

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Equable Ascent Financial, LLC,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-586
	:	(M.C. No. 2010 CVF 050845)
Sheila A. Barnes,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 22, 2012

Weltman, Weinberg & Reis, Co., L.P.A., and Matthew G. Burg, for appellee.

The Legal Aid Society of Columbus, Scott Torguson, and Carlie J. Boos, for appellant.

APPEAL from the Franklin Municipal Court

CONNOR, J.

{¶ 1} Appellant, Sheila A. Barnes, appeals from a judgment rendered by the Franklin County Municipal Court in favor of appellee, Equable Ascent Financial, LLC. For the reasons that follow, we reverse.

{¶ 2} On December 23, 2010, appellee filed this action to collect on a credit card account. In her answer, appellant denied that she owed appellee the amount it sought to collect. On May 23, 2010, appellee requested leave to file a motion for summary judgment. On May 31, 2010, the trial court granted appellee's motion for leave and accepted appellee's motion as having been filed. The next day, a court administrator filed a notice establishing June 13, 2010 as the cutoff date by which appellant could file a response to appellee's motion for summary judgment. On June 2, 2010, appellant filed a motion to dismiss. On June 7, 2010, the trial court granted summary judgment in

appellee's favor. This timely appeal ensued, in which appellant raises the following assignments of error:

FIRST ASSIGNMENT OF ERROR:

THE TRIAL COURT ERRED BY GRANTING APPELLEE SUMMARY JUDGMENT PRIOR TO THE DATE THE COURT SET FOR A RESPONSE BY APPELLANT.

SECOND ASSIGNMENT OF ERROR:

THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT TO PLAINTIFF-APPELLEE BECAUSE IT FAILED TO MEET ITS INITIAL BURDEN PURSUANT TO CIV.R. 56.

{¶ 3} Because it is dispositive, we initially address the first assignment of error, in which appellant contends that the trial court prematurely granted summary judgment.

{¶ 4} An appellate court's review of summary judgment is de novo. *Helton v. Scioto Cty. Bd. Of Commrs.*, 123 Ohio App.3d 158, 162 (4th Dist.1997). Under such a review, an appellate court stands in the shoes of the trial court and conducts an independent review of the record. *Jones v. Shelly Co.*, 106 Ohio App.3d 440, 445 (5th Dist.1995). Civ.R. 56(C) provides that a motion for summary judgment "shall be served at least fourteen days before the time fixed for hearing." Thus, a hearing on a motion for summary judgment must be held at least 14 days after service of the motion on the adverse, non-moving party; this provides the non-moving party with an opportunity to file affidavits or otherwise defend against the motion for summary judgment. See *Lloyd v. William Fannin Builders, Inc.*, 40 Ohio App.2d 507, 511 (10th Dist.1973). These timing requirements support the settled principle: "Before ruling on a summary judgment motion, a court must allow time for a full and fair response from the nonmoving party." *Cheap Escape Co., Inc. v. Tri-State Constr., L.L.C.*, 173 Ohio App.3d 683, 2007-Ohio-6185, ¶ 30 (10th Dist.), citing *Hooten v. Safe Auto Ins. Co.*, 100 Ohio St.3d 8, 2003-Ohio-4829, ¶ 40.

{¶ 5} In our review of this matter, we find instruction from *Bombardier Capital, Inc. v. W.W. Cycles, Inc.*, 155 Ohio App.3d 484, 2003-Ohio-6716 (7th Dist.). In that case, the moving party filed a motion for summary judgment, and a court administrator notified the parties of a cutoff date for filing responsive briefs. Before the cutoff date had

passed, the trial court granted summary judgment. On appeal, the Seventh Appellate District held: "It is not appropriate for the trial court to ignore the cutoff date for filing responsive briefs * * *, and it is reversible error for the trial court to render summary judgment against the [non-moving] party prior to the cutoff date without providing some further notice or procedural safeguards to protect the parties." *Id.* at ¶ 35.

{¶ 6} In the instant matter, appellee makes much ado about appellant's motion to dismiss and suggests that it served as a response to appellee's summary judgment motion. Initially, we note that appellant's motion to dismiss was filed a mere day after the notice setting June 13, 2010 as the cutoff date. Whether appellant received the administrator's notice before filing her motion to dismiss is left for speculation. We must also speculate on the issue of whether appellant intended for her motion to serve as a response to appellee's motion for summary judgment. However, "because summary judgment is a procedural device to terminate litigation, it must be awarded with caution. Doubts must be resolved in favor of the non-moving party." *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 359 (1992), citing *Osborne v. Lyles*, 63 Ohio St.3d 326, 333 (1992).

{¶ 7} We agree with the Seventh District's well-reasoned analysis. In the instant matter, the trial court failed to follow the 14-day period espoused in Civ.R. 56(C). Moreover, it also failed to follow its own June 13, 2010 cutoff date. When a trial court or a court administrator, undertakes the affirmative step of notifying parties of a cutoff date for responding to a motion for summary judgment, it constitutes reversible error for the trial court to grant judgment prior to that cutoff date without providing further notice to the parties. *See Bombardier* at ¶ 35; *see also Chibinda v. Depositors Ins.*, 12th Dist. No. CA2010-09-254, 2011-Ohio-2597, ¶ 39 (where non-moving party was not given at least 14 days to serve and file opposing affidavits in response to moving party's summary judgment motion, summary judgment was reversed); *Coates v. Asmar*, 8th Dist. No. 82776, 2003-Ohio-6498 (where cutoff date imposed by local rule was not followed, summary judgment was reversed); *State ex rel. Thernes v. United Local School Bd. Dist. of Edn.*, 7th Dist. No. 07 CO 45, 2008-Ohio-6922, ¶ 45.

{¶ 8} Based upon the foregoing, we sustain appellant's first assignment of error. Because appellant's second assignment of error regards the substantive evidence supporting appellee's motion for summary judgment, our resolution of the first

assignment of error renders moot the second assignment of error. *See Bombardier* at ¶ 37. We accordingly reverse and remand this matter to afford appellant an opportunity to respond to appellee's motion for summary judgment, and for further proceedings in accordance with law and consistent with this decision.

*Judgment reversed;
cause remanded.*

SADLER and DORRIAN, JJ., concur.
