

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

MARY ALLEN-JONES,	:	APPEAL NO. C-220447
	:	TRIAL NO. A-2003245
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
	:	
MICHAEL LANCE GRIFFIN, d.b.a.	:	
TINT MASTER,	:	
	:	
Defendant-Appellant.	:	

The court sua sponte removes this case from the regular calendar and places it on the court’s accelerated calendar, 1st Dist. Loc.R. 11.1(C), 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.

Defendant-appellant Michael L. Griffin appeals the trial court’s judgment ordering him to pay plaintiff-appellee Mary Allen-Jones (“Jones”) for breach of contract, violations of the Consumer Sales Practices Act, and attorney fees.

We consider Griffin’s first and second assignments of error together. In his first assignment of error, Griffin argues: “The Trial Court erred in its Decision to deny the Defendant-Appellant’s default motion filed on 3/23/2021, in favor of Plaintiff-Appellee after she failed to timely answer counterclaims within 28 days as require [sic], or prove excusable neglect in a proper hearing, prior to receiving said final judgment in her favor.” In his second assignment of error, Griffin argues: “The Trial Court erred in its Decision to proceed with its case in want of jurisdiction without causing the Appellee to prove excusable neglect after failing to file an answer to the Appellant’s counterclaims timely.

Such an act was unreasonable, and was an abuse of discretion throughout the entire case.”

Griffin argues that the trial court erred in denying his motion for a default judgment because Jones failed to timely answer his counterclaims without a showing of excusable neglect. This court cannot reverse a correct decision merely because erroneous reasons were given for that decision, because “a trial court may be right for the wrong reasons.” *Hall v. Gill*, 108 Ohio App.3d 196, 205, 670 N.E.2d 503 (1st Dist.1995). Here, Griffin’s counterclaims for fraud and emotional distress were deficient on their face, and “[w]hen a complaint fails to state a claim for which relief can be granted, it is not error for a trial court to deny a motion for default judgment.” *Whiteside v. Williams*, 12th Dist. Madison No. CA2006-06-021, 2007-Ohio-1100, ¶ 12, citing *Graham v. Byerly*, 3d Dist. Hancock No. 5-04-09, 2004-Ohio-4530, ¶ 18 (“[A] default judgment will be entered in favor of a party who is entitled to the judgment. If a complaint fails to state a cause of action upon which relief can be granted, the court is not required to enter a default judgment in favor of the plaintiff, as he would not be entitled to such relief.”); *Morgan v. Chamberlin*, 2d Dist. Clark No. 00CA0017, 2000 Ohio App. LEXIS 4744 (Oct. 13, 2000).

In his counterclaim, Griffin alleged that Jones had filed a “materially false” complaint against him, and because of Jones’s complaint, he had been subject to emotional distress. In order for Griffin to succeed on a claim for fraud, he must establish:

‘(a) a representation or, where there is a duty to disclose, concealment of a fact, (b) which is material to the transaction at hand, (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (d) with the intent of misleading another into relying upon it, (e) justifiable

reliance upon the representation or concealment, and (f) a resulting injury proximately caused by the reliance.’

White v. Pitman, 2020-Ohio-3957, 156 N.E.3d 1026, ¶ 18 (1st Dist.), quoting *State ex rel. Seibert v. Richard Cyr, Inc.*, 157 Ohio St.3d 266, 2019-Ohio-3341, 134 N.E.3d 1185, ¶ 36. Fraud claims must be pleaded with particularity. *See* Civ.R. 9(B).

Furthermore, a plaintiff alleging intentional infliction of emotional distress must show:

(1) that the defendant either intended to cause emotional distress to the plaintiff, or knew or should have known that the actions would result in serious emotional distress to the plaintiff, (2) that the defendant’s conduct was so extreme and outrageous as to go beyond all bounds of decency and was such that it can be considered utterly intolerable in a civilized society, (3) that the defendant’s actions were the proximate cause of the plaintiff’s psychic injury, and (4) that the mental anguish suffered by the plaintiff is so serious that no reasonable person could be expected to endure it.

Burks v. Dayton Pub. Schools Bd. of Edn., 2d Dist. Montgomery No. 29583, 2023-Ohio-1227, ¶ 51, quoting *Cline v. Tecumseh Local Bd. of Edn.*, 2d Dist. Clark No. 2020-CA-36, 2021-Ohio-1329, ¶ 26.

Negligent infliction of emotional distress “can be brought in very factually-specific circumstances where the plaintiff has either witnessed or experienced a dangerous accident such that the plaintiff was subject to actual physical peril.” *Cline v. Tecumseh Local Bd. of Edn.*, 2d Dist. Clark No. 2020-CA-36, 2021-Ohio-1329, ¶ 23, citing *Heiner v. Moretuzzo*, 73 Ohio St.3d 80, 652 N.E.2d 664 (1995).

Griffin’s counterclaims do not state causes of action for fraud, or negligent/intentional infliction of emotional distress; therefore, the trial court did not

abuse its discretion in denying Griffin's default-judgment motion. We overrule Griffin's first and second assignments of error.

We consider Griffin's third and fourth assignments of error together. In his third assignment of error, Griffin argues as follows: "The Trial Court erred when it ignored the testimony of the Appellee when she admitted on the record that she had hired the Appellant Michael Griffin and agreed to pay him \$2300 for a tint job and a paint job, then stated in its judicial report that the Appellee was charged \$2300 to get her car back." In his fourth assignment of error, Griffin argues: "The Trial Court erred when it allowed the Appellee Attorney to just make up frivolous legal fees in a mock trial, knowing the Appellee had already had [sic] defaulted on answering the Appellant's counterclaims."

Both of Griffin's assignments of error challenge the trial court's findings based on the testimony presented at trial. Griffin, as the appellant, has the duty to file the transcript or any parts of the transcript that are necessary for this court to review the trial court's decision. *See* App.R. 9(B); *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980). Griffin failed to file transcripts of the trial. Without a transcript or an alternative record pursuant to App.R. 9(C) or (D), this court must presume regularity in the trial court's proceedings. *Id.*

Therefore, we overrule Griffin's third and fourth assignments of error. We affirm the judgment of the trial court.

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.

BERGERON, P.J., WINKLER and KINSLEY, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on May 24, 2023

per order of the court _____.

Administrative Judge