

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

PHILIP B. MINK,	:	APPEAL NO. C-070473
	:	TRIAL NO. A-0608246
Plaintiff-Appellant,	:	
	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
NATIONWIDE MUTUAL	:	
INSURANCE COMPANY,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiff-appellant Philip B. Mink appeals the trial court’s entry of summary judgment for defendant-appellee Nationwide Mutual Insurance Company (“Nationwide”). We affirm.

Mink filed a complaint against Nationwide alleging criminal trespass, grand larceny, fraud, and conspiracy. Additionally, Mink filed a document titled “affidavit of disability,” in which he averred that he is “disabled,” and that he “requires technical visual and audio aides to his home” to present his case. Later, in a motion directed to several pending Nationwide motions, including one for summary judgment, Mink identified his disability as a “fear which causes panic” and requested the court to order “that all his responses to Defendant’s motions be oral at hearings and placed on the record.”

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

The trial court held a telephonic hearing on February 21, 2007, and accepted into the record several documents that Mink had previously filed that, he alleged, “show a history and pattern of corrupt and illegal activity of Defendant and their employees with regard to Mink, using his disability as a means to an end.”

Mink later moved to recuse the trial judge, alleging that she had violated Title II of the Americans with Disabilities Act (“ADA”) by (1) denying him “communication devices,” (2) denying his request to place evidence in the record, and (3) denying his request for a “signed subpoena, signed by the clerk and otherwise left blank (verbal motion) Civ.R. 45(A).”

Mink did not file a written memorandum opposing summary judgment. The trial court granted summary judgment for Nationwide. In its entry, the court referenced several documents offered by Mink at the telephonic hearing and stated that no genuine issue existed as to any material fact and that Nationwide was entitled to judgment as a matter of law.

Mink then appealed and requested special accommodation pursuant to Title II of the ADA in presenting his oral argument. This court allowed a telephonic oral argument, but rejected Mink’s proposed accommodation of an in-home, literal or virtual, face-to-face presentation of his oral argument.

Mink’s failure to properly cite the record and governing case law or to present a cogent argument has hampered our review of his three assignments of error. He alleges in his first assignment of error that “[t]he trial court erred in violating a U.S. Supreme Court order.” We interpret this assignment of error as a challenge to the trial court proceedings based upon Title II of the ADA and *Tennessee v. Lane*,<sup>2</sup> the United States Supreme Court

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<sup>2</sup> (2004), 541 U.S. 509, 124 S.Ct. 1978.

decision that validated Congress's enforcement through Title II of the constitutional right of access to the courts.

As we explained in our entry disposing of Mink's motion for accommodation at oral argument, Title II prohibits a public entity, in its service, programs, or activities, from discriminating against a "qualified" person with a disability<sup>3</sup> and seeks to enforce a number of rights secured by the United States Constitution. These rights include the Equal Protection Clause of the Fourteenth Amendment, which requires that persons similarly situated be treated alike, and the amendment's Due Process Clause, which, by ensuring the right of access to the courts, requires states to afford certain civil litigants a "meaningful opportunity to be heard" by removing obstacles to their full participation in judicial proceedings.<sup>4</sup>

Thus, Title II imposes a "duty to accommodate" consistent with the due-process principle that " 'within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard' in its courts."<sup>5</sup> And section 35.160 of Title II's implementing regulations requires a public entity "to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others."<sup>6</sup>

Assuming, without deciding, that Mink is a qualified individual with a disability for ADA purposes, we hold that the trial court did not err in its accommodation of Mink. The record reflects that the trial court accommodated Mink by allowing a telephonic hearing on February 21, 2007. The trial court disposed of Mink's case by summary judgment, a procedure governed by Civ.R. 56 that does not involve face-to-face communication or an

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<sup>3</sup> 42 U.S.C. 12131-12134.

<sup>4</sup> *Lane*, 541 U.S. at 522-523.

<sup>5</sup> *Id.* at 523 (quoting *Boddie v. Connecticut* [1971], 401 U.S. 371, 379, 91 S.Ct. 780).

<sup>6</sup> 28 C.F.R. 35.160.

evidentiary hearing. Thus, the “other accommodations” requested by Mink were unnecessary to ensure that Mink had a meaningful opportunity to be heard. The assignment of error is overruled.

In his second assignment of error, Mink argues that the “[t]rial court violated in error Civ. Rules 5(E) and 45(A)(2) causing wrongful and damaging filings by clerk on Civ.R. 5(E).” At oral argument, Mink clarified that the “wrongful and damaging filings by the clerk” involved an act by the clerk of courts that resulted in the erroneous docketing of an entry of dismissal in a different case under Mink’s appellate case number.

Mink alleges also under this assignment of error that the “[t]rial judge denied subpoena power to Appellant for serving Civ. Rule 45(A)(2) and [t]rial by [j]ury of the Civ. Rules.” Mink’s oral argument elucidated with regard to this issue that he had requested a jury trial but that the court had provided him with only a “bench trial.”

We overrule this assignment of error. With regard to the docketing error by the clerk of courts, Mink has not alleged how the docketing error, which occurred after Mink filed his notice of appeal and has since been corrected, affected the validity of the court’s grant of summary judgment for Nationwide. Likewise, Mink’s claims that the court erred by proceeding to a “bench trial” instead of a jury trial and that the court denied him the right to subpoena witnesses are not cognizable challenges to an order granting summary judgment.<sup>7</sup>

In his final assignment of error, Mink argues that the trial court erred “in not enforcing ORC 2911.21 trespass posted on private property.” In support of this assigned error, Mink alleges that “[t]he Bench should have allowed subpoenaed testimony to correct prosecutor’s mistake.”

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<sup>7</sup> See Civ.R. 56.

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The record indicates that Mink sought to have an evidentiary hearing in lieu of properly responding to Nationwide's motion for summary judgment. But the proceedings below were governed by Civ.R. 56, which does not contemplate such a hearing. Accordingly, we overrule the assignment of error.

Finding no merit to the assigned errors, we affirm the trial court's judgment.

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

**HILDEBRANDT, P.J., HENDON and CUNNINGHAM, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on March 26, 2008

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