

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

|                      |   |                        |
|----------------------|---|------------------------|
| JOAN VONDERHAAR,     | : | APPEAL NO. C-090012    |
| Plaintiff-Appellant, | : | TRIAL NO. A-0707852    |
| vs.                  | : | <i>JUDGMENT ENTRY.</i> |
| CITY OF CINCINNATI,  | : |                        |
| 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 Joan Vonderhaar appeals from the summary judgment entered by the Hamilton County Court of Common Pleas in favor of defendant-appellee, the city of Cincinnati.

Vonderhaar raises a sole assignment of error in which she argues that the trial court erred in granting summary judgment to the city. Vonderhaar first argues that the trial court's grant of summary judgment must be reversed on a narrow but dispositive ground. She argues that the city relied solely on statements made in her deposition to support its motion for summary judgment, but that it never filed her deposition with the trial court. Consequently, the trial court erred in granting the city's motion for summary judgment when it had no evidentiary materials before it that supported the city's motion. We agree.

"Civ.R.56(C) places a mandatory duty on a trial court to thoroughly examine all appropriate materials filed by the parties before ruling on a motion for summary

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

judgment.”<sup>2</sup> The Ohio Supreme Court has held that a trial court’s failure to comply with this requirement constitutes reversible error.<sup>3</sup>

The record reveals that at the time the trial court granted summary judgment to the city, Vonderhaar’s deposition had not been filed with the trial court. While the city subsequently sought to correct the record under App.R. 9(E), and Vonderhaar’s deposition was subsequently filed with the trial court, we cannot examine her deposition because it was not filed with the trial court prior to its ruling on the city’s motion for summary judgment.<sup>4</sup>

While the trial court may have reviewed Vonderhaar’s deposition, it was never appropriately filed with the trial court for summary-judgment purposes. As a result, we must presume that trial court erred in granting summary judgment to the city. We, therefore, sustain Vonderhaar’s sole assignment of error, reverse the trial court’s judgment, and remand this case for further proceedings consistent with this judgment entry and the law.

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.

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

*To the Clerk:*

Enter upon the Journal of the Court on October 28, 2009

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

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<sup>2</sup> *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 1992-Ohio-95, 604 N.E.2d 138, syllabus.

<sup>3</sup> Id.

<sup>4</sup> Id. at 360.