

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Citibank, N.A., Successor to Citibank (South Dakota), N.A.,	:	
	:	
Plaintiff-Appellee,	:	No. 13AP-30
	:	(C.P.C. No. 11CVH07-9383)
v.	:	
	:	(REGULAR CALENDAR)
Lori Sandys LaPierre, aka Lori L. LaPierre,	:	
	:	
Defendant-Appellant.	:	
	:	

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D E C I S I O N

Rendered on July 11, 2013

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*Javitch, Block & Rathbone, LLC, Audra T. Funk, James Y. Oh,  
and Melissa A. Hager, for appellee.*

*Lori L. LaPierre, pro se.*

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APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Defendant-appellant, Lori Sandys LaPierre ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas denying her motion to vacate judgment. Because we conclude the trial court did not err in denying appellant's motion to vacate, we affirm.

{¶ 2} On July 29, 2011, plaintiff-appellee, Citibank, N.A., successor to Citibank (South Dakota), N.A. ("appellee"), filed a complaint asserting that appellant owed money on a credit card account. Appellant, acting pro se, filed an answer on August 29, 2011. On

December 21, 2011, appellee filed a motion for summary judgment, which appellant opposed. The next day, appellee filed a request to extend its time to respond to appellant's requests for discovery. The trial court granted appellee 30 additional days from the date of receipt of an electronic version of appellant's discovery requests. The trial court separately denied appellee's motion for summary judgment to allow discovery to be completed.

{¶ 3} Five months later, on July 24, 2012, appellee filed a motion for leave to file a renewed motion for summary judgment instant. The same day, appellee also filed its renewed motion for summary judgment instant. Appellant did not object to the motion for leave or file a memorandum contra the motion for summary judgment. The trial court granted the motion for leave on July 26, 2012, and granted the renewed motion for summary judgment on August 14, 2012.

{¶ 4} On September 5, 2012, appellant filed a memorandum in opposition to the renewed motion for summary judgment and a motion to vacate judgment. In her memorandum, appellant argued that numerous issues of material fact remained, including that the alleged amount owed was not correct. She did not provide an accompanying affidavit averring to the truth of these statements. In the motion to vacate, appellant argued, inter alia, that she was not served with the motion for summary judgment and that the alleged amount owed was not correct. Appellee opposed appellant's motion to vacate.

{¶ 5} On December 13, 2012, the trial court denied appellant's motion to vacate judgment noting that (1) service was proper, and (2) appellant did not provide any evidence to support her argument that she did not owe the amount alleged in the complaint. Appellant appeals from the trial court's December 13, 2012 decision.

{¶ 6} In her brief, appellant did not set forth any assignments of error nor any statement of issues. Rather, she set forth the following arguments:

- 1) Plaintiff has failed to state a claim.
- 2) Plaintiff's claims are barred as the alleged amount is fraudulent.
- 3) Summary Judgment was improperly awarded to Plaintiff, and must be vacated for justice to be served.
- 4) Plaintiff barred from award or recovery due to "Unclean Hands".
- 5) Summary Judgment must be vacated, as Defendant has been denied the right to Due Process.
- 6) Summary Judgment must be overturned as Court demanded more from a *Pro Se* Defendant than from the Plaintiff.

{¶ 7} In relevant part, App. R. 16 requires that an appellant shall include in its brief "[a] statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected" and "[a] statement of the issues presented for review, with references to the assignments of error to which each issue relates." App.R. 16(A)(3) & (4). Pursuant to App.R. 12(A)(1)(b), appellate courts must "[d]etermine [an] appeal on its merits on the assignments of error set forth in the briefs under App.R. 16." "Thus, this court rules on assignments of error only, and will not address mere arguments." *Ellinger v. Ho*, 10th Dist. No. 08AP-1079, 2010-Ohio-553, ¶ 70. Therefore, because appellant failed to set forth any assignments of error for this court's review, it is not necessary for this court to address appellant's arguments in order to affirm the judgment of the trial court.

{¶ 8} Nevertheless, it appears from her arguments that the alleged error about which appellant complains is the trial court's denial of her motion to vacate judgment.

{¶ 9} In determining whether the trial court erred in denying appellant's motion to vacate the default judgment, we will consider the criteria set forth in Civ.R. 60(B), which provides that, under certain circumstances, a court may relieve a party from a final judgment. We review a trial court's decision to grant or deny a motion for relief from judgment under Civ.R. 60(B) for abuse of discretion. *Winona Holdings, Inc. v. Duffey*, 10th Dist. No. 10AP-1006, 2011-Ohio-3163, ¶ 12. An abuse of discretion occurs where a trial court's decision is "unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 10} A party seeking relief from judgment under Civ.R. 60(B) "must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2), or (3), not more than one year after the judgment, order or proceeding was entered or taken." *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus. The movant must establish all three of the requirements to obtain relief from judgment. *Bank of Am., N.A. v. Malone*, 10th Dist. No. 11AP-860, 2012-Ohio-3585, ¶ 7. Appellant does not make any attempt to address these three criteria; however, in the interest of justice, we will consider her argument that she was not served with the renewed motion for summary judgment.

{¶ 11} Under Civ.R. 5(B)(2)(c), a party may be served with a motion by mailing it to the person's last known address by United States mail. *Edney v. Life Ambulance Serv.*,

*Inc.*, 10th Dist. No. 11AP-1090, 2012-Ohio-4305, ¶ 7. If this method of service is used, service is complete upon mailing. Civ.R. 5(B)(2)(c). "Where a party follows the Ohio Civil Rules of Procedure, courts presume proper service unless the presumption is rebutted with sufficient evidence." *Paasewe v. Wendy Thomas 5 Ltd.*, 10th Dist. No. 09AP-510, 2009-Ohio-6852, ¶ 22. " '[U]nsworn statements, such as bare allegations in an appellate brief, do not constitute evidence and are not sufficient to rebut the presumption of proper service.' " *Id.*, quoting *Poorman v. Ohio Adult Parole Auth.*, 4th Dist. No. 01CA16, 2002-Ohio-1059.

{¶ 12} In this case, appellee filed the motion for leave and the renewed motion for summary judgment *instanter* on July 24, 2012. Both motions included a certificate of service signed by counsel attesting that a copy of the motion was sent to appellant by United States mail the same day at P.O. Box 353, Blacklick, OH 43004. We note that this address is the same address that appellant has listed in her filings before this court. It also is the address she listed under her signature on the certified mail receipt of the complaint; it is the address she listed on her answer;<sup>1</sup> it is the address she listed on her memorandum in opposition to appellee's initial motion for summary judgment; and it is the address she listed on her motion to vacate judgment. Therefore, it appears that this is appellant's current address and would have constituted her "last known address" for purposes of regular mail service under Civ.R. 5(B)(2)(c) at the time appellee filed its renewed motion for summary judgment *instanter*. Furthermore, appellant's statement

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<sup>1</sup> On her answer, appellant listed the following address: "P.O. Box 353, 7560 Dover Ridge Court, Blacklick, OH 43004."

that she was not served was unsworn as she merely alleged it in her motion to vacate and did not attach an affidavit or any other form of evidence attesting to the same.

{¶ 13} As explained above, Civ.R. 5(B) permitted appellee to serve the motion for summary judgment on appellant by mail. The use of an authorized method of service creates a presumption of proper service. The unsworn statement contained in appellant's motion to vacate is insufficient to establish that appellant did not receive a copy of the motion for summary judgment, which was mailed to appellant's last known address, which also appears to be her current address. Absent sufficient evidence to rebut the presumption of proper service and establish that she was not served with a copy of appellee's renewed motion for summary judgment, appellant has failed to establish that the common pleas court erred by granting the motion for summary judgment for lack of proper service.

{¶ 14} We note again that appellant did not address the criteria required for relief from judgment pursuant to Civ.R. 60(B). Nevertheless, we have determined that her argument that she was not served fails. In her motion to vacate, appellant set forth three additional arguments, asserting that: (1) the court had previously refused appellee's attempt at a judgment; (2) she did not owe the alleged amount of money being demanded by appellee; and (3) the court had allowed a continuance based on appellant's personal situation. We determine that these other arguments also fail to either establish a meritorious defense or show that appellant is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5). The fact that the court previously denied appellee's initial motion for summary judgment is not a defense to a renewed motion for summary judgment which properly includes evidence demonstrating that no genuine issue of

material fact remained. Furthermore, a mere allegation that appellant did not owe the amount of money claimed by appellee, without evidence in support of the allegation, is not a defense. *See Matson v. Marks*, 32 Ohio App.2d 319, 327-28 (10th Dist.1972) ("The mere allegation of facts that would constitute a grounds for relief from a judgment does not entitle the defendant to such relief."). Finally, the fact that the court previously granted a continuance of the pretrial and trial dates in this instance also does not establish grounds to grant a motion to vacate judgment.

{¶ 15} As explained above, with no assignments of error or statement of issues, it is not necessary for this court to address the additional arguments outlined in appellant's brief. Nevertheless, examining the arguments made by appellant in her motion to vacate, we find the trial court did not err in denying the same. Accordingly, we affirm the trial court's decision to deny appellant's motion to vacate.

{¶ 16} For the foregoing reasons, the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

BROWN and CONNOR, JJ., concur.

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