

[Cite as *Richardson v. Ohio Mut. Ins. Group*, 2010-Ohio-30.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

EARL RICHARDSON	:	
	:	Appellate Case No. 23224
Plaintiff-Appellant	:	
	:	Trial Court Case No. 08-CVF-6305
v.	:	
	:	
OHIO MUTUAL INSURANCE GROUP, et al.	:	(Civil Appeal from Dayton Municipal Court)
	:	
Defendant-Appellees	:	

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OPINION

Rendered on the 8th day of January, 2010.

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Attorney for Plaintiff-Appellant

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BROGAN, J.

{¶ 1} Earl Richardson appeals pro se from the trial court’s January 15, 2009 entry of final judgment against him and order to pay previously imposed discovery sanctions.

{¶ 2} Richardson advances the following five assignments of error on appeal:

(1) “The Court’s failure to comply with local court rule 2.09 Discovery, II Informal Discovery (A)”; (2) “Confiscation of Work Product without Court Order”; (3) “Stolen Document and the Court’s refusal to investigate”; (4) “The Court’s refusal to consider controvertible evidence”; and (5) “Court’s Failure to adhere to precedence setting Ohio case law and Federal Sixth Circuit Court of Appeals.”

{¶ 3} The present appeal stems from an August 12, 2008 complaint Richardson filed in Dayton Municipal Court against appellees Ohio Mutual Insurance Group and the Greene County Insurance Agency, alleging unlawful cancellation of his automobile insurance policy.

{¶ 4} The record reflects that a discovery dispute arose on October 8, 2008 while Richardson was being deposed. The dispute initially concerned the appellees’ request to examine and copy documents that Richardson had brought to the deposition and Richardson’s own request to examine documents brought by the appellees’ counsel. The dispute expanded to include an allegation by Richardson that the appellees’ counsel had stolen a document from his binder. The trial court resolved the discovery dispute during an October 14, 2008 hearing.

{¶ 5} Following the dispute, Richardson moved for sanctions against the appellees “for expense, for cost, and for and [sic] attorney fees; for not complying [sic] discovery court Rule 2.09, for causing undo [sic] hardship, suffering and adversity, for delaying the administration of Justice.” He requested sanctions of \$1,428.00, which included \$13.00 for parking, \$15.00 for gas, \$100.00 for an “Escort/Driver,” \$1,000 for “Undo [sic] Hardship, Suffering, adversity,” and \$300.00 for “ATTORNEY FEES.” The appellees subsequently filed their own motion for

discovery sanctions based on Richardson's failure to appear for a rescheduled and properly noticed deposition. The appellees supported the motion with an affidavit from Mark Engling, their counsel.

{¶ 6} A magistrate held a hearing on the competing sanctions motions on October 28, 2008. The magistrate filed a decision the same day, finding a lack of "sufficient evidence that Defendant failed to return certain documents upon making copies of Plaintiff's binder, which was the subject of the October 14, 2008 emergency hearing." The magistrate further found that the allegedly removed document was "not relevant to the issues in this case." As a result, the magistrate overruled Richardson's sanctions motion. With regard to the appellees' motion, the magistrate found sanctions warranted. It concluded that Richardson had "failed to appear at a properly scheduled deposition on October 22, 2008" and had failed "to timely and properly reschedule the deposition as previously ordered * * *." Consequently, the magistrate directed Richardson to complete the deposition and ordered him to pay a sanction of \$219.20, which represented the charge for the court reporter's appearance at the missed deposition. The trial court subsequently overruled Richardson's objections to the magistrate's ruling.

{¶ 7} Thereafter, Richardson's complaint proceeded to a bench trial before the magistrate on December 15, 2008. After the trial, the magistrate filed a decision finding as follows:

{¶ 8} "At trial, Plaintiff admitted he failed to establish damages, which is fatal to his claim. Plaintiff did not present any exhibits for the Court's review, such as the insurance policy at issue, the accident report, witness statements, or estimates of

damage, or evidence of any damages from Defendant's alleged cancellation of the insurance policy. Plaintiff's sole issue at trial, was whether or not Defendant properly notified him of the policy cancellation. Since the Court finds that Plaintiff failed to establish damages, it is not necessary for the Court to determine liability and whether or not the cancellation was proper."

{¶ 9} The trial court overruled objections to the magistrate's decision and adopted it in a final entry and order filed January 15, 2009. The trial court's ruling also included an order for Richardson to pay the previously imposed discovery sanctions. This timely appeal followed.

{¶ 10} Richardson's first three assignments of error appear to concern the trial court's denial of his motion for discovery sanctions. In particular, he contends sanctions were warranted based on (1) the failure of appellees' counsel to turn over documents that appellees' counsel had brought to Richardson's deposition, and (2) appellees' counsel's theft of a document from a binder that Richardson had brought to the deposition.

{¶ 11} This court reviews a trial court's ruling on discovery sanctions for an abuse of discretion. *Nakoff v. Fairview Gen. Hosp.*, 75 Ohio St.3d 254, 256, 1996-Ohio-159. We see no abuse of discretion here. As an initial matter, Richardson has failed to provide us with a transcript of the October 14, 2008 hearing on the sanctions motions. Therefore, our ability to review the matter is limited. In any event, based on the record before us, the trial court reasonably could have concluded that the appellees' counsel was not required to turn over any documents during the deposition because he was not being deposed. Moreover, to the extent that

Richardson made proper written discovery requests, the record reflects that the appellees complied with them. Therefore, we see no basis for sanctions.

{¶ 12} As for the purported theft of a document from Richardson's binder, the trial court concluded that he had failed to prove the allegation. The trial court acted within its discretion in reaching this conclusion. The trial court also found that the missing document was irrelevant. The record reflects that the document was a copy of Richardson's *reinstated* automobile insurance policy with a coverage period from June 9, 2008 through December 9, 2008. Richardson's complaint, however, concerned the appellees' earlier cancellation of his policy effective May 31, 2008 for non-payment of his premium. Even assuming, *arguendo*, that the appellees unlawfully cancelled his policy on May 31, 2008, he fails to explain the relevance of the reinstated policy with a later effective date. Richardson's first three assignments of error are overruled.

{¶ 13} We also find no merit in Richardson's fourth assignment of error, which concerns the trial court's decision to sanction him for non-appearance at a properly noticed deposition. In support of their motion, the appellees provided the trial court with an affidavit from Mark Engling, their counsel, setting forth the circumstances surrounding Richardson's failure to appear for the completion of his deposition. Engling averred, among other things, that Richardson did not appear, did not return a telephone call, did not respond to a request to make alternative arrangements to conduct the deposition at his home, and did not seek a protective order. Engling also provided the trial court with an invoice for court-reporting services on the scheduled deposition day.

{¶ 14} On appeal, Richardson does not dispute his non-appearance for the deposition. Nor does he dispute the amount of the sanctions. Instead, he professes his inability to “read the Magistrate’s mind” and asserts: “It is very difficult for me to determine with a set of Pre-Trial Process of procedures set-forth such as guidelines, rules, etc... that informs me of what is expected of me; and what I should expect from this court.” Notwithstanding Richardson’s professed difficulty in knowing what is expected of him, we see no abuse of discretion in the trial court’s imposition of discovery sanctions for his failure to attend a scheduled deposition. Richardson’s fourth assignment of error is overruled.

{¶ 15} In his fifth assignment of error, Richardson asserts only that the trial court failed “to adhere to precedence setting Ohio case law and Federal Sixth Circuit Court of Appeals.” The appellees have construed this assignment of error as a challenge to the trial court’s entry of judgment against him on his complaint alleging unlawful cancellation of his insurance policy. For his part, Richardson has not disputed this characterization of his fifth assignment of error.

{¶ 16} To the extent Richardson does challenge the trial court’s entry of a judgment of dismissal against him on his complaint, his assignment of error lacks merit. Although the appellees insist that they gave Richardson proper notice before cancelling his policy, the trial court did not resolve that issue. Instead, it found that “[a]t trial, Plaintiff admitted he failed to establish damages, which is fatal to his claim.” On appeal, Richardson has not provided us with a transcript of his December 15, 2008 bench trial. Therefore, we are unable to review the trial court’s determination that he presented no evidence of damages. In any event, Richardson does not raise

the damages issue on appeal. Instead, he continues to assert that the cancellation notice he received was improper. Because the trial court did not rule against Richardson on this basis, we have no occasion to decide whether he received proper notice. Richardson's fifth assignment of error is overruled, and the judgment of the Dayton Municipal Court is affirmed.

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FAIN and GRADY, JJ., concur.

Copies mailed to:

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Mark C. Engling
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Hon. John S. Pickrel