

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

JR. BROCK'S AUTO WORKS, II, INC.,	:	APPEAL NOS. C-100180
d.b.a. AUTO WORKS,	:	C-100182
	:	TRIAL NO. A-0308567
AUTO HOUSE, LTD.,	:	
	:	<i>JUDGMENT ENTRY.</i>
Plaintiffs,	:	
	:	
and	:	
	:	
DONNA BROCK,	:	
	:	
Plaintiff-Appellee,	:	
	:	
vs.	:	
	:	
EWELL BROCK, JR.,	:	
	:	
JOSEPH B. MANSOUR,	:	
	:	
MANSOUR CONSULTING CPA	:	
FIRM, LLC.,	:	
	:	
and	:	
	:	
LAURA BROCK,	:	
	:	
Defendants-Appellants.	:	

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

Defendants-appellants, Ewell Brock, Jr., Joseph Mansour, Mansour Consulting CPA Firm, LLC, and Laura Brock, appeal the trial court's judgment apportioning the costs of the entire litigation among them following a previous appeal. We hold that the trial court did not have jurisdiction to apportion costs contrary to our previous decision.

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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 record shows that Donna and Ewell Brock are former spouses. Under their divorce decree, they operated Auto Works jointly. Also, after their divorce, articles of incorporation and an operating agreement were filed for Auto House. In 2003, Donna sought to have Auto Works and Auto House dissolved and to have Ewell buy her interest in the businesses. Ewell responded that he had retained Mansour and Mansour Consulting (collectively “Mansour”) to act as his business advisor and to negotiate a buy-out agreement.

Donna eventually filed suit on behalf of herself, Auto Works, and Auto House. In her complaint, she sought the dissolution of Auto Works and Auto House, as well as appraisals and accountings. She also asserted various claims against Ewell, Mansour, and Laura Brock, Ewell’s current spouse. The trial court appointed a receiver for Auto Works and Auto House to operate the businesses and to conduct an accounting for purposes of dissolving them.

Ewell, Laura and Mansour Consulting, who were all represented by counsel, and Mansour, who was acting pro se, filed numerous motions. A magistrate twice found Mansour in violation of Civ.R. 11 for ignoring the magistrate’s orders and ordered him to pay attorney fees. The trial court adopted the magistrate’s decisions regarding the fees over Mansour’s objections.

Subsequently, the magistrate granted summary judgment against Donna on all her claims except for those relating to the dissolution of the businesses. The magistrate eventually dismissed the case, including the appellants’ counterclaims, except for two of Donna’s claims relating to the dissolution. The trial court adopted the magistrate’s decision over appellants’ objections.

Appellants appealed the trial court’s judgment to this court. Upon their motion, we remanded the case to the trial court for resolution of various motions, including motions for sanctions against Donna. Additionally, appellants filed a

motion asking the trial court to assess costs against Donna under Civ.R. 54(D). The trial court eventually journalized an entry overruling all outstanding motions in the case and adopting all of the magistrate's decisions. The motion to assess costs was outstanding at that time.

Appellants again appealed to this court, and we consolidated all of the appeals. We overruled the parties' assignments of error and affirmed the trial court's judgment.<sup>2</sup>

In their fourth assignment of error, Ewell, Laura and Mansour had argued that the trial court should have ordered Donna to pay costs because she was the losing party. In overruling that assignment of error, we stated, "Civ.R. 54(D) provides that '[e]xcept when express provision therefor is made either in a statute or in these rules, costs shall be allowed to the prevailing party unless the court otherwise directs.' The Ohio Supreme Court has held that trial courts have discretion 'to order prevailing parties to bear all or part of their own costs.' The appellants were the prevailing parties only to the extent that the trial court dismissed some of Donna's claims against them. As we have discussed, Donna was successful in obtaining the dissolution of the businesses. And she did prevail with respect to all the appellants' counterclaims. Given these results, the trial court did not abuse its discretion when it required the appellants to bear their own costs to the extent that they were the prevailing parties."

Mansour filed motions for reconsideration related to two other assignments of error, which this court overruled. He did not file a motion for reconsideration of the fourth assignment of error. He also appealed our decision to the Ohio Supreme Court, which refused to accept the case for review.<sup>3</sup>

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<sup>2</sup> *Jr. Brock's Auto Works II, Inc. v. Brock* (Oct. 3, 2007), 1st Dist. Nos. C-060464, C-060467, and C-061070 (citations omitted).

<sup>3</sup> *Jr. Brock's Auto Works, II, Inc. v. Brock*, 117 Ohio St.3d 1408, 2008-Ohio-565, 881 N.E.2d 275.

A year and half later, appellants filed motions asking the trial court to assess costs against Donna. They contended that the clerk of courts had refused to assess costs because the trial court had not issued an order stating that each party was to bear their own costs. They argued that, despite our previous decision, the trial court had never assessed costs. A magistrate stated that “the movants waived any right to contest the assessment of costs when they failed to file a motion for reconsideration of the fourth assignment of error under App.R. 26(A). As the Ohio Supreme Court dismissed the movants’ appeal, this court lacks jurisdiction over the instant motions.”

The magistrate denied the motions to assess costs against Donna. But the magistrate’s decision went on to state, “Costs to this action are to be divided 50% to defendants Ewell Brock, Jr. and Laura Brock and 50% to defendant Joseph Mansour.” The trial court denied appellants’ objections and adopted the magistrate’s decision. This appeal followed.

Appellants present two assignments of error for review in this appeal. In their first assignment of error, they contend that the trial court erred by “overruling its prior Order to deny all parties costs.” They argue that the trial court essentially reversed its previous order and awarded costs to Donna. In their second assignment of error, they argue that the trial court erred by awarding costs to Donna. We agree that the trial court erred in holding that Ewell and Laura were to pay 50% of the costs and that Mansour was to pay 50% because that order was contrary to what we ordered in our previous judgment entry.

The law-of-the-case doctrine provides that “a decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent

proceedings in the case at both trial and reviewing court levels.”<sup>4</sup> Thus, a trial court confronted with substantially the same facts and circumstances and issues involved in a prior appeal is bound by the appellate court’s determination of those issues regardless of whether the determination is correct or incorrect. It is without authority to extend or vary the mandate given.<sup>5</sup>

The doctrine also precludes a litigant from attempting to rely at a retrial on arguments that were fully pursued or available to be pursued in a first appeal. New arguments are subject to issue preclusion and are barred.<sup>6</sup> When the supreme court refuses jurisdiction following the issuance of an opinion by a court of appeals, the decision of the court of appeals becomes the law of the case.<sup>7</sup>

Our previous decision was the law of the case, and the trial court had no authority to vary the mandate. It was correct in stating that it had no jurisdiction to rule on the motions to assess costs against Donna, yet it went ahead and assessed costs against appellants and not Donna. Because it had no jurisdiction, it should not have ruled on the motions at all. Instead, the proper procedure would have been for the parties to file a motion to clarify or another appropriate motion with this court.

Since the issue is again before us, we take this opportunity to clarify our previous decision, which we acknowledge was less than clear. As we noted in the previous appeal, the decision whether to award costs to a prevailing party lies within the trial court’s discretion.<sup>8</sup> We held that the trial court “did not abuse its discretion

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<sup>4</sup> *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 3, 462 N.E.2d 410; *State v. Fields*, 1st Dist. No. C-090648, 2010-Ohio-4114, ¶6.

<sup>5</sup> *Hubbard ex rel. Creed v. Sauline*, 74 Ohio St.3d 402, 404, 1996-Ohio-174, 659 N.E.2d 781; *Fields*, supra, at ¶6; *State v. Paulo*, 1st Dist. No. C-060969, 2007-Ohio-4316, ¶6.

<sup>6</sup> *Hubbard*, supra, at 404-405.

<sup>7</sup> *Id.* at 405.

<sup>8</sup> *State ex rel. Frailey v. Wolfe*, 92 Ohio St.3d 320, 321, 2001-Ohio-197, 750 N.E.2d 164; *State ex rel. Gravill v. Fuerst* (1986), 24 Ohio St.3d 12, 13, 492 N.E.2d 809.

when it required the appellants to bear their own costs to the extent that they were prevailing parties.”

This meant that both sides were to bear their own costs. Thus, Donna, as the plaintiff, must bear her own costs. The appellants, as the defendants, must also bear their side’s costs. The question then becomes what proportion of the defendants’ costs should each defendant bear?

We note that the trial court stated, “Mr. Mansour, with all due respect, my analysis of this case is that two-thirds of the time that was spent by all parties in this case result[ed] from trying to defend against your claims.” This finding was amply supported by the record. Therefore, Mansour should pay two-thirds of the defendants’ costs, and Ewell and Laura should divide the remaining one-third of the costs between them.

Consequently, we sustain both assignments of error in part. We reverse that part of the trial court’s judgment ordering costs to be divided between the appellants, but we affirm the judgment in all other respects. This litigation is over; all issues that were raised or could have been raised have been decided. We direct the trial court on remand to journalize an entry apportioning costs as directed in this judgment entry.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., HENDON and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on December 17, 2010

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

Presiding Judge