

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

ALICIA A. EPPS,	:	APPEAL NO. C-180429
Plaintiff-Appellant,	:	TRIAL NO. 17CV-16623
vs.	:	<i>JUDGMENT ENTRY.</i>
TIME WARNER CABLE, NOW	:	
SPECTRUM TV,	:	
Defendant-Appellee.	:	

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.

About three weeks before trial, pro se plaintiff Alicia Epps filed three motions concerning her dispute with Time Warner Cable (“TWC”)—a motion for leave to amend the complaint, a motion for leave to file a motion for summary judgment, and a motion to strike defendant’s answer and counterclaim. A few days later, the trial court denied all three motions because they were “not timely filed.” Ms. Epps now appeals, raising three assignments of error, which challenge not the trial court’s final judgment entered after trial, but instead the court’s order on May 30, 2018, denying all three of Ms. Epps’s motions.

Importantly, abuse of discretion governs this court’s analysis concerning the trial court’s decision to deny all three of Ms. Epps’s motions. *See Deutsche Bank v. Smith*, 1st Dist. Hamilton No. C-140514, 2015-Ohio-2961, ¶ 13 (affirming the trial court’s denial of the motion to amend a pleading); *Lohmann v. City of Cincinnati*, 1st

Dist. Hamilton No. C-170242, 2018-Ohio-2505, ¶ 20 (affirming the trial court's denial of the motion to strike); *Lachman v. Wietmarschen*, 1st Dist. Hamilton No. C-020208, 2002-Ohio-6656, ¶ 7 (affirming the trial court's granting of the motion for leave to file a motion for summary judgment).

Turning first to Ms. Epps's denied motion for leave to amend the complaint, under Civ.R. 15(A), when a party does not amend her pleadings within the required time, then the party may amend only if the opposing party provides written consent or with leave of court. Since Ms. Epps's filing was well past the prescribed 28 days, and TWC did not provide written consent, her only available option was for the court to grant the motion with leave of court. This court recognizes a trial court's discretion to deny a motion for leave to amend a complaint when the request is untimely. *See Wille v. Hunkar Lab., Inc.*, 132 Ohio App.3d 92, 109, 724 N.E.2d 492 (1st Dist.1998) (holding the trial court did not abuse its discretion in denying a motion for leave to amend a complaint filed 21 days before trial). Given that Ms. Epps had already amended her complaint on three previous occasions, we hold that the trial court did not abuse its discretion in denying yet another (untimely) motion for leave to amend her complaint.

Similarly, the trial court did not abuse its discretion in denying Ms. Epps's motion for leave to file a motion for summary judgment. Civ.R. 56(A) makes clear that if the case has been set for pretrial or trial, a motion for summary judgment may only be made with leave of court. In *Lachman*, this court held that since the trial court eventually granted the motion for summary judgment, it was "not unreasonable to consider the issues raised by the motion and to decide not to strike [defendant's] motions and arguments for summary judgment." Applying this same logic, since the trial court ultimately found in TWC's favor after trial (a point which

Ms. Epps did not appeal), the trial court was not unreasonable to consider the issues raised by Ms. Epps's motion for leave to file a motion for summary judgment during the trial. Accordingly, the trial court did not abuse its discretion.

As to Ms. Epps's motion to strike TWC's answer and counterclaim, under Civ.R. 12(F), Ms. Epps needed to file her motion to strike within 28 days after TWC served its answer and counterclaim on her. Because Ms. Epps did not file her motion to strike until six months after TWC's service, her only other possibility was if the court (by its own initiative) found that the answer and counterclaim held any "insufficient claim or defense, or any redundant, immaterial, impertinent, or scandalous matter," and thereby granted the motion to strike. Civ.R. 12(F). While the motion in *Lachman* concerned summary judgment, the same principle stated above applies here. Because the trial court eventually entered judgment in favor of TWC on its counterclaim, the trial court was not unreasonable to consider the issues raised by Ms. Epps's motion to strike TWC's answer and counterclaim during the impending trial and to deny Ms. Epps's motion.

We accordingly hold that the trial court did not abuse its discretion in denying all three of Ms. Epps's motions. We overrule the assignments of error and thereby affirm the trial court's judgment.

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

MOCK, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on May 31, 2019
per order of the court _____
Presiding Judge