

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

ALISHA OWENSBY,	:	APPEAL NO. C-240022
	:	TRIAL NO. A-2102691
and	:	
NATHAN DICKERSON,	:	
Plaintiffs-Appellees,	:	<i>JUDGMENT ENTRY</i>
vs.	:	
YOHANCE UNDERWOOD,	:	
Defendant-Appellee,	:	
ORLANDO ANDERSON,	:	
Defendant-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, 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.

Plaintiffs-appellees Alisha Owensby and Nathan Dickerson contracted with defendant-appellant Orlando Anderson and defendant-appellee Yohance Underwood to purchase the property located at 1923 Webman Court from Anderson and Underwood for \$45,000. The contract contained an earnest-money provision providing that “\$15,000 as earnest money (“Earnest Money”) shall be deposited with [a title agency] upon acceptance of this Contract, in a trust account pending Closing, or returned to the Buyer if this offer is not accepted.” The contract was executed by all parties on February 20, 2021.

OHIO FIRST DISTRICT COURT OF APPEALS

While preparing for closing, the title agency discovered that the property was encumbered by two liens. The closing on the sale of the property, originally scheduled for March 15, 2021, was delayed while the liens were removed. During the period of delay, Underwood sold his interest in the property to Anderson for \$9,000. The last lien was removed on June 25, 2021, and the closing was rescheduled for August 5, 2021. The earnest money was then deposited. Anderson did not appear at closing, and he refused to go forward with the sale and convey title to the property to Owensby and Dickerson.

Owensby and Dickerson filed a complaint for specific performance against Anderson and Underwood, asking the trial court to order the defendants to complete the contract, close on the sale, and convey title to the property. The complaint also sought damages for legal fees and other damages that Owensby and Dickerson incurred from the defendants' failure to close on the sale of the property.

Underwood asserted a counterclaim for breach of contract against Owensby and Dickerson. He sought damages in the amount of \$13,500, which constituted the difference between what he would have received for his share of the property, had it sold for the contractually agreed upon price of \$45,000, and what he received for selling his share to Anderson. Underwood moved for summary judgment on both the plaintiffs' claims and his counterclaim. The motion was not opposed by Owensby and Dickerson and was granted by the trial court.

The case proceeded to a bench trial on the claims against Anderson. Dickerson's trial testimony established that he and Owensby obtained a loan to purchase the property and were prepared to close on the date provided for in the contract; that they attempted to deposit the earnest money, but the title agency would not accept the money because it had discovered that the property was encumbered by

OHIO FIRST DISTRICT COURT OF APPEALS

liens; that neither Anderson nor Underwood objected to the title company's postponement of the closing date; and that the earnest money was deposited at the end of July 2021, prior to the rescheduled closing date in August.

Anderson's testimony established that he still intended to go forward with the sale of the property after learning of the liens and after the liens were cleared in June 2021; that he purchased Underwood's interest in the property and received that interest via a quit claim deed on July 9, 2021; that he decided sometime in July of 2021 that he longer wanted to sell the property; and that, in his view, a contract had not yet been formed when he elected not to sell because the earnest money had not been deposited.

The trial court issued an entry granting judgment in favor of Owensby and Dickerson on their claim for specific performance and denying their claim for damages. The entry ordered Anderson to perform under the terms of the parties' contract, close on the sale, and convey the property to the plaintiffs. The entry also entered final judgment for Underwood on his counterclaim and awarded him a judgment of \$13,500 to be paid out of the earnest money that the plaintiffs had deposited.

Anderson filed a motion for reconsideration, or, in the alternative, a new trial. The trial court denied the motion, and Anderson now appeals, raising four assignments of error for our review.

In his first assignment of error, Anderson argues that the trial court abused its discretion in granting specific performance and ordering that the property be sold because Owensby and Dickerson wrongly prolonged the original closing date and because Anderson had revoked his offer to sell prior to closing. But Anderson has failed to provide any case law or other legal authority establishing that the closing was

OHIO FIRST DISTRICT COURT OF APPEALS

wrongly delayed or that he properly revoked his offer. He cites only to a provision in the Second Restatement of Contracts providing for good faith and fair dealing in the performance and enforcement of a contract. In the absence of relevant authority, and on the facts of this case, where Anderson lodged no objection to the delay in the closing date and where the delay was not caused by Owensby and Dickerson, but rather by the title agency after it discovered liens on the property, we find no abuse of discretion in the trial court's grant of specific performance. *See 125th & St. Clair St. Co., L.L.C. v. Adams*, 2021-Ohio-4013, ¶ 30-31 (8th Dist.) (holding that specific performance is an equitable remedy available when a loss arises from a breach of contract for which there is no adequate remedy available at law, and that a trial court's grant of specific performance is to be reviewed for an abuse of discretion). The first assignment of error is overruled.

In his second assignment of error, Anderson argues that the trial court abused its discretion in disallowing an indispensable party, namely Anderson's wife Mariah Anderson, to intervene in the action. Approximately two years after the complaint was filed and one week before the trial was scheduled to begin, Mariah filed a motion to intervene as a defendant under Civ.R. 24. The trial court denied the motion after finding that it was not timely filed and was procedurally improper.

To the extent that Anderson challenges the trial court's denial of the motion to intervene under Civ.R. 24, we hold that he lacks standing to raise this argument. The right to challenge the denial of the motion to intervene lies with Mariah, not Anderson. *See In re D.B.*, 2019-Ohio-4439, ¶ 14 (10th Dist.) (holding that in a legal-custody proceeding, father did not have standing to challenge the denial of grandfather's motion to intervene). "An appellant cannot raise issues on another's behalf, especially

OHIO FIRST DISTRICT COURT OF APPEALS

when that [other] party could have appealed the issues appellant posits.” (Bracketed text in original.) *Id.* at ¶ 16, quoting *In re D.T.*, 2008-Ohio-2287, ¶ 8 (10th Dist.).

Anderson attempts to avoid the standing roadblock by arguing on appeal that the trial court erred in failing to join Mariah as a necessary party pursuant to Civ.R. 19. But a Civ.R 19 argument was never raised below and consequently has been waived. *See Setters v. Durrani*, 2020-Ohio-6859, ¶ 57 (1st Dist.) (“a party waives the right to claim a necessary party was not joined when it does not take affirmative action to pursue that defense”); *Robinson v. Turoczy Bonding Co.*, 2016-Ohio-7397, ¶ 24 (8th Dist.) (“Civ.R. 19(A) expressly provides that if a party fails to timely assert the defense of failure to join a party, the defense is waived.”). The second assignment of error is overruled.

In his third assignment of error, Anderson argues that the trial court abused its discretion in awarding fees to Underwood from the escrow account. We disregard this assignment of error because Anderson has failed to provide any citation to legal authorities, statutes, or the record in support of his argument. *See App.R. 16(A)(7)* (an appellant must provide “citations to the authorities, statutes, and parts of the record on which appellant relies”); *App.R. 12(A)(2)* (“The court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief.”).

In his fourth assignment of error, Anderson argues that “the trial court was mistaken in law by its decision.” It is difficult to discern the precise argument raised by Anderson in support of this assignment of error, but we interpret the thrust of his argument to be that the trial court erred in ordering specific performance because no

OHIO FIRST DISTRICT COURT OF APPEALS

contract had been formed due to the fact that the earnest money had not been deposited before Anderson decided not to sell the property.

Anderson cites *Pol v. Miller*, 2007-Ohio-2954 (1st Dist.), to support his contention that there was no contract formed. *Pol* simply held that “[t]he language contained in the contract should be accorded its plain and ordinary meaning unless the contract is ambiguous.” *Id.* at ¶ 7. We find no error in the trial court’s determination, based on the language of the earnest-money provision, that a deposit of earnest money was not necessary for contract formation. Rather, a deposit of earnest money was a material term of the contract that the parties had formed.

Anderson also seems to argue that he was entitled to cancel or rescind the contract due to the delay of the closing and the delayed deposit of the earnest money, but he does not cite us to any case that supports his argument, nor have we found any. We accordingly hold that Anderson has failed to establish any mistake of law by the trial court, and we overrule the fourth assignment of error.

The trial court’s judgment is affirmed.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

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

To the clerk:

Enter upon the journal of the court on 3/12/2025 per order of the court.

By: _____
Administrative Judge