

ORIGINAL

IN THE SUPREME COURT OF OHIO

10-0331

KISHA SIMES

Defendant-Appellant

Vs.

CAPITAL ONE BANK

Plaintiff-Appellee

On Appeal from the
Montgomery County
Court of Appeals
2nd Appellate District

Appeal No. CA023369
Trial No.08CVF01900

Notice of Appeal

Kisha Simes

KISHA SIMES
P.O. BOX 3153
DAYTON, OHIO 45401
(937) 278-1238

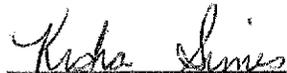
JOSEPH D. DEGIORGIO (0082065)
175 SOUTH THIRD ST. SUITE 900
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FILED
FEB 22 2010
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

| | | |
|---------------------|---|------------------------------------|
| KISHA SIMES | . | On Appeal from the |
| | . | Montgomery County |
| Defendant-Appellant | . | Court of Appeals |
| | . | 2 nd Appellate District |
| Vs. | . | |
| | . | |
| CAPITAL ONE BANK | . | Appeal No. CA023369 |
| | . | Trial No.08CVF01900 |
| Plaintiff-Appellee | . | |
| | . | |

Now comes Appellant with the date that the Court of Appeals filed the Decision and Entry on January 6, 2010. A copy of that decision and entry is attached hereto as exhibit A. The case originated in the Municipal Court and it was Appealed in the Second Appellate District Court. This case raises a substantial constitutional question. 1.) Appellee did not file an affidavit as stated in Civ R. 4.4. 2.) In Appellee's summary judgment was an affidavit with no signature signed. All legal documents from the court and attorney were not properly signed. On or about 6 months later an attorney that was not on record filed in the lower court a motion for garnishment of wages before Court of Appeals had made their decision.



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FILED
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CLERK OF COURTS
MONTGOMERY CO. OHIO

Exhibit
A

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

| | | |
|----------------------------|---|----------------------------------|
| CAPITAL ONE BANK | : | Appellate Case No. 23369 |
| | : | |
| <i>Plaintiff-Appellee</i> | : | |
| | : | Trial Court Case No. 08-CVF-1900 |
| v. | : | |
| | : | |
| KISHA N. SIMES | : | |
| | : | |
| <i>Defendant-Appellant</i> | : | |

DECISION AND ENTRY
January 6, 2010

PER CURIAM:

This matter is before the court on the December 10, 2009 "Motion and Demand for Immediate Dismissal and Esponded from Credit Report Lien Removed Garnishment Stopped and Esponded from Record and Opposition" filed by Appellant, Kisha N. Simes.

The record, in relevant part, indicates that Simes filed a notice of appeal on April 2, 2009 from the March 4, 2009 entry of the Dayton Municipal Court in case no. 08-CVF-1900. There, the trial court granted summary judgment in favor of Appellee, Capital One Bank, in the amount of \$1045.12, with accrued interest of \$189.90 through February 25, 2008, plus interest thereafter on the principal balance at the rate of 24.990% per annum. Notably, the docket does not indicate that Simes sought a stay of execution of the trial court's March 4, 2009 order.

In the present motion, Simes argues that dismissal of this matter is necessary because (1) Appellee failed to file a brief within the time allowed by App.R. 18(A); (2) the trial court allowed an attorney who was not on record to file documents in the underlying case in violation of Civ.R. 11; and (3) although the notice of appeal had been filed, the trial court permitted Appellee to proceed toward collecting the subject debt.

Upon consideration, this Court does not find Simes's December 10, 2009 motion to dismiss well-taken. The arguments raised in the present motion do not warrant dismissal of this appeal prior to its consideration on the merits.

Accordingly, Appellant's "Motion and Demand for Immediate Dismissal and Espoused from Credit Report Lien Removed Garnishment Stopped and Espoused from Record and Opposition" is OVERRULED. The above-captioned appeal shall proceed under the Rules of Appellate Procedure.

SO ORDERED.



JAMES A. BROGAN, Judge



MIKE FAIN, Judge

Copies mailed to:

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Defendant-Appellant, *Pro Se*
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Dayton, OH 45401

Joseph DeGiorgio
Attorney for Plaintiff-Appellee
175 S. Third Street, Suite 900
Columbus, OH 43215

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing has been sent certified mail, and U.S ordinary mail to each party listed. Joseph D. DeGiorgio (0082065) Attorney for Plaintiff Capital One Bank, 175 South Third Street, Suite 900, Columbus, Ohio 43215, (614) 801-2600, on the 22nd day of February 2010.



KISHA SIMES
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