

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

ROBERT CREGAR, et al.,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2007-T-0058
CITY OF WARREN, OHIO,	:	
Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2004 CV 02976.

Judgment: Appeal dismissed.

John H. Large, 144 North Park Avenue, #101, Warren, OH 44481 (Plaintiff-Appellant).

Gregory V. Hicks, Warren Law Director, and *David D. Daugherty*, Assistant Warren Law Director, 391 Mahoning Avenue, N.W., Warren, OH 44483 (For Defendants-Appellees, City of Warren, Ohio, City of Warren Police Department, Warren City Fire Department, Kenneth Nussel, and Curtis C. King).

Randil J. Rudloff, Guarnieri & Secrest, P.L.L., 151 East Market Street, P.O. Box 4270, Warren, OH 44482 (For Defendant-Appellee, Comfort Inn).

MARY JANE TRAPP, J.

{¶1} On May 16, 2007, appellant, Robert Cregar, filed a notice of appeal from an April 18, 2007 judgment entry of the Trumbull County Court of Common Pleas.

{¶2} In an October 27, 2006 entry, the trial court ordered that each party shall continue to have the free and unobstructed right of access in and through the subject alley, but neither party shall be permitted to obstruct the other's use or right of access,

including, but not limited to, neither party shall park or permit the parking of motor vehicles within the alley and neither party shall obstruct, by physical barrier or otherwise, the other party's access through the alley. The trial court further stated that the case was to proceed as to the remaining claims and parties, and that all claims of plaintiff as to defendant, Warren Investments, LLC, d.b.a. Comfort Inn, and any counterclaims were dismissed.

{¶3} Appellant subsequently filed a voluntary dismissal with the trial court on April 18, 2007. In that dismissal, appellant states:

{¶4} “Now comes Plaintiff, Robert [Cregar], by and through counsel, and gives this Honorable Court notice of voluntary dismissal of the above captioned case, without prejudice, pursuant to Ohio Rule of Civil Procedure 41(A). This motion is self-effectuating, and requires no further action by this Court.”

{¶5} Appellant then filed his notice of appeal on May 16, 2007.

{¶6} The language contained in the Civ.R. 41(A) dismissal filed by appellant makes the appeal moot since the notice of voluntary dismissal dismissed the “above captioned case.” See *Wilson v. Vaccariello*, 11th Dist. No 2007-L-045, 2007-Ohio-2694, 2007 Ohio App. LEXIS 2496.

{¶7} Civ.R. 41(A)(1) states that:

{¶8} “*** [A] plaintiff, without order of court, may dismiss all claims asserted by that plaintiff against a defendant by doing either of the following:

{¶9} “(a) filing a notice of dismissal at any time before the commencement of trial unless a counterclaim which cannot remain pending for independent adjudication by the court has been served by that defendant;

{¶10} “(b) filing a stipulation of dismissal signed by all parties who have appeared in the action.

{¶11} “Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits of any claim that the plaintiff has once dismissed in any court.”

{¶12} The Supreme Court of Ohio has held that a voluntary dismissal pursuant to Civ.R. 41(A) renders the parties as if no suit had ever been filed against the dismissed parties. *Denham v. New Carlisle* (1999), 86 Ohio St.3d 594, 596; see, also, *Wilson*, supra.

{¶13} In *Wilson*, supra, this court cited to *Gruenspan v. Thompson* (Oct. 12, 2000), 8th Dist. No. 77276, 2000 WL 1514357, at 2, which stated that:

{¶14} “A voluntary dismissal by a plaintiff operates to nullify the claims brought against the dismissed party and leaves the parties as if the action was never filed. ***.”

{¶15} In addition to this court and the Eighth Appellate District, the Second, Sixth, Ninth, and Tenth Districts have concluded that a voluntary dismissal of all defendants renders a prior interlocutory summary judgment ruling a nullity. See *Fairchilds v. Miami Valley Hosp., Inc.*, 160 Ohio App.3d 363; *Toledo Heart Surgeons v. The Toledo Heart Hosp.*, 6th App. No. L-02-1059, 2002-Ohio-3577; *Ohio Farmers Ins. Co. v. Modine Mfg.* (Sept. 1, 2001), 9th App. Nos. 3114-M and 3116-M, 2001 Ohio App. LEXIS 3921; *State ex rel. Mogavero v. Beliskis*, 10th App. No. 02AP-164, 2002-Ohio-6497.

{¶16} In *Fairchild* at ¶38, the appellants filed a notice of voluntary dismissal informing the trial court that they were “voluntarily dismissing this case without prejudice, and subject to refiling pursuant to Civ.R. 41(A) against all party Defendants, Angela Landis and Miami Valley Hospital, Inc.” The notice clearly included the voluntary dismissal of all defendants, and thus, the Second District concluded that the appellants’ voluntary dismissal of all defendants prevented the prior interlocutory summary judgment decision from becoming a final adjudication of the claims with which it was concerned.

{¶17} Here, the October 27, 2006 entry clearly states that the “case is to proceed as the remaining claims and parties.” The trial court’s October 27, 2006 order did not specify that there was no just cause for delay. On April 18, 2007, appellant dismissed his action. Appellant subsequently filed a notice of appeal.

{¶18} Based on the language contained in the notice of dismissal, appellant voluntarily dismissed “the above captioned case.” Therefore, because appellant dismissed the entire case pursuant to Civ.R. 41(A)(1)(a) and not just the remaining claims, this court lacks jurisdiction to consider the appeal.

{¶19} Accordingly, this appeal is hereby, sua sponte, dismissed for lack of jurisdiction.

{¶20} Appeal dismissed.

CYNTHIA WESTCOTT RICE, P.J., concurs,

DIANE V. GRENDALL, J., dissents.