

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

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| CRYSTAL ALLEN, | : | APPEAL NO. C-130822 |
| | : | TRIAL NO. A-1302858 |
| Plaintiff-Appellant, | : | |
| | : | <i>JUDGMENT ENTRY.</i> |
| vs. | : | |
| HOWARD RILEY, | : | |
| DONALD SHABAZZ, | : | |
| GEORGE WHITTON, | : | |
| COLLEEN SIMS, | : | |
| OLUBANJO ADIGUN, | : | |
| VINAY SATYAL, | : | |
| PATRICK LENGA, | : | |
| COLUMBUS PERKINS, | : | |
| DANNY WILLIAMS, | : | |
| ELIZABETH LOWE, | : | |
| GUY MOORE, | : | |
| VINCENT MORTON, | : | |
| LELIA KIM WALKER, | : | |
| CARRIE COX | : | |
| and | : | |
| THE REAL STEPCHILD RADIO OF | : | |
| CINCINNATI #1 INC., d.b.a. WAIF | : | |
| 88.3 FM, | : | |
| Defendants-Appellees. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Bringing forth 12 assignments of error, plaintiff-appellant Crystal Allen appeals the trial court's judgment dismissing her second amended complaint against defendants-appellees, a nonprofit public broadcast radio station and its board of trustees (collectively, "WAIF"), seeking injunctive relief for breach of fiduciary duties, breach of contract and waste of corporate assets. For the following reasons, we affirm.

In her first assignment of error, Allen argues that the trial court abused its discretion by denying her motion to mediate her claims. We overrule this assignment of error. The trial court did not abuse its discretion in denying Allen's motion to mediate when WAIF was under no obligation to mediate and did not want to do so.

In her second assignment of error, Allen contends that the trial court erred by ignoring WAIF's counsel's "refusal" to file an attorney notification form. Regardless of whether WAIF's counsel filed a notification form with the court, this did not prejudicially affect the outcome of Allen's case. The record demonstrates that Allen was aware of the name and address of the attorney representing WAIF during the entire proceedings. The second assignment of error is overruled.

Allen maintains in her third assignment of error that the trial court erred by ignoring the professional misconduct of WAIF's counsel. Allen claims that WAIF's counsel filed "false" certificates of service, and that she did not receive several motions filed by WAIF. But we find no error here where there was no evidence

presented that the certificates of service complained of were “false,” and where Allen had filed timely responses to all of WAIF’s motions. The third assignment of error is overruled.

Next, we consider Allen’s fourth, tenth and eleventh assignments of error together. In her fourth assignment of error, Allen asserts that the trial court erred by dismissing her complaint for failure to state a claim. In her tenth assignment of error, she maintains that the trial court erred by determining that her claims were derivative in nature. In her eleventh assignment of error, Allen contends that the trial court erred in determining that Allen had failed to exhaust her administrative remedies prior to bringing suit.

The judgment of a lower court dismissing a complaint will only be upheld where it appears beyond doubt that the plaintiff can prove no set of facts in support of its claim which would entitle it to relief. *O’Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus.

The first three claims in Allen’s complaint alleged that the radio station’s board of trustees breached their fiduciary duties to the members of the radio station by, among other things, embezzling money, mismanaging the “accounting books,” failing to maintain adequate minutes of board meetings and failing to design and implement internal controls, causing damage to the radio station and members of the radio station similarly situated to Allen. Allen also asserted two breach-of-contract claims in which she alleged that the board of trustees caused damage to the corporation and its members by arbitrarily enforcing bylaws, holding secret meetings and engaging in deceptive business practices. In her last claim, she sought an injunction against the board of trustees to prohibit it from enforcing certain bylaws

of the corporation, alleging that those bylaws harmed members of the corporation, including herself when her membership in the corporation was revoked.

Because Allen alleges that the corporation and its members are being harmed by the board of trustee's actions, her action is derivative in nature and not direct. Therefore, her complaint is governed by Civ.R. 23.1. See *Russell v. United Missionary Baptist Church*, 92 Ohio App.3d 736, 637 N.E.2d 82 (12th Dist.1994). Because Civ.R. 23.1 applies to derivative actions, and Allen's complaint did not comply with the requirements set forth in Civ.R. 23.1, the trial court properly dismissed her complaint *Id.* at 738-739. Exhausting administrative remedies prior to bringing an action against WAIF was required under Civ.R. 23.1, see *Grand Council v. Owens*, 86 Ohio App.3d 215, 620 N.E.2d 234 (10th Dist.1993), and Allen did not do that. The record demonstrates that she was notified of the appeal process afforded to a member whose membership had been revoked, but she did not follow it. Therefore, we overrule the fourth, tenth and eleventh assignments of error. Additionally, our resolution of these assignments of error render moot Allen's eighth and ninth assignments of error, which also argue against the dismissal of her claims.

We also overrule Allen's fifth assignment of error, in which she maintains that she did not receive a "fair hearing" because of the trial court's bias against pro se plaintiffs. The record does not demonstrate any bias towards Allen.

In her sixth assignment of error, Allen argues that the trial court abused its discretion in directing WAIF's counsel to draft the final entry dismissing Allen's complaint. We cannot say that the trial court abused its discretion where Allen did not request findings of fact and conclusions of law, and where it is a common practice to have the prevailing party draft a final entry. The sixth assignment of error is overruled.

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Allen contends in her seventh assignment of error that the trial court abused its discretion by failing to call the case as scheduled on November 8, 2013. We hold that the trial court did not abuse its discretion in continuing the case until November 22, 2013. *See State v. Unger*, 67 Ohio St.3d 65, 433 N.E.2d 1078 (1981). The case was originally scheduled for a decision on WAIF's motion to dismiss, but the trial court needed more time, and ultimately issued its written decision on November 15, 2013. The seventh assignment of error is overruled.

In her twelfth and final assignment of error, Allen contends that the trial court abused its discretion by dismissing her complaint after Allen had filed a motion with the Ohio Supreme Court to disqualify the trial judge from hearing her case. We overrule this assignment of error. We have already held that the trial court properly dismissed Allen's complaint. Therefore, the judgment of the trial court is affirmed.

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., FISCHER and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on December 17, 2014
per order of the court _____.
Presiding Judge