

The Supreme Court of Ohio

FILED

SEP 27 2017

CLERK OF COURT
SUPREME COURT OF OHIO

Cristial Satterwhite and Sydney Shauntee

Case No. 2017-0754

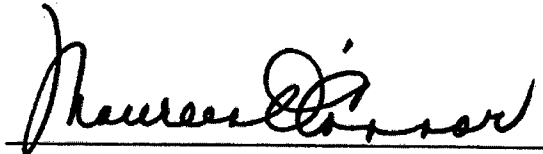
v.

ENTRY

Frisch's Restaurant, Inc., and Ohio Medicaid

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).

(Hamilton County Court of Appeals; No. C-160506)



Maureen O'Connor
Chief Justice

ENTERED

APR 21 2017

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

CRISTIAL SATTERWHITE,

Plaintiff-Appellant,

and

SYDNEY SHAUNTEE,

Plaintiff,

vs.

FRISCH'S RESTAURANT, INC.,

Defendant-Appellee,

and

OHIO MEDICAID,

Defendant.

APPEAL NO. C-160506
TRIAL NO. A-1500820

JUDGMENT ENTRY.



D117954457

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Cristial Satterwhite appeals the summary judgment entered by the Hamilton County Court of Common Pleas in favor of Frisch's Restaurant, Inc., on her claim for negligence.

Satterwhite alleged that on January 14, 2014, while at Frisch's Montgomery Road location, she suffered an electrical shock from the breakfast bar. Further, she alleged that

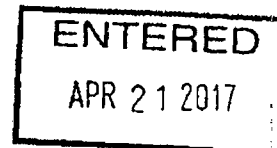
Frisch's had breached its duty to her as a business invitee by creating and/or permitting a hazardous condition to exist at its restaurant and by failing to warn her of latent or concealed defects of which it knew or should have known. Frisch's denied all allegations.

The trial court resolved cross-motions for summary judgment in favor of Frisch's, finding in part that Satterwhite had failed to present any evidence of the type identified in Civ.R. 56(C). In her sole assignment of error, Satterwhite essentially argues that the trial court erred by granting summary judgment to Frisch's and by denying her motion for summary judgment in light of the evidence she presented in support of her claim. We review the trial court's decision on summary judgment de novo, applying the standards set forth in Civ.R. 56(C). *Comer v. Risko*, 106 Ohio St.3d 185, 186, 833 N.E.2d 712 (2005).

Satterwhite's assignment of error fails. We first note that Satterwhite failed to present her argument with the specificity demanded by App.R. 16(A)(7) and 1st Dist. Loc.R. 16.1(A)(3)(e) and (D), as she wholly failed to provide citation to the part of the record upon which she relies to support her argument.

Further, it is clear that Satterwhite's argument relies, at least in part, on documents and other materials that were not filed in the trial court. Any documents and exhibits not filed in the trial court are not a part of the record to be considered by this court on appeal. *See State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978). The composition of the record on appeal comprises "[t]he original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court." App.R. 9(A)(1).

Although Satterwhite is a pro se litigant on appeal, and was a pro se litigant for part of the proceedings below, she is "bound by the same rules and procedures as those [civil] litigants who retain counsel." *Meyers v. First Natl. Bank of Cincinnati*, 3 Ohio



OHIO FIRST DISTRICT COURT OF APPEALS

App.3d 209, 210, 444 N.E.2d 412 (1st Dist.1981). Pro se litigants "are not to be accorded greater rights and must accept the results of their own mistakes and errors." *Id.*

Therefore, we overrule the assignment of error and affirm the trial court's judgment.

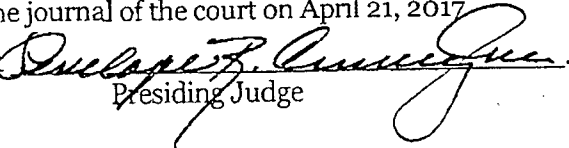
Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on April 21, 2017

per order of the court


Presiding Judge

ENTERED

APR 21 2017



D114559314

COURT OF COMMON PLEAS
HAMILTON COUNTY

ENTERED

MAY 23 2016

CRISTAL SATTERWHITE,

Plaintiff,

v.

FRISCH'S RESTAURANT INC.,

Defendant.

: Case No: A1500820

: Judge Pat Foley

:

: ENTRY DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

This matter came before the Court on cross motions for summary judgment. Plaintiff, who is *pro se*, filed some additional motions which are now moot. The Court denies Plaintiff's motion for summary judgment and Defendants' motion for summary judgment is held in abeyance until the Court is satisfied that the discovery dispute is ultimately resolved.

I. Procedural Posture

Plaintiff filed her complaint on February 12, 2015. She previously retained an attorney who withdrew from the case; she then retained another attorney, and he withdrew as well. She then proceeded *pro se*. The Court is mindful that Plaintiff is a *pro se* litigant. However, the First District has stated: "*Pro se* civil litigants are bound by the same rules and procedures as those litigants who retain counsel." *Meyers v. First Nat'l Bank of Cincinnati*, 3 Ohio App.3d 209, (First Dist. 1981) (*syllabus*). "They are not to be accorded greater rights and must accept the results of their own mistakes and errors." *Id.*

The parties had a series of discovery issues. Plaintiff insisted that the video she received of the day of the incident was edited and missing important information. The Court ordered on December 9, 2015, that Defendants provide the full unedited video. Defendants, likewise, were having difficulties receiving some of Plaintiff's medical documents.

II. Facts

Plaintiff alleges that she received an electric shock from Frisch's Restaurant's breakfast bar, causing her injuries, which included pre-term labor. Defendants claim that no other patron made a complaint before or after the alleged incident and provided proof that it sold breakfast bars to sixty other patrons on the day of the incident. After the alleged incident, Defendant claims it inspected the bar and did not discover any issues.

III. Legal Standard and Analysis

"Summary judgment is appropriate if (1) no genuine issue of material fact exists for trial, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, who is entitled to have the evidence construed most strongly in his or her favor." *Evans v. Thrasher*, 2013 WL 4684592 (Ohio App. 1 Dist).

For Plaintiff to prevail on her claim of negligence she must prove, by a preponderance of the evidence, each element of her negligence claim. Plaintiff has not provided any admissible evidence under Civil Rule 56(C). The Court cannot consider any evidence or stipulation except as those provided for in Civ. R. 56(C). For this reason, her motion for summary judgment is denied.

IV. Plaintiff's Other Motions

Plaintiff has filed a number of motions including a Motion for a Definite Statement and a Motion for Pleading Decision. Both motions are simply requesting that the Court make a ruling. Those motions are now moot. Plaintiff filed a "Brady" motion as well. Brady motions are used exclusively used in the criminal law context; however, the Court will construe that motion as a motion to compel. The Court granted a motion to compel regarding the video on December 9, 2015. The substance of Plaintiff's motion is an allegation of spoliation.

2. maintenance records of the steam bar and other equipment 60 days before the incident as well as;
3. an affidavit explaining what has been done to provide or attempt to provide the evidence.

V. Conclusion

Plaintiff's motion for summary judgment is DENIED. Plaintiff's motion to compel is GRANTED. Plaintiff's other motions are MOOT. Defendants' motion for summary judgment is held in abeyance until the Court is satisfied that the Defendants have provided the requested evidence or provided an affidavit as to why the evidence is missing.

IT IS SO ORDERED.

Foley, J.
Judge Pat Foley

5/25/16
Date

The Supreme Court of Ohio

FILED

DEC -6 2017

CLERK OF COURT
SUPREME COURT OF OHIO

Cristial Satterwhite and Sydney Shauntee

Case No. 2017-0754

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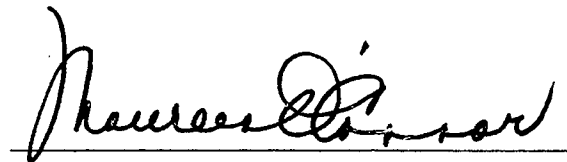
Frisch's Restaurant, Inc., and Ohio Medicaid

RECONSIDERATION ENTRY

Hamilton County

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

(Hamilton County Court of Appeals; No. C-160506)



Maureen O'Connor
Chief Justice