

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
CYNTHIA WINGO,**

COMPLAINANT,

v.

CASE NO. 17-2002-EL-CSS

**NATIONWIDE ENERGY PARTNERS, LLC,
ET AL.,**

RESPONDENTS.

ENTRY ON REMAND

Entered in the Journal on

I. SUMMARY

{¶ 1} The Commission finds the Complainant's notice of dismissal reasonable and dismisses the complaint, without prejudice.

II. PROCEDURAL HISTORY

{¶ 2} This complaint was filed on September 19, 2017 on behalf of Cynthia Wingo (Complainant or Ms. Wingo), generally alleging that the Respondents, Nationwide Energy Partners, LLC (NEP), Crawford Hoying, Ltd. and Crawford Communities, LLC (jointly Crawford Hoying), and Knox Energy Cooperative Association, Inc. (Knox), provide illegal submetered electric, water, sewer, and natural gas services to the Complainant's residence at the Creekside at Taylor Square apartments in Reynoldsburg, Ohio.

{¶ 3} On October 24, 2018, the Commission issued a Finding and Order (October 24, 2018 Order) dismissing the complaint against Knox, sua sponte, and granting the motions to dismiss of NEP, and of Crawford Hoying, in finding that the Complainant had failed to meet her burden of alleging reasonable grounds for hearing, as required by R.C. 4905.26. The October 24, 2018 Order applied the Commission's traditional test for

determining its jurisdiction over residential submetered service arrangements (*Shroyer* Test), first established in *In re Inscho, et al. v. Shroyer's Mobile Homes*, Case No. 90-182-WS-CSS, et al., Opinion and Order (Feb. 27, 1992) at 2, 4-6, and affirmed modifications to the *Shroyer* Test utilized in *In re the Commission's Investigation of Submetering in the State of Ohio*, Case No. 15-1594-AU-COI, Finding and Order (Dec. 7, 2016) at ¶¶ 1, 16 and Second Entry on Rehearing (June 21, 2017) at ¶¶ 40, 49-50 .

{¶ 4} On November 23, 2018, the Complainant filed an application for rehearing of the October 24, 2018 Order. On November 26, 2018, the Complainant filed a motion for leave to file a corrected application for rehearing. Memoranda contra the Complainant's application for rehearing were filed by NEP and Knox on December 3, 2018, and by Crawford Hoying on December 6, 2018.

{¶ 5} On December 19, 2018, the Commission issued an Entry on Rehearing granting Complainant's motion for leave to correct her application for rehearing of the October 24, 2018 Order and granting rehearing for further consideration of the matters specified therein.

{¶ 6} On January 18, 2018, the Complainant filed another application for rehearing, this time for rehearing of the Commission's December 19, 2018 Entry on Rehearing challenging the Commission's authority to grant rehearing for the purpose of further consideration of the matters specified therein.

{¶ 7} On February 6, 2019, the Commission issued its Second Entry on Rehearing denying both of the Complainant's applications for rehearing, within which, among other things, we specifically rejected the Complainant's contention that the modified *Shroyer* Test is contrary to law. Second Entry on Rehearing at ¶ 23.

{¶ 8} On February 21, 2019, the Complainant filed a notice of appeal of the Commission's decision in this matter to the Supreme Court of Ohio.

{¶ 9} The Supreme Court of Ohio issued its Opinion on December 9, 2020. In its decision, the Court reversed the Commission's order dismissing the complaint, holding that the Commission's modified *Shroyer* Test is contrary to law, and remanded the case to the Commission to determine whether it has jurisdiction to hear the complaint based upon the requirements found in R.C. 4905.03, not the modified *Shroyer* Test. *Wingo v. Nationwide Energy Partners, LLC*, 163 Ohio St.3d 208, 2020-Ohio-5583, at ¶ 26.

{¶ 10} Subsequent to the Supreme Court of Ohio's Opinion being issued, on April 30, 2021, Complainant filed a notice of dismissal of the complaint, requesting dismissal, without prejudice, in accordance with R.C. 4903.082 and Civ. R. 41(A)(1)(a). No memoranda contra were filed by the parties.

{¶ 11} Civ. R. 41(A)(1)(a) enables a plaintiff, without order of court, to dismiss all of its claims within the complaint by filing a notice of dismissal at any time before the commencement of trial, unless certain other conditions exist, which are inapplicable here. Notably, although the Ohio Rules of Civil Procedure should be used wherever practicable, they do not limit the Commission's discretion in conducting cases before it. R.C. 4903.082. While a complainant's unilateral dismissal of its claims under Civ. R. 41(A)(1)(a) is self-executing within a court of general jurisdiction, it is worth examining the propriety of such a filing in our docket despite the Commission discretion noted above, considering the unique procedural history of this case. According to the Supreme Court of Ohio, once a plaintiff voluntarily dismisses all claims against a defendant, the court is divested of jurisdiction over those claims. *State ex rel. Engelhart v. Russo*, 131 Ohio St.3d 137, 2012-Ohio-47, 961 N.E.2d 1118, at ¶ 16, citing *State ex rel. Fifth Third Mtge. Co. v. Russo*, 129 Ohio St.3d 250, 2011-Ohio-3177, 951 N.E.2d 414, at ¶ 17. If a voluntary dismissal is filed before a summary judgment is journalized, the dismissal is effective. *Engelhart* at ¶ 18, citing *Witt v. Lamson*, Cuyahoga App. No. 87349, 2006-Ohio-3963, 2006 WL 2171530 (Aug. 3, 2006), at ¶¶ 7-11. Summary judgement is a device designed to effect a prompt disposition of a case on the merits without the need for a hearing where there are no genuine issues of material fact;

the Commission rules do not provide for summary judgment in complaint proceedings. *In re the Complaint of Debra and Andrew Dennewitz and State Farm Fire & Cas. Co. v. East Ohio Gas Co. dba Dominion East Ohio*, Case No. 07-517-GA-CSS, Entry (Oct. 24, 2007) at ¶ 5. Although the Commission rules do not provide for summary judgement, Civ. R. 41(A)(1)(a) and the above Supreme Court of Ohio opinions highlight that, generally, an effective voluntary dismissal filing should be made prior to a hearing and/or a decision on the merits. *See, Olynyk v. Scoles*, 114 Ohio St.3d 56, 2007-Ohio-2878, 868 N.E.2d 254, at ¶¶ 28-30.

{¶ 12} Here, the October 24, 2018 Order squarely centered on a jurisdictional question, whether the Complainant failed to meet her burden of alleging reasonable grounds for hearing, as required by R.C. 4905.26. Similarly, the Supreme Court of Ohio's order and remand focuses on the issue of Commission jurisdiction to hear the complaint. The Court reversed the Commission's order dismissing the complaint, essentially rewinding the procedural clock to the point where the question of Commission jurisdiction is still pending. Subsequent to the remand, the Complainant filed a notice of dismissal pursuant to Civ. R. 41(A)(1)(a). This filing was made prior to an evidentiary hearing date being set and prior to any decision on the merits of the complaint being issued. According to the above caselaw, the current procedural posture of the case coupled with the timing of the Complainant's notice of dismissal filing would suggest the Complainant's notice of dismissal is appropriate. Again, we emphasize that the Ohio Rules of Civil Procedure do not limit the Commission's discretion in conducting its cases. Nevertheless, we do find the above analysis surrounding Civ. R. 41(A)(1)(a) instructive in reaching our conclusion. Accordingly, the Commission finds the Complainant's notice of dismissal reasonable and dismisses the complaint, without prejudice.

{¶ 13} With regard to accepting the Complainant's voluntary dismissal despite the Supreme Court of Ohio's remand and mandate, the Commission first acknowledges that, according to the law of the case doctrine, an inferior court is typically compelled to follow the mandate of a reviewing court on the legal questions involved for all subsequent

proceedings, absent extraordinary circumstances. *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984). The Court has also stated that the doctrine is considered to be a rule of practice rather than a binding rule of substantive law and that the purpose of the rule is to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts. *Nolan* at 3. Here, the Court restated the jurisdictional test to be applied by the Commission when determining jurisdiction over a submetering service complaint and then noted that applying these relevant legal standards to the facts is best left to the Commission. *Wingo, LLC*, 2020-Ohio-5583, at ¶ 26. However, once the Complainant filed her notice of dismissal, it became unnecessary to apply the jurisdictional test posited by the Court. If the Complainant were to bring this complaint properly before the Commission again, it would apply the legal standards clarified by the Court to the applicable facts of the case.

III. ORDER

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That the complaint be dismissed, without prejudice, in accordance with Paragraph 12. It is, further,

{¶ 16} ORDERED, That a copy of this Entry on Remand be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

MJS/kck

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/14/2021 3:02:09 PM

in

Case No(s). 17-2002-EL-CSS

Summary: Entry finding the Complainant's notice of dismissal reasonable and dismisses the complaint, without prejudice electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio