

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

TRIHEALTH, INC.,	:	APPEAL NO. C-140685
Plaintiff-Appellee,	:	TRIAL NO. A-1306608
vs.	:	<i>JUDGMENT ENTRY.</i>
DENNIS MURRAY,	:	
and	:	
HANNAH MURRAY,	:	
Defendants-Appellants.	:	

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.

This is a civil appeal of the trial court’s grant of summary judgment. TriHealth, Inc., (“TriHealth”) owed Dennis Murray \$27.56, but by mistake it sent Mr. Murray a check for \$121,012. Mr. Murray cashed the check and used the funds to pay off his mortgage and car and to remodel his kitchen. After TriHealth contacted him to get its money back, Mr. Murray transferred the home to his wife, Hannah Murray. TriHealth filed suit to recover the funds and to set aside the transfer to Ms. Murray as fraudulent. Following discovery, TriHealth moved for summary judgment. The Murrays failed to respond, and the court granted the motion. This appeal followed.

We consider first the Murrays’ second assignment of error in which they contend the court erred in striking affidavits they filed in opposition to the motion

for summary judgment. The record reveals that the affidavits were not filed within the response time provided by the local rules for a motion for summary judgment. *See* Loc.R. 14(B) of the Hamilton County Court of Common Pleas. Rather, the day the court issued its summary judgment and after counsel had been notified of the decision, the Murrays made an “after hours” filing of their affidavits with the clerk. The Murrays contend that the affidavits should be considered, because the version of Civ.R. 56(C) in effect at the time provided that “prior to the day of the hearing” the opposing party may serve and file opposing affidavits. But here, neither party requested argument on the motion and no hearing was scheduled. The motion was ripe for consideration under the local rules. *See* Loc.R. 14(C)(4) of the Hamilton County Court of Common Pleas. Therefore, we do not find the trial court’s decision to strike the affidavits to be arbitrary, unreasonable, or unconscionable. *See Lachman v. Wietmarschen*, 1st Dist. Hamilton No. C-020208, 2002-Ohio-6656, ¶ 9. We overrule the Murrays’ second assignment of error.

In their first assignment of error, the Murrays contend that the trial court erred by granting summary judgment to TriHealth. Even without the affidavits or a responsive motion, summary judgment is only appropriate if there is no genuine issue of material fact, the movant is entitled to judgment as a matter of law, and the evidence, when viewed in favor of the nonmoving party, permits only one reasonable conclusion that is adverse to the nonmoving party. *See Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). We review the trial court’s grant of summary judgment de novo. *Id.*

“Money paid under the mistaken supposition of the existence of a specific fact which would entitle the payee to the money, which money would not have been paid had it been known to the payer that the fact did not exist, may be recovered.” *Firestone Tire & Rubber Co. v. Cent. Natl. Bank of Cleveland*, 159 Ohio St. 423, 433, 112 N.E.2d 636 (1953). If the money belongs to the payer and the payee cannot

establish a legal or equitable right to keep the money, the payee must refund it, regardless of whether the payee acquired the money in good faith. *Id.* at 434. The evidentiary materials presented by TriHealth establish that the money was paid by mistake and the Murrays were required to return the money.

TriHealth produced sufficient evidence to void the transfer of the home to Ms. Murray as a fraudulent transfer under R.C. 1336.04. A person may not transfer their property to their spouse with the actual intent of defeating the collection of money due. *See* R.C. 1336.04(A)(1). Mr. Murray transferred the home to his wife, an insider, without receiving value in return, immediately after being threatened with a lawsuit to recover the money. *See* R.C. 1336.04(B)(1), (4) and (8). He also retained possession or control of the property even after it was transferred. *See* R.C. 1336.04(B)(2). These factors demonstrate that Mr. Murray transferred the property with the actual intent of defeating TriHealth's ability to collect its funds. Thus, summary judgment was properly granted to TriHealth, and we overrule the Murrays' first assignment of error.

We therefore affirm the judgment of the trial court.

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.

DEWINE, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on September 30, 2015
per order of the court _____.

Presiding Judge