. As we noted above, the docket in the Girard Municipal Court case shows that Delores never filed a counterclaim in that case following remand. Consequently, all of Ann's claims in this case are barred by res judicata.

{¶23} The assignments of error lack merit.

{¶24} The judgment of the Trumbull County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, J., concurs,

THOMAS R. WRIGHT, J., concurs in judgment only.

STATE OF OHIO	)	**IN THE COURT OF APPEALS**
	)SS.	
COUNTY OF TRUMBULL	)	**ELEVENTH DISTRICT**

ANN KARNOFEL,

Plaintiff-Appellant,

- vs -

SUPERIOR WATERPROOFING, INC.,

Defendant-Appellee.

JUDGMENT ENTRY

CASE NO. 2017-T-0026

For the reasons stated in the Opinion of this court, the assignments of error are without merit. The order of this court is that the judgment of the Trumbull County Court of Common Pleas is affirmed. Costs to be taxed against appellant.

JUDGE COLLEEN MARY O'TOOLE

TIMOTHY P. CANNON, J., concurs,

THOMAS R. WRIGHT, J., concurs in judgment only.