[Cite as *Ameritech Publishing, Inc. v. Griffin*, 2009-Ohio-5602.]

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

AMERITECH PUBLISHING, INC.	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2009 CA 18
v.	:	T.C. NO. 08 CVF 03565
JAMES N. GRIFFIN	:	(Civil appeal from Municipal Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 23rd day of October, 2009.

. . . . . .

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. . . . . .

DONOVAN, P.J.

{¶ 1} Appellant James Griffin, appeals a decision of the Clark County Municipal Court, which sustained the motion for summary judgment of appellee Ameritech Publishing, Inc. on January 7, 2009. Griffin did not file a response to Ameritech's motion for summary judgment, and the trial court found there were no genuine issues of material fact and that the plaintiff was

entitled to judgment as a matter of law. Griffin filed a timely notice of appeal with this Court on February 9, 2009.

I

{¶ 2} On August 14, 2008, Ameritech commenced an action on account against Griffin for breach of contract, quantum meruit, and unjust enrichment. Ameritech provided advertising services in its telephone directory for Griffin. Ameritech sought judgment in the amount of $12,581.31 with interest at the rate of 18% per annum and costs. Griffin admitted Ameritech provided advertising, but denied that he owed Ameritech any money.

{¶ 3} We note that the trial court set an initial pretrial conference for November 13, 2008. On November 13, 2008, the trial court entered a pretrial order scheduling a second pretrial conference for January 15, 2009 and granting leave for the filing of motions for summary judgment. Responses to motions for summary judgment were "to be filed within the times allowed by Rule."

{¶ 4} Loc.R. 3.10(D)(2) of the Municipal Court of Clark County dictates that motions must be in writing and accompanied by a written memorandum containing citations of authority and arguments of counsel. Opposing counsel must respond within fourteen days. *Id.* Unless the judge or magistrate extends the time period, all motions will be deemed submitted at the end of the fourteen day period. *Id.* No oral hearings will be granted unless requested in writing and deemed necessary by the judge or magistrate. *Id.*

{¶ 5} On December 9, 2008, Ameritech filed its motion for summary judgment. Griffin did not request an oral hearing on the summary judgment motion and gave no indication of an intention to file any response to Ameritech's motion. Almost a month later, the trial court granted Ameritech's motion on January 7, 2009. Griffin did not file

a response or seek an extension.

II

{¶ 6} Griffin raises one assignment of error for this appeal:

{¶ 7} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE DEFENDANT WHEN IT GRANTED THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BEFORE THE EXPIRATION OF THE TIME ALLOWED FOR RESPONSES TO THAT SUMMARY JUDGMENT MOTION."

{¶ 8} The Supreme Court of Ohio has held that a "trial court need not notify the parties of the date of consideration of a motion for summary judgment or the deadlines for submitting briefs and [Civil Rule 56] materials if a local rule of court provides sufficient notice of the hearing date or submission deadlines." *Hooten v. Safe Auto Ins. Co.,* 100 Ohio St.3d 8, 2003-Ohio-4829, at ¶33; see also *Davis v. Upper Valley Medical Center*, 2007-Ohio-1332, ¶18.

{¶ 9} Further, "a trial court is not required to schedule an oral hearing on every motion for summary judgment." *Hooten*, 2003-Ohio-4829 at ¶14. The "hearing" contemplated by [Civil Rule 56] may be either a formal oral hearing . . . or a 'nonoral,' informal one." *Id.*

{¶ 10} Griffin argues that he was not required to respond to Ameritech's motion until the day prior to the January 15, 2009 pretrial conference. He relies on the language of Civil Rule 56(C) stating that the adverse party may "serve and file opposing affidavits" prior to the day of hearing. This argument fails as a matter of law.

{¶ 11} The pretrial conference scheduled by the trial court was not a "hearing" as defined in Civil Rule 56(C), as it was not intended as a forum for the trial court to hear

oral argument on Ameritech's motion for summary judgment. *See Hooten*, 2003-Ohio-4829 at ¶14 (defining a formal, oral hearing as one "in which the trial court entertains oral arguments from counsel on a scheduled date preceded by the parties' filing of memoranda and [Civil Rule 56] evidentiary materials"). The January 15 conference was a routine pretrial conference between the parties and the trial court—scheduled prior to the filing of Ameritech's motion for summary judgment.

{¶ 12} Because Griffin failed to request an oral hearing under Local Rule 3.10(D)(2), no oral hearing was set and Griffin had fourteen days to respond to Ameritech's motion for summary judgment. Almost a month passed before the trial court entered judgment on the motion. Griffin failed to respond within the time prescribed by the rules. Therefore, the trial court's grant of summary judgment to Ameritech was proper.

{¶ 13} We note that Griffin raises an additional argument for the first time in his reply brief. Griffin maintains that Local Rule 3.10 is invalid because of noncompliance with the Rules of Superintendence. Griffin is not permitted to raise new arguments in his reply brief. *Hoskins v. Simones* (2007), 173 Ohio App.3d 186, 1015; *Durham v. Pike Cty. Joint Vocational School*, 150 Ohio App.3d 148, 2002-Ohio-6300, ¶12; *State v. Hubbard*, Franklin App. No. 03AP-286, 2004-Ohio-553, fn. 2. See also App.R. 16(C). Reply briefs are merely intended to be an opportunity to reply to the brief of the appellee. *Durham* at ¶ 12. This argument having been waived, we shall not address it.

{¶ 14} Accordingly, we hold that the trial court did not err when it sustained Ameritech's motion for summary judgment. The judgment of the trial court is affirmed.

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FROELICH, J. and WOLFF, J., concur.

(Hon. William H. Wolff, Jr., retired from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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