[Cite as *Schwark v. Valentine,* 2004-Ohio-375.]

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

M. CHRISTINE SCHWARK

Plaintiff-Appellee

vs.

JACOB VALENTINE

Defendant-Appellant

: JUDGES:
: Hon. William B. Hoffman, P.J.
: Hon. Sheila G. Farmer, J.
: Hon. John W. Wise, J.
:
:
: Case No. 2003AP070059
:
: OPINION

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 2003CV030159
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	January 26, 2004

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
THOMAS H. HISRICH 121 West Fourth Street Dover, OH 44622	MATTHEW P. MULLEN 158 North Broadway Street New Philadelphia, OH 44663

Farmer, J.

{¶1} On March 6, 2003, appellee, M. Christine Schwark, filed a complaint against appellant, Jacob Valentine, for monies due and owing on two notes, one for four thousand dollars and the other for ten thousand dollars.

{¶2} On March 31, 2003, appellant filed a letter addressed to the clerk of court, informing him of his intention to defend the action.

{¶3} On May 28, 2003, appellee filed a motion for summary judgment, claiming appellant failed to set forth a defense to the claims. A hearing was held on June 16, 2003. By judgment entry filed June 26, 2003, the trial court found in favor of appellee, finding appellant failed to properly answer the complaint.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶5} "THE TRIAL COURT ERRED IN GRANTING THE PLAINTIFF-APPELLANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE THERE IS A GENUINE ISSUE OF MATERIAL FACT STATED BY APPELLANT AND SUMMARY JUDGMENT SHOULD NOT BE GRANTED IN THIS MATTER."

I

{¶6} Appellant claims the trial court erred in finding in favor of appellee. We disagree.

{¶7} Appellee filed a motion for summary judgment however, a close reading of the trial court's June 26, 2003 judgment entry appears the trial court based its decision

on the failure to file an answer and granted a Civ.R. 12(C) motion for judgment on the pleadings:

{¶8} "The matter before the Court is the determination of whether the Defendant has properly denied the allegations of the Complaint as set forth in the defense. The letter addressed to the Clerk of Courts for Tuscarawas County and filed with the Court on March 31, 2003, did not indicate that it had been served upon opposing counsel and does not sufficiently address the allegations of the Complaint, as an Answer is required under the Ohio Rules of Civil Procedure. Specifically, the Defendant fails to admit or deny any of the allegations of the Complaint and fails to set forth any defense thereto.

{¶9} "***

{¶10} "The letter which appears to have been sent as an Answer to the Complaint, file-stamped March 31, 2003, simply informs the Court that the Defendant is 'coming to defend myself' regarding the Complaint, and further requests that the original Notes which are the subject of the Complaint be mailed to the Defendant for forensic evaluation.

{¶11} "The Defendant further states that he will be involving an attorney, however, no attorney has entered an appearance on behalf of the Defendant."

{¶12} Under a motion for summary judgment, the procedure implicitly implies that the parties have filed and completed responsive pleadings. The exception which does not apply sub judice would be a converted Civ.R. 12(B)(6) motion to a summary judgment motion.

{¶13} Appellant sent a letter addressed to the clerk of court. Said letter was docketed on March 31, 2003, within twenty-eight days of service of the summons. This letter informed the clerk he was "coming to defend myself," requested a review of the notes by a "certified forensic handwriting expert" and mentioned his attorney would be contacting appellee's attorney.

{¶14} Civ.R. 8 governs general rules of pleading. Subsection (B) requires an answer to a complaint as follows:

{¶15} "A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make the denials as specific denials or designated averments or paragraphs, or the pleader may generally deny all the averments except the designated averments or paragraphs as the pleader expressly admits; but, when the pleader does intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Civ. R. 11."

{¶16} The March 31, 2003 letter does not conform to the requirements of Civ.R.8(B). Pursuant to Civ.R. 8(D), "Averments in a pleading to which a responsive pleading is required,***are admitted when not denied in the responsive pleading."

{¶17} Therefore, on the date of the requested relief for summary judgment, the record evidenced an admission that the notes were signed by appellant and said notes were in default because no monies had been paid. See, Complaint filed March 6, 2003.

{¶18} In response to the motion for summary judgment, appellant and his spouse filed on June 16, 2003 a purported "affidavit" claiming the notes were fraudulent. Because an answer was not filed, these claims do not alleviate the status of the proceedings or constitute an answer. Factually, appellant was in default and at the summary judgment hearing, could not contest the validity of the notes or the lack of any payment thereon.

{¶19} Appellant, who is now represented by counsel, makes an impassioned plea to this court to relieve him of the requirements of the rules of civil procedure, and to somehow waive a magical appellate wand over the March 31, 2003 letter and convert it into an answer. We are mindful that justice requires matters be resolved on their merits rather than on a fine knit-picking of the civil rules. *DeHart v. Aetna Life Insurance Co*. (1982), 69 Ohio St.2d 189. However, an attempt to hide behind the skirts of ignorance and pleas of lack of knowledge by pro se litigants is not acceptable. Although Ohio courts are more than lenient in protecting pro se litigants, we find the trial court was correct sub judice. The motion for summary judgment was filed two months after the March 31, 2003 letter, giving appellant sufficient time to obtain an attorney as his letter implied and request leave from the trial court to file an answer. Although he was in

default, appellant was given notice of the summary judgment motion. The motion was not heard until June 16, 2003, again giving appellant the opportunity to obtain counsel and properly request leave to file an answer. During the summary judgment hearing, appellant, although he was not under oath, admitted to signing the notes. T. at 5, 11.

{¶20} Upon review, we find the trial court did not err in finding in favor of appellee.

{¶21} The sole assignment of error is denied.

{¶22} The judgment of the Court of Common Pleas of Tuscarawas County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.