

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

BRAD RINDERLE,	:	APPEAL NOS. C-170561
		C-170562
Plaintiff-Appellant,	:	TRIAL NO. A-1604567
vs.	:	<i>JUDGMENT ENTRY.</i>
LEBANON CHRYSLER-PLYMOUTH, INC.,	:	
	:	
GORDON D. WALLACE,	:	
	:	
BRIAN SWEENEY,	:	
	:	
and	:	
	:	
BRIDGET REINBERGER,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Brad Rinderle appeals from the trial court's judgment staying the proceedings pending arbitration, and also from the court's judgment dismissing his case with prejudice under Civ.R. 41(B)(1) for a failure to prosecute.

In his first assignment of error, Rinderle contends that the trial court erred in dismissing his complaint. We review the trial court's decision for an abuse of discretion, and find none. *See Jones v. Hartranft*, 78 Ohio St.3d 368, 371, 678 N.E.2d 530 (1997). Plaintiff's counsel had consistently failed to pursue this action. Almost six

months after the court had stayed the proceedings so that the parties could arbitrate, no arbitration had been scheduled. The court thereafter ordered the parties to schedule arbitration within the next two months, and warned plaintiff that the failure to do so could result in a dismissal for want of prosecution. Defense counsel attempted to schedule arbitration multiple times, but his calls, letters and emails to plaintiff's counsel went largely unanswered. Further, plaintiff had earlier brought the same case in Warren County, did not take part in court-ordered arbitration or cooperate in the discovery process, and had voluntarily dismissed the case after defense counsel had filed a motion to dismiss for want of prosecution. Under these circumstances, we hold that the trial court acted well within its broad discretion when it dismissed Rinderle's case with prejudice for a failure to prosecute.

Rinderle raises several arguments here that he did not raise below, as he did not respond to defendants' motion to dismiss. We review them for plain error. Aside from attacking the trial court's decision on its merits, which we have determined was not an abuse of discretion, Rinderle contends that the trial court was without jurisdiction to dismiss the case once it was stayed pending arbitration and that the arbitrator was to control scheduling, not the court. Rinderle has cited no statute or case law that supports this argument. He has failed to demonstrate error, let alone plain error. *See generally Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997), syllabus (the plain error doctrine may be applied in civil appeals only in the extremely rare case involving exceptional circumstances that seriously affect the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself). We therefore overrule Rinderle's first assignment of error.

OHIO FIRST DISTRICT COURT OF APPEALS

In his second assignment of error, Rinderle contends that the trial court erred when it stayed the proceedings pending arbitration. Resolution of Rinderle's first assignment of error renders this one moot, and we decline to address it. *See* App.R. 12(A)(1)(c).

The trial court's judgment is affirmed.

MOCK, P.J., ZAYAS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on September 21, 2018

per order of the court _____.

Presiding Judge