[Cite as *Shepherd v. Richland Cty. Child Support Enforcement Agency*, 2009-Ohio-1671.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RANDY SHEPHERD

Plaintiff-Appellant

-vs-

RICHLAND COUNTY CHILD SUPPORT ENFORCEMENT AGENCY

Defendant-Appellee

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. 08CA83

O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Richland County Court of Common Pleas, Case No. 2008CV0294
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	February 10, 2009

APPEARANCES:

For Plaintiff-Appellant	For Defendant-Appellee
RANDY SHEPHERD, PRO SE 3558 Alvin Road Shelby, Ohio 44875	ANDREW N. YOSOWITZ MARK LANDES Isaac, Brant, Ledman and Teetor, LLP 250 East Broad Street, Suite 900 Columbus, Ohio 43215

Hoffman, P.J.

{¶1} Plaintiff-appellant Randy Shepherd appeals the August 19, 2008 Judgment Entry of the Richland County Court of Common Pleas entering summary judgment in favor of Defendant-appellee Richland County Child Support Enforcement Agency.

STATEMENT OF THE CASE

{¶2} On December 31, 1991, Appellant was divorced from JoAnn Shepherd in the Richland County Court of Common Pleas, Division of Domestic Relations. The trial court ordered Appellant pay child support in the amount of $175.00 per month for each of the party's four children. The Richland County Child Support Enforcement Agency (hereinafter "RCCSEA") was not a party to the action. On October 17, 1997, a magistrate ordered Appellant pay $361.02 per month for two of the four children. Appellant filed objections to the magistrate's decision. On November 6, 1997, the trial court overruled Appellant's objections.

{¶3} In February of 2005, Appellant was found to be delinquent in his support obligation, and ordered he pay $60.00 per month until he became current. In March, 2005, Appellant filed a motion for compliance and for relief from judgment. The magistrate overruled the motions finding they were untimely and not supported by the evidence. On June 17, 2005, the trial court adopted the magistrate's decision.

{¶4} On February 4, 2008, Appellant filed a complaint against RCCSEA alleging RCCSEA erred in calculating his child support obligation, and did not properly complete a child support computation worksheet in various custody cases involving Appellant. On March 13, 2008, RCCSEA filed an answer to the complaint. On March

17, 2008, Appellant filed a motion for default judgment. The trial court overruled the motion on March 26, 2008.

{¶5} On April 18, 2008, Appellant filed a motion for relief from judgment relative to the denial of his motion for default judgment. On June 24, 2008, the trial court overruled the motion for relief from judgment.

{¶6} On July 14, 2008, RCCSEA filed a motion for summary judgment. On August 11, 2008, Appellant filed a response to the motion. Via Judgment Entry of August 19, 2008, the trial court granted summary judgment in favor of RCCSEA finding RCCSEA is a political subdivision immune from liability under R.C. 2744.02.

{¶7} Appellant now appeals, assigning as error:

{¶8} "I. CAASE (SIC) NUMBER 2008CV0294 WAS SET FOR TRIAL ON JUNE 20 (SIC) 2008. THE JURY TRIAL ORDER WAS FILED ON JUNE 23, 2008. THE APPELLEE FILED A MOTION FOR SUMMARY JUDGMENT PER CIV (SIC) R. 56 ON JULY 14, 2008. CIV R.56 (B) PROVIDES IN PERTINENT PART: 'IF THE ACTION HAS BEEN SET FOR PRETRIAL OR TRIAL, A MOTION FOR SUMMARY JUDGMENT MAY BE MADE ONLY WITH LEAVE OF THE COURT.' THE APPELLEE DID NOT SEEK LEAVE OF THE COURT NOR WAS LEAVE GRANTED. APPELLEE (SIC) MOTION FOR SUMMARY JUDGMENT MUST BE STRICKEN FROM THE RECORD AS IT FAILS TO MEET THE STATUTORY REQUIREMENT OF CIV. R. 56 (B).

{¶9} "II. THE TRIAL COURT ERRED IN DISMISSAL OF APPELLANTS' MOTION FOR DEFAULT JUDGMENT AS FILED ON MARCH 17, 2008, 42 DAYS AFTER THE CIVIL ACTION WAS COMMENCED ON FEBRUARY 4, 2008. CIV. R.3

(A) PROVIDES IN PERTINENT PART: A CIVIL ACTION IS COMMENCED BY FILING A COMPLAINT WITH THE COURT.

{¶10} "III. THE CLERK BREACHED ITS DUTY TO NOT ISSUE THE SUMMONS FORTHWITH CIV. R.4(A): PROVIDES IN PERTINENT PART: SUMMONS ISSUANCE. UPON THE FILING OF THE COMPLAINT THE CLERK SHALL FORTHWITH ISSUE A SUMMONS FOR SERVICE UPON EACH DEFENDANT LISTED IN THE CAPTION. THE RULE, THEREFORE, EXPLICITLY REQUIRES THE CLERK TO SERVE THE COMPLAINT UPON ALL LISTED DEFENDANTS IMMEDIATELY AND WITHOUT DELAY, AND GIVES THE CLERK NO DISCRETION TO SUSPEND THAT SERVICE.

{¶11} "IV. SERVICE OF THE SUMMONS WAS PERFECTED ON MARCH 14, 2008 VIA CERTIFIED MAIL. THE RULES CLEARLY DECLARE THAT AN ACTION IS COMMENCED WHEN SERVICE IS PERFECTED. CIV. R. 3(A). THE APPELLEE MADE NO APPEARANCE BETWEEN THE DATE SERVICE WAS PERFECTED AND APRIL 25 (SIC) 2008. THE COURT ERRED IN ACCEPTING ANY CONVEYANCES FROM THE APPELLEE AFTER APRIL 11 (SIC) 2008, 28 DAYS AFTER THE ACTION WAS COMMENCED. CIV. R. 12 (A-1) IN PERTINENT PART STATES: THE DEFENDANT SHALL SERVE HIS ANSWER WITHIN TWENTY-EIGHT DAYS AFTER SERVICE OF SUMMONS AND COMPLAINT UPON HIM. SUP CT. PRAC R. XIV IN PERTINENT PART STATES: THE CLERK SHALL REFUSE TO FILE A DOCUMENT THAT IS NOT TIMELY TENURED FOR FILING.

{¶12} "V. THE COURT ERRED IN TAXING COSTS TO THE PLAINTIFF/APPELLANT IN ITS JUDGMENT ON A MOTION FOR SUMMARY

JUDGMENT NOT PROPERLY RAISED AND NOT ALLOWED FOR REASONS SET FORTH IN ASSIGNMENTS OF ERROR 1-5."

I

{¶13} In the first assignment of error, Appellant maintains the trial court erred in granting summary judgment in favor of RCCSEA.

{¶14} Summary Judgment motions are to be resolved in light of the dictates of Civ.R. 56. Said rule was reaffirmed by the Supreme Court of Ohio in *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 448, 1996-Ohio-211:

{¶15} "Civ.R. 56(C) provides that before summary judgment may be granted, it must be determined that (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made. State ex. rel. Parsons v. Fleming (1994), 68 Ohio St.3d 509, 511, 628 N.E.2d 1377, 1379, citing Temple v. Wean United, Inc. (1977), 50 Ohio St.2d 317, 327, 4 O.O3d 466, 472, 364 N.E.2d 267, 274."

{¶16} As an appellate court reviewing summary judgment motions, we must stand in the shoes of the trial court and review summary judgments on the same standard and evidence as the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35.

{¶17} Specifically, Appellant argues the within action had been set for pretrial or trial; therefore, RCCSEA was required to request leave of court before filing its motion for summary judgment.

{¶18} On June 23, 2008, the trial court entered a jury trial order setting dates in the within matter. The trial court scheduled a jury trial for October 9, 2008, and stated substantive and dispositive motions shall be filed by August 15, 2008 or must otherwise have written leave of court. RCCSEA filed its motion for summary judgment on July 14, 2008. Accordingly, RCCSEA filed the motion well within the time parameters set forth by the trial court's scheduling order, and RCCSEA was not required to seek leave of court in filing their motion for summary judgment.

{¶19} Appellant's first assignment of error is overruled.

II, IV

{¶20} Appellant's second and fourth assignments of error raise common and interrelated issues; therefore, we will address the arguments together.

{¶21} In the second and fourth assignments of error, Appellant asserts the trial court erred in denying his motion for default judgment, and RCCSEA failed to file an answer within the time provided by the civil rules, following service of process of the complaint.

{¶22} Upon review of the record, RCCSEA filed an answer on March 13, 2008, the same day service of process was sent. Therefore, the answer was filed prior to service of the complaint.

{¶23} In *Maryhew v. Yova* (1984), 11 Ohio St.3d 154, the Ohio Supreme Court held:

{¶24} "It is rudimentary that in order to render a valid personal judgment, a court must have personal jurisdiction over the defendant. This may be acquired either by service of process upon the defendant, the voluntary appearance and submission of the defendant or his legal representative, or by certain acts of the defendant or his legal representative which constitute an involuntary submission to the jurisdiction of the court. The latter may more accurately be referred to as a waiver of certain affirmative defenses, including jurisdiction over the person under the Rules of Civil Procedure."

{¶25} Accordingly, service of process is a means of obtaining personal jurisdiction over a defendant. However, personal jurisdiction is also acquired upon the voluntary appearance or submission of the defendant. In the case subjudice, RCCSEA voluntarily filed an answer prior to service of process waiving personal jurisdiction. We know of no requirement the answer must be filed after service of process is perfected. Therefore, the trial court did not err in denying Appellant's motion for default judgment as RCCSEA timely filed an answer in response to Appellant's complaint.

{¶26} The second and fourth assignments of error are overruled.

III

{¶27} In the third assignment of error, Appellant argues the Richland County Clerk of Courts breached its duty to issue the summons in accordance with Civil Rule 4(A). Said rule reads:

{¶28} "(A) Summons: issuance

{¶29} "Upon the filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption. Upon request of the plaintiff separate or additional summons shall issue at any time against any defendant."

{¶30} We note Appellant has not made the Richland County Clerk of Courts a party in this action. We find no prejudice resulted from any alleged error on the part of the clerk in delay of service of Appellant's complaint on Appellee.

{¶31} Appellant's third assignment of error is overruled.

V

{¶32} In the final assignment of error, Appellant maintains the trial court erred in taxing costs to Appellant in the August 19, 2008 Judgment Entry granting summary judgment in favor of RCCSEA, whereas the summary judgment motion was not properly raised and not allowed as set forth in the proceeding assignments of error.

{¶33} In accordance with our analysis and disposition of Appellant's first, second, third and fourth assignments of error set forth above, we do not find the trial court abused its discretion in assessing costs to Appellant. The fifth assignment of error is overruled.

{¶34} For the foregoing reasons set forth above, the August 19, 2008 Judgment Entry of the Richland County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Wise, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RANDY SHEPHERD	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
RICHLAND COUNTY CHILD SUPPORT ENFORECMENT AGENCY	:	
	:	
Defendant-Appellee	:	Case No. 08CA83

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Richland County Court of Common Pleas is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY