

APPENDIX

STATE OF OHIO)
COUNTY OF TRUMBULL)
)SS.

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

ANN KARNOFEL,

JUDGMENT ENTRY

Plaintiff-Appellant,

CASE NO. 2018-T-0055

- VS -

SUPERIOR WATERPROOFING, INC.

Defendant-Appellee.

Appellant, Ann Karnofel, has filed yet another motion for reconsideration asking this court to reconsider its October 29, 2019 judgment entry, which adopted the September 18, 2019 Magistrate's Decision overruling all other pending motions and awarding judgment to appellee, Superior Waterproofing, Inc., in the sum of \$2,722.50, as and for sanctions for a frivolous appeal.

As grounds for her motion, Ms. Karnofel claims the entry "made some obvious errors and did not consider some issues fully or did not consider them at all." Ms. Karnofel's motion then proceeds to once again rehash all of her arguments raised in her appeals, prior motions, and objections.

Thus, we find that Ms. Karnofel's motion is frivolous and obviously serves only to harass Superior and cause it to incur further expense.

Ms. Karnofel's latest motion for reconsideration raises nothing new. Further, she did not demonstrate any obvious error or omission which would necessitate reconsidering this court's opinion or its judgment upon the Magistrate's Decision. She has failed to identify any relevant fact or any relevant

APPENDIX A

law we did not consider; therefore, Ms. Karnofel's motion for reconsideration is denied.

Mary Jane Trapp

JUDGE MARY JANE TRAPP

THOMAS R. WRIGHT, P.J.,

TIMOTHY P. CANNON, J.,

concur.

FILED
COURT OF APPEALS

DEC 19 2019

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

STATE OF OHIO)
)SS.
COUNTY OF TRUMBULL)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

ANN KARNOFEL,

JUDGMENT ENTRY

Plaintiff-Appellant,

CASE NO. 2018-T-0055

- VS -

SUPERIOR WATERPROOFING, INC.,

Defendant-Appellee.

This matter came on for consideration upon the Magistrate's Decision of September 18, 2019, and objections filed by appellant, Ann Karnofel.

Under Civ.R. 53(D)(3)(b)(1), a party may file written objections to a magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period. Civ.R. 53(D)(3)(b)(iii) describes certain requirements to support an objection to a magistrate's factual findings, stating in pertinent part:

"An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. * * * The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections."

Ms. Karnofel's objections were timely filed on September 27, 2019. Appellee, Superior Waterproofing, Inc., did not file a response to Ms. Karnofel's objections, and Ms. Karnofel has not filed a transcript of the proceedings before the magistrate or an affidavit.

The court has undertaken an independent review of the Magistrate's Decision as to the objected matters, and the findings of fact contained within the Magistrate's Decision are approved and incorporated by reference within this judgment entry.

Ms. Karnofel's first, third, and fourth objections relating to the court's denial of her motion to stay, the court's denial of her motion to continue the evidentiary hearing before the magistrate, and her objection to the court's judgment entry ordering appellee to show cause are overruled as those judgment entries are not a part of the Magistrate's Decision. Thus, they are not properly the subject of objections to that decision. The court would note that we also overruled appellee's motion for a continuance of the evidentiary hearing.

Ms. Karnofel's second and eighth objections are overruled for the same reason. Ms. Karnofel is attempting to relitigate this court's opinion and judgment entry on the merits of her appeal. The only matter referred to the magistrate was the issue of the reasonable amount of appellee's attorney fees and expenses incurred in defense of the underlying appeal. The only frivolous conduct found by this court in the underlying appeal was that of Ms. Karnofel.

Ms. Karnofel's fifth objection regarding Attorney Gold's hourly rate is also overruled. The court has accepted the magistrate's finding that \$275 per hour is reasonable. No transcript from the evidentiary hearing was filed; thus, without a

transcript, our review of the magistrate's findings of fact is limited to determining whether those findings support the magistrate's conclusions of law. *Krlich v. Shelton*, 11th Dist. Trumbull No. 2018-T-0104, 2019-Ohio-3441, ¶23.

Further, Ms. Karnofel argues the hourly rate should not exceed \$125 pursuant to the "Equal Access to Justice Act," citing an article in American Jurisprudence 2d. The act found at Title 28 U.S.C., Chapter 161, Section 2412, applies only in cases where the United State of America or any of its agencies or officials are parties.

Ms. Karnofel's sixth and seventh objections are overruled because, again, the court has accepted the magistrate's findings regarding the testimony of Attorney Grove as to Attorney Gold's professional qualifications, the reasonableness of fees as contemplated in Prof.Cond.R. 1.5(A)(1) through (8), and the hours spent. Again, without a transcript of the evidentiary hearing our review is limited. Ms. Karnofel's inability to pay any money judgment is not a valid basis for an objection to the Magistrate's Decision.

Therefore, this court adopts the Magistrate's Decision overruling all other pending motions and awarding appellee, Superior Waterproofing, Inc., the sum of \$2,722.50, for which judgment is hereby rendered and execution may issue. Costs are assessed to appellant.

Mary Jane Trapp

JUDGE MARY JANE TRAPP

THOMAS R. WRIGHT, P.J.,
MATT LYNCH, J.,
concur.

FILED
COURT OF APPEALS

OCT 29 2019

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

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.

Date: 8/10/19

W. Wyatt McKay
JUDGE W WYATT MCKAY

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

APPENDIX B

June 8 2018
This is a true and correct copy of the
original *Entry*
Karen Infante Allen

KAREN INFANTE ALLEN
Clerk of Courts

The Supreme Court of Ohio

FILED

APR 14 2020

CLERK OF COURT
SUPREME COURT OF OHIO

Ann Karnofel

Case No. 2020-0130

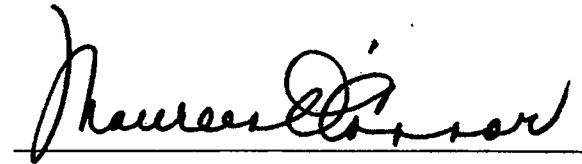
v.

E N T R Y

Superior Waterproofing, Inc.

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 C

FILED
The Supreme Court of Ohio

JUL -7 2020

CLERK OF COURT
SUPREME COURT OF OHIO

Ann Karnofel

v.

Superior Waterproofing, Inc.

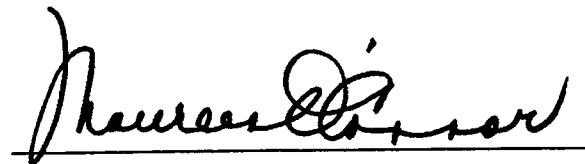
Case No. 2020-0130

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 D

Additional 1200.00 for digging around
Sunroom.

Paid 3000.00 down payment 9-24-13
Balance 7,700.00

Waterproofing 9,500.00
Downspouts 1,600.00
Sunroom 1,200.00
extra french doors 200.00
12500.00

- 3000.00 down payment 9-24-13

9,500.00

- 3000.00 payment 9-30-13

6,500.00 Balance

Superior Waterproofing Inc. v. Delores Karnofel
Coillard Municipal Court
Case No. 2014 CVF 1065
January 20, 2017

APPENDIX E

FILED

DEC 11 2014

GIRARD MUNICIPAL
COURT

GIRARD MUNICIPAL COURT
TRUMBULL COUNTY, OHIO

Superior Waterproofing, Inc.
9680 Cain Drive, N.E.
Warren, OH 44484

Case No. 2014 CVF 01065

Plaintiff

Judge Jeff Adler

v.

COMPLAINT ON ACCOUNT

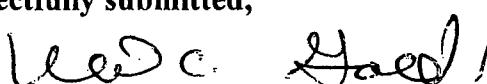
Delores M. Karnofel
1528 Greenwood Avenue
Girard, Ohio 44420

Defendant

Plaintiff for its Complaint says as follows:

1. Plaintiff is in the business of waterproofing predominately residences.
2. Plaintiff was retained by Defendant to perform waterproofing services on her home at the address indicated above in 2012. A copy of the agreement is attached as Exhibit A.
3. The total consideration to be paid to Plaintiff was \$9,500.00.
4. Plaintiff performed the services as required pursuant to the contract, but Defendant has refused to pay full consideration and still owes \$6,000.00 to Plaintiff on an account. A copy of the account is attached as Exhibit B.

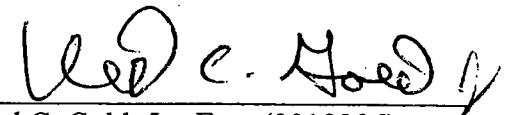
Respectfully submitted,


Ned C. Gold, Jr., Esq. (0018306)
Ford, Gold, Kovoov & Simon, Ltd.
8872 E. Market Street
Warren, OH 44484
Phone: 330.856.6888 Fax: 330.856.7550
Email: gold@neo-lawgroup.com

APPENDIX F

Instructions for Service

Please serve a copy of the foregoing Complaint with summons on Defendant at the address shown above by certified mail.


Ned C. Gold, Jr.

Ned C. Gold, Jr., Esq. (0018306)

Proposal

Page No.

of

Pages

EXHIBIT**A**

SUPERIOR WATERPROOFING, INC.

P.O. Box 542
WARREN, OHIO 44482
(330) 856-9133

Frank

330-883-337

PROPOSAL SUBMITTED TO

Detores Karnofel

STREET

152B Greenwood ave

CITY, STATE and ZIP CODE

Girard, OH 44420

ARCHITECT

DATE OF PLANS

PHONE

545-6303

DATE

8-26-12

JOB NAME

JOB LOCATION

JOB PHONE

We hereby submit specifications and estimates for:

Bid is for hand digging 103 feet of basement walls.

We will dig down to the footer and replace old footer pipe.

New PVC pipe will be installed. All cracks will be repaired.

Walls will be sealed with tar. We will backfill with washgravel. Topsoil will be placed on top. Front porch will be taken down.

38'

24'

24'

30'

A new front porch will be built consisting of

Birch block and filling to grade. Pouring new concrete pad. 15 feet x 6 feet.

We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

Payment to be made as follows:

dollars (\$ 9500.00).

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized
SignatureFrank Augur

Note: This proposal may be withdrawn by us if not accepted within _____ days.

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance:

6/27/13

Signature

Irene Karnofel

Signature

Superior Waterproofing, Inc.
9680 Cain Dr.
Warren Ohio 44484
330.883.3372

EXHIBIT B

INVOICE: #229
DATE: 10/3/2014

TO:
Ms. Delores Karnofel
1528 Greenwood Avenue
Girard, Ohio 44420
330.545.6303

**FOR: WATER PROOFING BASEMENT WALLS
AND REPLACE FRONT PORCH**

IN THE GIRARD MUNICIPAL COURT
TRUMBULL COUNTY, OHIO

FILED

JAN 20 2017

Girard Municipal
Court

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

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

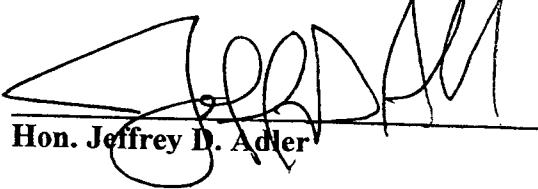
APPENDIX C

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 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.

APPENDIX H

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.*

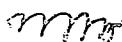
The Court notes that Delores Karnofel was declared a vexatious litigator by the Court of Common Pleas and cannot bring any actions on her own without leave of Court. The names of both Delores and Ann appear on the relevant contract. They both reside in the house that is the subject of the contract. Therefore, 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 No. 12-TR-100001-121 is concluded. Costs to Plaintiff. This is a final appealable order and there is no just cause for delay.


JUDGE W WYATT MCKAY

Date: 3/2/17

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

Proposal

Page No.

of

Pages

EXHIBIT

A

SUPERIOR WATERPROOFING, INC.

P.O. Box 542
WARREN, OHIO 44482
(330) 856-9133

Frank

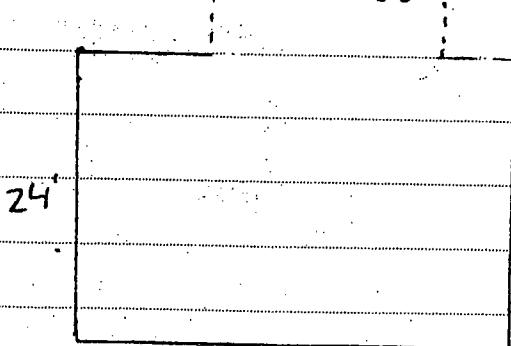
330-883-337

PROPOSAL SUBMITTED TO Delores Karnofel	PHONE 545-6303	DATE B-26-12
STREET 1528 Greenwood ave	JOB NAME	
CITY, STATE and ZIP CODE Girard, OH 44420	JOB LOCATION	
ARCHITECT	DATE OF PLANS	JOB PHONE

We hereby submit specifications and estimates for:

Bid is for hand digging 103 feet of basement walls.
We will dig down to the footer and replace old footer pipe.
New PEX pipe will be installed. All cracks will be repaired.
Walls will be sealed with tar. We will backfill with
wash gravel. Topsoil will be placed on top. Front porch will
be taken down.

38'



24'

38'

A new front porch will
be built consisting of
Brick block and filling to
grade. pouring new concrete
pad. 15 feet x 6 feet.

We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

Payment to be made as follows:

9500.00

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized
Signature

Frank Dippier

Note: This proposal may be withdrawn by us if not accepted within _____ days.

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance:

6/27/13

Signature

Delores Karnofel

APPENDIX I

Signature

STATE OF OHIO)
COUNTY OF TRUMBULL) SS.

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

ANN KARNOFEL,

MAGISTRATE'S ORDER

Plaintiff-Appellant,

CASE NO. 2018-T-0055

- VS -

SUPERIOR WATERPROOFING,
INC.,

Defendant-Appellee.

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 J

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO

ANN KARNOFEL,

) CASE NO. 2018-TR-00055

) PLAINTIFF-APPELLANT,

) VS.

) SUPERIOR WATERPROOFING, INC.,

) DEFENDANT-APPELLEE.

FILED
COURT OF APPEALS

JUN 20 2019

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

APPELLEE'S RESPONSE TO
COURT'S JUNE 13, 2019 ENTRY RE: ATTORNEY FEES

INTRODUCTION

In its June 13, 2019 Judgment Entry, the Court directed Appellee to show cause [within seven days from June 13, 2019] 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.

This response addresses that directive and then presents evidence of the fees and costs incurred in defending the appeal.

First, Appellee apologizes to this Court, and specifically to Magistrate Judge Sheth-Massacci for not responding timely to her May 16th Order.

By way of exclamation, and not excuse, allow me to advise why I did not respond timely. Just a few days after I received the May 16th order, receipt being May 20th, I left the office for a 4500-mile driving trip to the west and back. I was gone for a period of a little over two weeks and did not return to the office until June 11th.

In addition, a few months ago, I made a decision to begin winding down my 53-year practice. (I am nearly 78 years old and it is time to "smell the roses" – as directed (make that ordered) by my wife and children). I advised my partner, Sarah Kovoov, of my plans. We set a

APPENDIX K

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ORIGINAL

target date of May 31st. However, we had not completed a severance agreement by that date. Nevertheless, while on vacation I learned that Attorney Kovoor had abruptly – without any announcement, discussion or warning - left our offices on E. Market St. in Howland over the last weekend in May and moved to a new office - much to my and our staff's surprise and chagrin. Because I was in a western location where cell service is sparse, I did not find out until a few days later. I was taken aback; others affiliated with the firm (employees and those attorneys who are "of counsel") were taken aback as well. It was unclear to all of us what Sarah's intentions were, but, regardless, it threw our small firm into turmoil. And so when I returned, there were a lot of unexpected issues on my plate, and I flat-out forgot about Magistrate Sheth-Massacci's order until she contacted me. But before I had a chance to prepare a request for a continuance related to the matters in her May 16th order, I received the Court's June 13th show cause entry,

Accordingly, I respond to that entry.

RESPONSE

I do not have to remind the court of the saga that Appellant, Ann Karnofel, and her daughter Delores, have put Appellee, Superior Waterproofing, Inc., and undersigned counsel through over a four-year period as related to a contract entered between the parties for waterproofing at the Karnofel home in Girard. It has been onerous to say the least! This is especially true in view of the relatively insignificant amount of the judgment - \$5,000. The time, effort and money put into this case and the related cases far exceeds the amount of the judgment. And while I have not advised Superior of this, there is no way I can charge it for all the work put into this appeal.

While this case on the outside appears to involve only Ann, Delores is still tied into it by virtue of the earlier case in which Appellee sued Delores on the same transaction for which Ann then brought suit against Appellee. The Common Pleas Court and this Court ruled in summary that, because the same issue involved in these Ann cases was tried and lost by Delores in her case, Ann's cases are barred by the doctrine of *res judicata* and related legal principles, though Ann was not a party in the Delores case. Hence, the cases are inextricably tied together.

And why was the case carried as far as it has? Because the Karnofels act *pro se* and hence avoid attorney's fees; they make a hobby of litigating. All one need do is look at the docket entries for the Karnofels in this Court in this case and several others in Trumbull County; there are literally

dozens of Karnofel cases, all *pro se*. And it is Delores, who is really behind all this, acting as Ann's *de facto* attorney. As this Court well knows, Delores has been deemed a "vexatious litigator" (pursuant to an order in Trumbull County Court of Common Pleas Case No. 2008 CV 874). I believe it is part of the Karnofels strategy to make the opposing party spend money on legal fees so that pursuit against them won't be worth the while.

The Karnofels even assert they are indigent. No one has put them to the test on this but I am convinced this is not true. For one, the home in which they live and apparently have for over 60 years, is nearly free and clear except for a line of credit through Citizens Bank and the judgment lien I have filed in this case. They had enough money to enter the Superior contract and others which they have litigated (and lost).

As all the courts that have been involved in this case and the related cases have determined, there is no merit whatsoever to the Karnofels' contentions. This Court's fee order relating only to this appeal barely touches the incredible amount of time and expense incurred in the single merit issue, but at least it is something. The sanction imposed hopefully will cause the Karnofels to think more than twice before they again start off on a spurious litigation journey.

I guarantee that the response to this memorandum from Delores - speaking through Ann - will be a rehashing of previous spurious arguments advanced by the Karnofels in these cases and go something like this: this court is prejudiced against Ann (read that as Delores as well) because she is a woman and *pro se*; this court is biased in favor of undersigned because my now-deceased law partner, the Hon. Donald Ford, was a long-term distinguished member of this Court; Appellee behaved in a fraudulent manner; because and because and because..... The point is they will continue to rehash the merits long ago found in favor of Appellee by all involved courts, and they will continue to assert procedural irrelevancies.

Maybe ----- just maybe, if one of them is sanctioned financially, maybe they will quit this stuff and find some other hobby.

For all these reasons, this Court determined that fees and expenses are due to undersigned from Ann for her spurious appeal in this case (Case No. 2018-TR-00055), particularly bearing in mind that Ann had filed a previous unsuccessful appeal in this case under Case No. 2017-TR-00026 which, when appealed to The Ohio Supreme Court, was rejected for consideration. Supreme

Court Case No. 2018-0908 dated Sep. 12, 2018. My failure to respond timely (resulting from the reasons noted above) should not deter this court from its previous decisions in this regard.

And again, I apologize to the Court for the extra work it has had to expend in this matter.

TURNING TO THE MERITS PER THE MAGISTRATE'S MAY 16 ORDER

The Magistrate's order directs that I provide pre-hearing evidentiary material supporting the fees associated with this appeal and address the relevant factors set forth in Rule 1.5 of the Ohio Rules of Professional Conduct.

My Normal Hourly Rate and Charges to Client:

I cannot in good conscience charge Superior Waterproofing – which really means its sole owner, Frank Kiepper - for the time and effort put into this appeal. I have represented Superior for nearly 20 years. My charges to Superior are based on my normal hourly rate at the time services are rendered. That rate is and has been for a few years \$275 per hour. Even though I am not charging Superior for the appeal in this case – as said earlier, I have never advised Superior that I do not plan to charge - Ann is nevertheless no less responsible for the fees.

Lest it be asserted that because I have not charged Superior for the legal work, I cannot include that time in my fee motion. To be clear, as far as my client is concerned, he has never been told that I am not going to charge for the appellate work; as far as he understands he is legally obligated to pay my legal fees. In the case of *Grove v. Gamma Cntr*, 2015-Ohio-1180, the 3rd District, in construing the term “incurred” as used in R.C.2323.51, the statute providing for fee motions as well as, held that when a party has a legal obligation to pay legal fees or otherwise becomes legally accountable for them, regardless of whether the fees have been or will be paid, they have been “incurred” and therefore may be assessed against the defaulting party. See also *Marshall v. Cooper & Elliott*, 2017-Ohio-4301 (8th Dist.) at ¶31, *et seq.* (Also pertinent are Civ. R. 11 and R. App. P. 23.)

My Qualifications:

As a lawyer who has been in practice 53 years and represented many classes of clients from steel mills and hospitals with thousands of employees to one-man band companies, I have vast experience in many aspects of law and am well worth \$275 per hour or more. If you do a Lexis search on my name, you will see the extensive appellate experience I have had representing many varieties of clients in numerous fields of law and usually prevailing. Had I not had to respond to the spurious claims in this case I easily could have filled in the time with work for clients who routinely pay my normal hourly rate. Instead, I had to take up my time with this case on which I can earn nothing except what Ann might be ordered to pay, and then catch up on other lucrative work in time I would rather have been spending with my family. Whether I will ever receive any award adjudicated herein is quite speculative.

Potential Expert Witness:

Either Atty. Michael Grove or Atty. Tom Nader will vouch for the reasonability of fees at the hearing.

Hours Spent on the Appeal:

Frankly, because I made a decision that I would not charge Superior for work on this appeal, I have not kept the meticulous time records I normally do. So, I am giving an estimate of the number of hours spent on the actual appeal. That time includes: review of the initial appeal - .2 of an hour; review of the 17 page brief – about 1 hour; an abbreviated response (abbreviated because what was raised was nothing new and nothing but a repeat of Case No. 2017-TR-00026) – about 1 hour; prep for oral argument – about .5 of an hour; attendance at oral argument – about 1.5 hour (which includes travel and waiting time); motion for sanctions – about .5 of an hour; and this pre hearing memo related to the court’s order for sanctions for attorney’s fees and costs – 4.2 hours and that figure is exact inasmuch as I have kept time on that. **Total: 8.9 hours X \$275 = \$2,337.50.**

In addition, the further time that will be spent on prep for and trying of the sanctions issues.

There are no expenses directly attributable to this appeal other than copying charges and mail costs which are nominal.

UPDATE

This matter just won't stop! We see by way of the court docket, that Appellant has filed a Motion for Reconsideration today. We have yet to receive a copy. This has got to be brought to an end.

Respectfully submitted,


Ned C. Gold, Jr., Esq. (0018306)
Ford, Gold, Kovoov & Simon, Ltd.
Attorney for Defendant-Appellee
8872 E. Market Street, Warren, OH 44484
Phone: 330.856.6888 Fax: 330.856.7550
Email: Gold@neo-lawgroup.com

CERTIFICATE OF SERVICE

A copy of Appellee's Response to Court's June 13, 2019 Entry re: Attorney Fees was sent via U.S. regular mail on May 20, 2019, to:

Ms. Ann Karnofel
1528 Greenwood Avenue
Girard, Ohio 44420
Pro Se Plaintiff-Appellant


Ned C. Gold, Jr., Esq. (0018306)
Ford, Gold, Kovoov & Simon, Ltd.
Attorney for Defendant-Appellee

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

ANN KARNOFEL,

JUDGMENT ENTRY

Plaintiff-Appellant,

CASE NO. 2018-T-0055

- VS -

SUPERIOR WATERPROOFING,
INC.,

Defendant-Appellee.

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.

FILED
COURT OF APPEALS

JUN 13 2019

Mary Jane Trapp
JUDGE MARY JANE TRAPP

TRUMBULL COUNTY, OH APPENDIX L
KAREN INFANTE ALLEN, CLERK

STATE OF OHIO)
)SS.
COUNTY OF TRUMBULL)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

ANN KARNOFEL,

JUDGMENT ENTRY

Plaintiff-Appellant,

CASE NO. 2018-T-0055

- VS -

SUPERIOR WATERPROOFING, INC.,

Defendant-Appellee.

This matter came on for consideration upon the Magistrate's Decision of September 18, 2019, and objections filed by appellant, Ann Karnofel.

Under Civ.R. 53(D)(3)(b)(1), a party may file written objections to a magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period. Civ.R. 53(D)(3)(b)(iii) describes certain requirements to support an objection to a magistrate's factual findings, stating in pertinent part:

"An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. * * * The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections."

APPENDIX M

Ms. Karnofel's objections were timely filed on September 27, 2019. Appellee, Superior Waterproofing, Inc., did not file a response to Ms. Karnofel's objections, and Ms. Karnofel has not filed a transcript of the proceedings before the magistrate or an affidavit.

The court has undertaken an independent review of the Magistrate's Decision as to the objected matters, and the findings of fact contained within the Magistrate's Decision are approved and incorporated by reference within this judgment entry.

Ms. Karnofel's first, third, and fourth objections relating to the court's denial of her motion to stay, the court's denial of her motion to continue the evidentiary hearing before the magistrate, and her objection to the court's judgment entry ordering appellee to show cause are overruled as those judgment entries are not a part of the Magistrate's Decision. Thus, they are not properly the subject of objections to that decision. The court would note that we also overruled appellee's motion for a continuance of the evidentiary hearing.

Ms. Karnofel's second and eighth objections are overruled for the same reason. Ms. Karnofel is attempting to relitigate this court's opinion and judgment entry on the merits of her appeal. The only matter referred to the magistrate was the issue of the reasonable amount of appellee's attorney fees and expenses incurred in defense of the underlying appeal. The only frivolous conduct found by this court in the underlying appeal was that of Ms. Karnofel.

Ms. Karnofel's fifth objection regarding Attorney Gold's hourly rate is also overruled. The court has accepted the magistrate's finding that \$275 per hour is reasonable. No transcript from the evidentiary hearing was filed; thus, without a

transcript, our review of the magistrate's findings of fact is limited to determining whether those findings support the magistrate's conclusions of law. *Krlich v. Shelton*, 11th Dist. Trumbull No. 2018-T-0104, 2019-Ohio-3441, ¶23.

Further, Ms. Karnofel argues the hourly rate should not exceed \$125 pursuant to the "Equal Access to Justice Act," citing an article in American Jurisprudence 2d. The act found at Title 28 U.S.C., Chapter 161, Section 2412, applies only in cases where the United States of America or any of its agencies or officials are parties.

Ms. Karnofel's sixth and seventh objections are overruled because, again, the court has accepted the magistrate's findings regarding the testimony of Attorney Grove as to Attorney Gold's professional qualifications, the reasonableness of fees as contemplated in Prof. Cond. R. 1.5(A)(1) through (8), and the hours spent. Again, without a transcript of the evidentiary hearing our review is limited. Ms. Karnofel's inability to pay any money judgment is not a valid basis for an objection to the Magistrate's Decision.

Therefore, this court adopts the Magistrate's Decision overruling all other pending motions and awarding appellee, Superior Waterproofing, Inc., the sum of \$2,722.50, for which judgment is hereby rendered and execution may issue. Costs are assessed to appellant.



JUDGE MARY JANE TRAPP

THOMAS R. WRIGHT, P.J.,
MATT LYNCH, J.,
concur.

FILED
COURT OF APPEALS

OCT 29 2019

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

STATE OF OHIO)
) SS.
COUNTY OF TRUMBULL)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

ANN KARNOFEL,

MAGISTRATE'S DECISION

Plaintiff-Appellant,

CASE NO. 2018-T-0055

- VS -

SUPERIOR WATERPROOFING, INC.,

Defendant-Appellee.

The assigned panel in the instant action issued a judgment entry on April 15, 2019, finding this appeal to be frivolous and referring the matter to this Magistrate to conduct an evidentiary hearing to determine the amount of reasonable expenses to be assessed against appellant, including attorney fees and costs, incurred by appellee in defense of this appeal. Consistent with that entry, an evidentiary hearing was held on August 15, 2019.

App.R. 23 provides an appellate court with the authority to order an appellant to pay the reasonable expenses of appellee, including attorney fees and costs, where the court determines that an appeal is frivolous. The purpose of App.R. 23 is to compensate a non-appealing party for expenses incurred in defending a frivolous appeal and to deter frivolous appeals to preserve the appellate calendar and limited judicial resources for cases that are truly worthy of the court's consideration. *Waller v. Menorah Park Center for Senior Living*, 5th Dist. Stark No. 2018CA00083, at ¶ 26.

In this case, Attorney Ned C. Gold, Jr., appeared at the hearing on August 15, 2019, on appellee's behalf. Neither appellant, nor counsel on her behalf, appeared. The Court has considered the evidence and testimony of counsel.

APPENDIX N

When given the opportunity to present evidence in support of appellee's position, Attorney Gold referred to his June 20, 2019 submission, which was in response to this court's June 13, 2019 entry, regarding the hours he spent on this matter. He then presented a witness as to the reasonableness of the fees.

As to the hours spent, Attorney Gold's June 20, 2019 submission, at page 5, estimates, in detail, the hours spent on the appeal at 8.9 hours at \$275 per hour. However, during his opening remarks, Attorney Gold clarified he was reducing those hours to 7.9 hours. He further explained that he had an additional two hours in preparing for the evidentiary hearing. Thus, he indicated that he expended 9.9 hours at \$275 per hour for a total of \$2,722.50 in fees with respect to this appeal.

Attorney Gold presented the testimony of his sole witness, Attorney Michael E. Grove to attest to the reasonableness of the fees. Attorney Grove testified as an expert witness as to Attorney Gold's professional qualifications and as to the reasonableness of fees as contemplated in Prof.Con.R. 1.5(a)(1) through (8). He verified that the amount of time spent on this case and the hourly rate of \$275 charged were reasonable for this area for an attorney with Attorney Gold's appellate advocacy skills and legal experience.

Appellee established that it spent \$2,722.50 in attorney fees defending the appeal. This is, therefore, unrebuted, and appears, on its face, quite reasonable. Accordingly, the Magistrate awards appellee its attorney fees, pursuant to App.R. 23. Appellant, Ann Karnofel, is ordered to pay appellee, Superior Waterproofing, Inc., \$2,722.50.

Furthermore, all other pending motions are hereby overruled.

IT IS SO ORDERED.

A party may, within fourteen (14) days of the filing of this Magistrate's Decision, serve and file written objections. If objections are timely served and filed by any party, any other party may serve and file objections within ten (10) days of the date on which the first objections were filed, or within the time otherwise prescribed by Civ.R. 53, whichever period last expires. Such objections shall be considered a motion. Objections shall be specific and state with particularity the grounds therefore.

Upon consideration of the objections, the Court may: adopt, reject or modify the Magistrate's Decision; hear additional evidence; recommit the matter to the Magistrate with instructions; or hear the matter itself. (See Civ.R. 53, as amended.)

These and all other provisions of the Ohio Rules of Civil Procedure must be in compliance or objections may be overruled.

Date: 9-18-2019



MAGISTRATE SHIBANI SHETH-MASSACCI

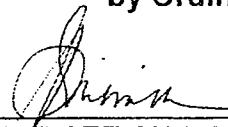
TO THE CLERK OF COURTS: You Are Ordered to Serve
Copies of this Magistrate's Decision on all Counsel of Record
or Upon the Parties who are Unrepresented Forthwith

FILED
COURT OF APPEALS

SEP 18 2019

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

by Ordinary Mail.



MAGISTRATE SHIBANI SHETH-MASSACCI