

**LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge**

Date Oct. 10, 2017

Case No. 16CV190684

JIMMIE LAPLANTE
Plaintiff

Albert Sammon
Plaintiff's Attorney

VS

MIKE BASS FORD, INC.
Defendant

John Christie
Defendant's Attorney

This matter is before the Court on Defendant, Mike Bass Ford, Inc.'s, Motion For Summary Judgment, filed September 12, 2017; Plaintiff's Brief in Opposition, filed September 27, 2017; and Defendant's Reply Brief, filed October 3, 2017. The Motion is not well-taken and hereby DENIED.

See Judgment Entry.

IT IS SO ORDERED. No Record.

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JUDGE D. Chris Cook

cc: Sammon, Esq.
Christie, Esq.



**LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JUDGMENT ENTRY
Hon. D. Chris Cook, Judge**

Date Oct 5., 2017

Case No. 16CV190684

JIMMIE LAPLANTE
Plaintiff

Albert Sammon
Plaintiff's Attorney

VS

MIKE BASS FORD, INC.
Defendant

John Christie
Defendant's Attorney

INTRODUCTION

This matter is before the Court on Defendant, Mike Bass Ford, Inc.'s, Motion For Summary Judgment, filed September 12, 2017; Plaintiff's Brief in Opposition, filed September 27, 2017; and Defendant's Reply Brief, filed October 3, 2017.

STANDARD OF REVIEW – SUMMARY JUDGMENT

The standard of review for summary judgment in Ohio is well-settled. In *Slinger v. Phillips*, 2015-Ohio-357, at ¶9, the Ninth District stated, "This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). "We apply the same standard as the trial court, viewing the facts in the case in the light most favorable to the non-moving party and resolving any doubt in favor of the non-moving party.'" Citing, *Garner v. Robart*, 9th Dist. Summit No. 25427, 2011-Ohio-1519, ¶ 8.

Pursuant to Civ.R. 56(C), summary judgment is appropriate when: (1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, (1977).



To succeed on a summary judgment motion, the movant bears the initial burden of demonstrating that there are no genuine issues of material fact concerning an essential element of the opponent's case. *Dresher v. Burt*, 75 Ohio St.3d 280, 292, (1996). If the movant satisfies this burden, the nonmoving party “must set forth specific facts showing that there is a genuine issue for trial.” *Id.* at 293, quoting Civ.R. 56(E).

Recently, the Ninth District Court of Appeals noted, “Summary judgment proceedings create a burden-shifting framework. To prevail on a motion for summary judgment, the movant has the initial burden to identify the portions of the record demonstrating the lack of a genuine issue of material fact and the movant's entitlement to judgment as a matter of law. * * *In satisfying this initial burden, the movant need not offer affirmative evidence, but it must identify those portions of the record that support her argument. Once the movant overcomes the initial burden, the non-moving party is precluded from merely resting upon the allegations contained in the pleadings to establish a genuine issue of material fact. Civ.R. 56(E). Instead, it has the reciprocal burden of responding and setting forth specific facts that demonstrate the existence of a “genuine triable issue.” *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449, (1996); See, *McQuown v. Coventry Township*, 2017-Ohio-7151, Ninth Dist. CA 28202, Summit Cty, at ¶ 10.

DECISION AND ANALYSIS

Civ. R 56(A) provides that a party may move for summary judgment “. . . with or without supporting affidavits . . .” In the matter at bar, Defendant’s motion is not supported by affidavit(s) or any evidentiary material in the record, transcripts, certified discovery, or otherwise.

Conversely, Plaintiff’s Brief in Opposition contains two affidavits, one from the Plaintiff himself and another from a former co-worker. Civ. R 56(E) states that “. . . when a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party’s pleadings, but the party’s response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial . . .”

The analog to this provision must logically follow that if the *movant* does not submit any affidavits or evidentiary material “as provided by this rule,” (Civ. R 56(C)) in support of summary judgment but the adverse party does *in opposition*, then summary judgment is inapposite if the evidentiary material posits a genuine issue of material fact.

Plaintiff’s argument and supporting affidavits put in dispute a number of material factual issues: 1) the retaliation claim is for the surgery occasioned in January, 2016, necessitated by the injury, not the original worker’s compensation claim made seven



years earlier; 2) Plaintiff was never provided with a copy of Defendant's policy or handbook regarding leave; and, 3) Defendant did not uniformly follow its policy as to the Defendant and a prior injury and his co-worker/affiant, Edward Gregory's, prior injury.

Moreover, summary judgment *may* be precluded as a matter of law under the reasoning posited by *Coolidge v. Riverside Local School Dist.* (2003), 100 Ohio St.3d 141. In *Coolidge*, the Ohio Supreme Court held, ". . . an employee who is receiving TTD compensation may not be discharged solely on the basis of absenteeism or inability to work, when the absence or inability to work is directly related to an allowed condition." *Id.* at paragraph (1) of the Syllabus.

CONCLUSION

For the foregoing reasons, Defendant, Mike Bass Ford, Inc.'s, motion for summary judgment is not well-taken and is DENIED.

This matter will be schedule for Case Management Conference and selection of a trial date forthwith by Magistrate Blaszak.

IT IS SO ORDERED. No Record.

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JUDGE D. Chris Cook