

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

COLLINS ASSET GROUP, LLC,

Plaintiff-Appellee,

v.

TINA DAVIS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 24 MA 0001

Civil Appeal from the
Youngstown Municipal Court of Mahoning County, Ohio
Case No. 22CVF03826Y

BEFORE:

Cheryl L. Waite, Mark A. Hanni, Katelyn Dickey, Judges.

JUDGMENT:

Affirmed.

Tina Davis, Appellant

Dated: September 12, 2024

WAITE, J.

{¶1} Appellant Tina Davis appeals a November 20, 2023 judgment entry of the Youngstown Municipal Court which granted summary judgment in favor of Appellee Collins Asset Group, LLC. For the reasons provided, Appellant’s assignments of error are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} This matter concerns the failure to repay a loan. Due to Appellant’s failure to cooperate with the discovery process, there are few facts on the record. The loan originated on January 19, 2018 and listed as its principal amount the sum of \$5,400. Apparently, Appellant made no payments on this loan.

{¶3} On November 23, 2022, Appellee filed a complaint asserting that Appellant failed to repay the loan, and had been unjustly enriched in the amount of \$5,915.09. Appellee additionally requested costs and interest at the statutory rate of three percent from the date of judgment.

{¶4} Two documents within the record (a Motion for Default Judgment and an affidavit of debt) are marked with what appears to be a red permanent marker. The motion to dismiss contained the handwritten note “Improper Service of Process,” and the affidavit of debt is marked “I Deny.” It is unclear who marked these documents and on what date. On July 25, 2023, Appellee filed its first set of interrogatories, requests for admissions, and requests for production of documents. Appellant did not respond to any of these requests.

{¶5} On October 5, 2023, Appellee filed a request for admissions pertaining to the July 25, 2023 requests, and filed a motion for summary judgment. On November 20,

2023, the trial court granted both motions and awarded Appellee \$5,915.09 plus costs and interest. Appellant did not request a stay of judgment either in the trial court or on appeal.

{¶16} After the notice of appeal was filed, this Court sent Appellant a notice that her brief was delinquent, and provided her a new filing deadline of March 21, 2024. Appellant did not file until March 30, 2024, one week after the deadline. However, that brief was stricken, as it failed in any way to comply with the appellate rules. Appellant was given until April 26, 2024 to file a new brief, however no brief was filed until May 2, 2024, again a week after the deadline. While acknowledging the untimeliness of the brief, this Court accepted it as timely filed.

{¶17} The Clerk of Court subsequently mailed Appellant a notice of oral argument on June 10, 2024. The notice clearly provided that oral argument on the matter was set for August 7, 2024. Appellant informed this Court in the closing hours the day before oral argument (August 6, 2024) that she was unable to attend. Appellant did not file a written motion seeking continuance until moments before her scheduled oral argument time on August 7, 2024.

{¶18} The notice of oral argument the Clerk provided to Appellant specifically stated: “Absent extraordinary circumstances presented by written motion filed with the Clerk of Court, there will be no continuance of the oral argument as scheduled.” (6/10/24 Notice of Oral Argument.) There is no question that Appellant had ample time to file a timely motion for continuance but did not do so. Even so, she never provided reasons to excuse her tardiness or as to the need for continuance. Pursuant to App.R. 21(F), “[i]f neither party appears [at oral argument], the case will be decided on the briefs unless the

court shall otherwise order.” Accordingly, Appellant’s untimely motion to continue oral argument is overruled and the matter will be decided on the parties’ briefs.

Non-Conforming Brief

{¶9} Preliminarily, we note that while Appellant filed a second brief in an attempt to cure the deficiencies in her prior non-conforming brief, her curative brief remains non-conforming. Appellant listed one assignment of error within the table of contents. Two assignments of error are contained within the body of the brief.

{¶10} App.R. 16(A)(7) requires “[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies.” Appellant makes a passing reference to one case, but does not provide any discussion of the relevant law. Instead, the “assignments of error” contain headings that are more akin to argument. These headings are limited to a few sentences each, merely containing a few general assertions without legal analysis or citations.

{¶11} As an apparent excuse, Appellant argues that she should not be held to the standards of an attorney, as she is a layperson. This contention is contrary to the established law in Ohio. “A *pro se* appellant is held to the same obligations and standards set forth in the appellate rules that apply to all litigants.” *Bryan v. Johnston*, 2012-Ohio-2703, ¶ 8, (7th Dist.), citing *Kilroy v. B.H. Lakeshore Co.*, 111 Ohio App.3d 357, 363 (8th Dist. 1996). “Although a court may, in practice, grant a certain amount of latitude toward *pro se* litigants, the court cannot simply disregard the Rules of Civil Procedure in order to accommodate a party who fails to obtain counsel.” *Pinnacle Credit Servs., LLC v.*

Kuzniak, 2009-Ohio-1021, ¶ 30 (7th Dist.), citing *Robb v. Smallwood*, 2005-Ohio-5863, ¶ 5 (4th Dist.). “The rationale for this policy is that if the court treats pro se litigants differently, ‘the court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel.’ ” *Pinnacle Credit Servs.*, at ¶ 31, citing *Karnofel v. Kmart Corp.*, 2007-Ohio-6939, ¶ 27 (11th Dist.). (Internal citations omitted.)

{¶12} Appellant’s actual arguments are confused and confusing, at best. However, in the interest of fairness, we will attempt to interpret Appellant's intended arguments contained in her assignments and address the relevant, applicable law.

FIRST AND SECOND ASSIGNMENTS OF ERROR

The trial court committed prejudicial error in granting Appellee’s motion for summary judgment. *Trinsey v. Pagliaro* is a Supreme Ruling dating back to 1964. The trial court ignored this ruling. (Cleaned Up.)

The trial court committed prejudicial error in granting Appellee without considering Appellants-Defendants offset of eligible obligation also known as the authentic birth certificate. The Appellee-Plaintiff has conveyed and assigned the contract from LCUS and Cross River Bank. These corporations have extracted the credit from the Plaintiff to make the loan possible. To pay the loan back the bond is in placed to offset the debt. The Plaintiff is the initial investor in this contract and is turning this Enterprise Security which is also known as an “Eligible Obligation” book entry into you

to satisfy all obligations of this debt. This instrument was pledged to the United States to lower the debt. (Cleaned Up.)

{¶13} Appellant’s intended argument is difficult to follow largely due to her failure to develop legal arguments. This is particularly problematic as she failed to comply with any discovery conducted during the trial court proceedings, thus limiting the facts available in the record. Appellant cites to a singular case, *Trinsey v. Pagliaro*, 229 F.Supp. 647 (E.D.Pa.1964). However, absent any explanation, we can find no relevance in this case to the instant proceedings.

{¶14} Regardless of Appellant’s disjointed arguments, here, it is clear from this record that the case was properly disposed on procedural grounds. Ohio law is clear that “[w]here a party fails to respond to written requests for admissions, such failure constitutes a conclusive admission pursuant to Civ.R. 36.” *Natl. City Bank, N.E. v. Poling*, 2000 WL 748132, *2 (7th Dist. June 2, 2000). Similarly, while a trial court must still find that the law and facts contained in a motion for summary judgment are proper even where a party fails to respond, when considering the facts admitted by virtue of Appellant’s failure to comply with discovery in this matter, there is no genuine issue of material fact that exists that could lead to any result favorable to Appellant. Appellant failed to allege at any point during either the trial court or appellate proceedings that she did not receive or was excused for any other reason from responding to either the request for admissions or Appellee’s motion for summary judgment.

{¶15} Understandably, the detrimental effect of failing to respond to a request for admissions and a motion for summary judgment may be elusive to a layperson, unfamiliar

with legal rules. However, as previously stated, Ohio law holds a layperson to the same standards as an attorney in this regard.

{¶16} Another procedural bar exists to prevent Appellant's successful appeal. Because Appellant failed to respond to these motions and failed to raise any of these arguments below, she is barred from raising them on appeal for the first time. "[W]e cannot find in Appellant's favor where she failed to preserve the issue for appeal. '[I]ssues not raised in the trial court may not be raised for the first time on appeal.'" *Pinnacle Integrated Health v. Newton*, 2023-Ohio-4515, ¶ 18, (7th Dist.), citing *Mobberly v. Wade*, 2015-Ohio-5287, ¶ 25, (7th Dist.), citing *Mauersberger v. Marietta Coal Co.*, 2014-Ohio-21 (7th Dist.); *State v. Abney*, 2005-Ohio-146 (12th Dist.).

{¶17} Although Appellant's precise appellate argument cannot be ascertained, this record and relevant Ohio law clearly supports the trial court's decision to rule in favor of Appellee based on procedural grounds. As such, Appellant's first and second assignments of error are without merit and are overruled.

Conclusion

{¶18} Appellant failed to respond in any way to discovery attempts, including a request for admissions, and a motion for summary judgment. The record fully supports the trial court's decision to grant summary judgment to Appellee. For the reasons provided, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Hanni, J. concurs.

Dickey, J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Youngstown Municipal Court of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.