

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

CITY OF CINCINNATI,	:	APPEAL NO. C-230674
	:	TRIAL NO. 22CV-23053
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
DEVORE CLARK,	:	
Defendant-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, Loc.R. 11.1(C)(1), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Plaintiff-appellee the City of Cincinnati filed a complaint against defendant-appellant Devore Clark seeking to be awarded a judgment of \$11,250, which comprised the balance due and owing on nine citations that were issued between July 10, 2017, and May 3, 2020, regarding the property located at 2805 Baker Avenue. The citations were issued for violations of Cincinnati Municipal Code 731-3, a provision that required persons in control of lots or lands within the city to keep the lots or lands free from weeds and grasses that extend past a specified height. The citations were issued to SLD Properties, Inc., (“SLD Properties”)¹ a corporation that was dissolved in 2008. The complaint alleged that SLD Properties was the owner of the property at the time that all citations were issued, and that Clark, through his role as CEO of SLD Properties, was the successor to the liabilities of the dissolved company and was responsible for the civil citations.

Along with the issued citations, the city attached to the complaint a copy of the Hamilton County Auditor’s transfer history for the property located at 2805 Baker Avenue. This document provided that SLD Properties was the listed owner of 2805 Baker Avenue from

¹ The name of this entity is spelled alternatively as SLD Properties, Inc., S.L.D. Properties, Inc., and S L D Properties Inc.

October 25, 2004, until October 8, 2021. The city also attached a certificate of dissolution issued by the Ohio Secretary of State to SLD Properties on October 14, 2008. This certificate provided that Clark was both the CEO and listed statutory agent for SLD Properties.

Clark initially filed an answer pro se, denying all allegations in the city's complaint. The city subsequently filed a motion for summary judgment that was supported by the documents attached to the complaint and an affidavit from Rahman Shackelford, a Support Services Specialist in the city's Collections Division.

Clark obtained counsel, and he filed an amended answer asserting that neither he nor SLD Properties owned the property located at 2805 Baker Avenue on the dates in question. Clark alleged that the property had been foreclosed upon in the case numbered A-0702209, resulting in both he and SLD Properties losing title to the property. Clark attached the first page of the foreclosure complaint filed in the case numbered A-0702209 and the first page of the judgment entry issued in that case. Clark also filed a memorandum in opposition to the city's motion for summary judgment, arguing that, because of the foreclosure action, a genuine issue of fact existed regarding whether he and/or SLD Properties owned the property at the time that the citations were issued. Clark supported his memorandum with both the magistrate's decision and the judgment entry issued by the trial court in the case numbered A-0702209.

In a reply in support of its motion for summary judgment, the city argued that the judgment issued in the case numbered A-0702209 concerned the property located at 2740 Baker Avenue, not 2805 Baker Avenue. It attached the complaint in the case numbered A-0702209, which indicated that the property that was the subject of the complaint was 2740 Baker Avenue.

The trial court issued an entry granting the city's motion for summary judgment and entering judgment in favor of the city in the amount of \$11,250, plus court costs. Clark now appeals, arguing in a single assignment of error that the trial court's grant of summary judgment was in error.

Clark does not argue that he is not responsible for the payment of the citations because the company was dissolved in 2008, or that he is not responsible for the full payment of the citations because there were two members of the company. *See, e.g., Chatman v. Day*, 7 Ohio App.3d 281, 283 (2d Dist. 1982) (discussing when an officer of a corporation can be held personally liable for actions concerning a dissolved corporation); *see also, e.g., R.C. 1701.88* (setting forth regulations concerning, and the impact of, a corporation’s dissolution, as well as the powers and duties of directors, officers, and shareholders when a corporation is dissolved). Rather, Clark’s sole argument on appeal is that an issue of fact exists as to whether he and/or SLD Properties owned the property located at 2805 Baker Avenue at the time that the citations were issued because the property was subject to foreclosure proceedings.

We review a trial court’s grant of summary judgment *de novo*. *Collett v. Sharkey*, 2021-Ohio-2823, ¶ 8 (1st Dist.). “Summary judgment is appropriately granted when there exists no genuine issue of material fact, the party moving for summary judgment is entitled to judgment as a matter of law, and the evidence, when viewed in favor of the nonmoving party, permits only one reasonable conclusion that is adverse to that party.” *Id.*, citing *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589 (1994). The party moving for summary judgment “must specifically identify the portions of the record that demonstrate an absence of a genuine issue of material fact.” *Wells Fargo Bank, N.A. v. Braunskill*, 2015-Ohio-273, ¶ 13 (1st Dist.); *see Berkshire Bank v. Macedonia Hospitality, LLC*, 2024-Ohio-2485, ¶ 15 (9th Dist.). If the moving party meets this burden, “the nonmoving party has a reciprocal burden to point to specific facts that show a genuine issue of material fact for trial” *Wells Fargo Bank* at ¶ 13; *see Berkshire Bank* at ¶ 15.

Here, the city presented evidence that the record did not contain any genuine issues of material fact. Specifically, the city relied on Shackelford’s affidavit, the transfer history from the Hamilton County Auditor for the property located at 2805 Baker Avenue showing that SLD Properties owned the property at the time that all citations were issued, and the Ohio Secretary of State’s Certificate of Dissolution for SLD Properties, stating that Clark was the CEO and statutory agent for the entity.

The burden thus shifted to Clark to point to specific facts showing that the record contained a genuine issue of material fact. Clark attempted to do so below by arguing that the foreclosure proceedings in the case numbered A-0702209 established a genuine issue of material fact regarding ownership of the property. But the case numbered A-0702209 concerned the property located at 2740 Baker Avenue, not 2805 Baker Avenue. As a result, the documents did not establish a genuine issue of material fact as to whether Clark and/or SLD Properties owned the property located at 2805 Baker Avenue at the time that the citations were issued.

Clark now contends for the first time on appeal that SLD Properties owned two properties on Baker Avenue, 2740 Baker Avenue *and* 2805 Baker Avenue. He further argues that both properties were subject to foreclosure filings in 2007 in the respective cases numbered A-0702209 and A-0702210. According to Clark, these lawsuits and the resulting judgment entries establish the presence of a genuine issue of material fact because they are in conflict with the Hamilton County Auditor's transfer history providing that SLD Properties was the owner of 2805 Baker Avenue at all relevant times.

As we have explained, the foreclosure complaint and resulting judgment issued in the case numbered A-0702209 concerned 2740 Baker Avenue, rather than 2805 Baker Avenue, and the documents are therefore of no help to Clark. With respect to Clark's argument that the lawsuit and resulting judgment issued in the case numbered A-0702210 establish a genuine issue of material fact as to the ownership of the property, Clark failed to raise this argument in the trial court and is asserting it for the first time on appeal. The law is well settled that "[a] party who fails to raise an argument in the court below waives his or her right to raise it [on appeal]." *Ditech Fin., LLC v. Balimunkwe*, 2019-Ohio-3806, ¶ 11 (1st Dist.), quoting *State ex rel. Zollner v. Indus. Comm.*, 66 Ohio St.3d 276, 278 (1993). Clark has accordingly waived any argument concerning the impact of the lawsuit filed in the case numbered A-2702210.²

² Even if Clark had raised this argument below, a review of the record in the case numbered A-0702210 establishes that although judgment was initially granted in favor of the plaintiff and the property was ordered to be sold, the plaintiff subsequently dismissed the complaint and the judgment previously rendered was vacated.

We hold that Clark failed to meet his reciprocal burden and that the record does not contain a genuine issue of material fact regarding ownership of the property located at 2805 Baker at the time that the citations were issued. Clark's assignment of error is accordingly overruled, and the trial court's grant of summary judgment to the city is affirmed.

The court further orders that 1) a copy of this Judgment constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App.R. 27. Costs shall be taxed under App.R. 24.

BOCK, P.J., CROUSE and WINKLER, JJ.

To the clerk:

Enter upon the Journal of the Court on 9/13/2024 per Order of the Court.

By: _____
Administrative Judge