

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

JOHN S. KAHLER,	:	APPEAL NO. C-150589
Plaintiff-Appellee,	:	TRIAL NO. A-1305242
vs.	:	<i>JUDGMENT ENTRY.</i>
CINCINNATI INCORPORATED,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellee John Kahler filed a declaratory judgment action against his former employer, defendant-appellant Cincinnati Incorporated (“CI”), seeking a declaration as to how the interest in the parties’ deferred-compensation agreement should be calculated. Ultimately, the trial court entered summary judgment in favor of CI, who had argued that the agreement clearly called for CI to pay simple interest. Kahler appealed that judgment to this court. We reversed the trial court’s judgment, after finding that the parties’ agreement was ambiguous with respect to how interest was to be calculated, and remanded the matter for the trial court to determine the parties’ intent. *See Kahler v. Cincinnati Incorporated*, 1st Dist. Hamilton No. C-140407, 2015-Ohio-979 (“*Kahler I*”).

Following a bench trial on remand, the trial court found that the evidence demonstrated that the parties had “intended [that] the interest earned in the deferred compensation agreement should be compounded.” CI now appeals.

In its single assignment of error, CI argues that the trial court erred by admitting into evidence the deferred-compensation agreement, a statement by CI’s previous owner, John March, and copies of Kahler’s year-end deferred-compensation account statements.

We review a trial court’s admission or exclusion of evidence under an abuse-of-discretion standard. *See State v. Sage*, 31 Ohio St.3d 173, 180, 510 N.E.2d 343 (1987). “Absent an abuse of discretion and material prejudice to appellant, an appellate court will not disturb a trial court’s ruling as to the admissibility of evidence \* \* \*.” *Bruce v. Junghun*, 182 Ohio App.3d 341, 2009-Ohio-2151, 912 N.E.2d 1144, ¶ 19 (10th Dist.). “An abuse of discretion is more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary, or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 39, 40-41, 492 N.E.2d 83 (1986).

CI first contends that the trial court erred by admitting the deferred-compensation agreement because it was not properly authenticated under Evid.R. 901. But any error in admitting the agreement was harmless error because it did not unfairly prejudice CI or affect the outcome of the case. *Crum v. Walters*, 10th Dist. Franklin No. 02AP-818, 2003-Ohio-1789, ¶ 22. Given that this court had already determined in *Kahler I* that the deferred-compensation agreement was ambiguous as to how interest was to be calculated, the agreement was not conclusive in determining the intent of the parties with respect to that issue.

Next, CI argues that it was hearsay when, a former vice-president and treasurer of CI, Edward Silva, testified that CI's previous owner, John March, who was by then deceased, had said that it was CI's intent to compound the interest in its employees' deferred-compensation accounts. But March's statement was a statement against interest, and thus was admissible under an exception to the hearsay rule. *See* Evid.R. 804(B)(3).

Lastly, CI argues that Kahler's year-end deferred-compensation account statements, which Kahler introduced to show that CI had previously compounded the interest in his account, should not have been admitted into evidence under the business-record exception to the hearsay rule. While we agree that Kahler did not demonstrate that the account statements qualified as business records under Evid.R. 803(6), we hold that it was harmless error to admit the account statements. CI admitted that it had historically compounded the interest in Kahler's account. With this admission, CI was not actually challenging the reliability or truth of Kahler's year-end account statements, which is what the hearsay rule was designed to protect against. Thus, we cannot say that the trial court's action in admitting the statements into evidence was affected CI's substantial rights or was inconsistent with substantial justice. *Eyesoldt v. Imaging*, 194 Ohio App.3d 630, 2011-Ohio-2359, 957 N.E.2d 70, ¶ 37 (1st Dist.), quoting *O'Brien v. Angley*, 63 Ohio St.2d 159, 164, 407 N.E.2d 490 (1980) (error in the admission of evidence is harmless when the court's action is not inconsistent with substantial justice).

We, therefore, hold that the trial court's admission of this evidence was not an abuse of discretion. Accordingly, the single assignment of error is overruled, and the judgment of the trial court is affirmed.

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

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

**CUNNINGHAM, P.J., DEWINE and MOCK, JJ.**

To the clerk:

Enter upon the journal of the court on June 1, 2016

per order of the court \_\_\_\_\_.  
Presiding Judge