

STATE OF OHIO
COUNTY OF CUYAHOGA

) IN THE COURT OF COMMON PLEAS
) SS.
) Civil Case No. 494438

NATIONWIDE MUTUAL INS. CO.

Plaintiff,

vs.

ANDREW PARKS

Defendant.

) **JOURNAL ENTRY AND**
) **OPINION**
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Kathleen Ann Sutula, J:

IT IS SO ORDERED:

This case originally stems from a lawsuit brought by Donna Tartell, who was insured by Nationwide, in March 2001. One of the defendants in that case was the defendant in the case currently before the Court, Andrew Parks (“Parks”). In that case (No. 433653), Nationwide (the Plaintiff in the case presently before the Court), filed an Answer to Tartell’s complaint and a cross-claim against Parks.

Parks was finally served in that case on February 26, 2002. On March 4, 2002, the parties, who had already been active in that case, notified the court that the matter had been settled and dismissed, and they would be filing a more definitive entry. That more definitive entry was signed on March 27, 2002.

Parks was never a party to that stipulated dismissal. Parks did not answer until March 25, 2002, three weeks after the case had been dismissed. The judgment entry, however, stated, “Any cross-claims against Defendant Andrew P. Parks, are also

dismissed without prejudice, subject to any re-filing.” Neither Parks’s nor his attorney’s signature appear on the stipulated dismissal.

While that case was still pending, Nationwide filed an identical action in Garfield Heights Municipal Court. Nationwide obtained a default judgment in that case, but after receiving the judgment, Nationwide vacated it and filed a notice of voluntary dismissal.

Nationwide now initiates the instant action, which is identical to its prior claims against Parks. The Defendant has filed a motion for summary judgment seeking dismissal of the case on the basis of *res judicata*.

I. The Double Dismissal Rule

Ohio Civil Rule 41(A) provides several methods for a plaintiff to dismiss a case. When a plaintiff dismisses a case without prejudice, typically that is done by filing a notice of dismissal. If a plaintiff should re-file the case, a notice of dismissal in the re-filed case acts as a dismissal on the merits when the first dismissal was also dismissed by notice. OH Civ.R. 41(A). A “double dismissal,” therefore, bars any future matters under *res judicata*. *Chadwick v. Barba Lou, Inc.* (1982), 69 Ohio St.2d 222, 226.

It is not unheard of, however, for parties to stipulate to a dismissal without prejudice. There is a distinction, though, between a notice and a stipulation because a stipulated dismissal without prejudice will not activate the double dismissal rule since both dismissals must be by notice. *Hershisher v. BOS Corp.* (Crawford 1990), 69 Ohio App.3d 186.

The primary issue is whether the stipulated dismissal, to which Parks was not a party, activates the double dismissal rule of Civil Rule 41(A). The sticking point in the case currently before the Court is that Nationwide signed a stipulated dismissal entry

with the parties who had entered an appearance in the very first case (No. 433653). Contained in that stipulation was a sentence reading, “Any cross-claims against Defendant Andrew P. Parks, are also dismissed without prejudice, subject to any re-filing.” Typically, since the dismissal was by stipulation this would mean Nationwide could proceed as it has and not have its case barred by *res judicata*. Parks, however, was not a party to that stipulated dismissal.

The absence of Parks’s stipulation to the entry, therefore, requires an analysis of the stipulated dismissal and the attendant circumstances. In conducting the inquiry, Ohio courts have held that there is no single dispositive factor in determining “whether a dismissal document effects dismissal by notice...,by stipulation...,or by court order.” *International Computing & Electronic Engineering Corp. v. Ohio Dept. of Administrative Services* (Franklin 1996), No. 95API11-1475, 1996 WL 239590.

As it pertains to Parks, the circumstances reveal that the stipulated dismissal entry is more similar to a notice of dismissal. The language of the stipulation states quite explicitly that the cross claim against Parks was dismissed without prejudice. More importantly, Parks was not a party to the stipulation. This is shown by the fact that there is no line for either his signature or his attorney’s. Parks never had the opportunity to participate in the discussions and negotiations for the stipulation since the stipulated entry was signed only a few days after he had been served. Nationwide’s actions, with respect to its cross-claim against Parks are no different than that of a plaintiff who files a standard notice of dismissal. To hold Parks accountable to the terms of the stipulation would be akin to holding him accountable to the terms of a contract he did not sign.

The result of this is that Nationwide has dismissed its claims against Parks twice without prejudice via a notice of dismissal. Although the first dismissal without prejudice was contained in a stipulated dismissal entry and was not a formal notice of dismissal, an analysis of the circumstances shows that Parks did not stipulate to the dismissal. Case law throughout Ohio involving stipulated dismissals without prejudice is distinguishable from the instant case since all the parties involved in those prior precedents stipulated to the dismissal. As a result, those stipulated dismissals without prejudice permitted the plaintiffs, in those actions, to subsequently dismiss their cases without prejudice and still avoid the double dismissal rule.

Since, Parks did not stipulate to the entry, the Court treats Nationwide's dismissal of its claims against Parks as a first notice of dismissal without prejudice. When Nationwide then dismissed its claims without prejudice in Garfield Hts. Municipal Court, that dismissal thus became an adjudication on the merits, and Nationwide's present case is barred by *res judicata* pursuant to the double dismissal rule.

It is, therefore, ORDERED, ADJUDGED, and DECREED:

For the reasons previously stated, Parks's Motion for Summary Judgment is well taken.. For good cause shown, Parks is entitled to judgment as a matter of law, and the case is dismissed.

Costs to Plaintiff. FINAL.

DATE: August ____, 2003

KATHLEEN ANN SUTULA, JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing Journal Entry and Opinion has been sent via fax and regular U.S. mail on this _____ day of August, 2003, to the following:

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