

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

LESTER W. ABELE,	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellant	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. CT2010-0008
	:	
MCHUGH DODGE JEEP,	:	
	:	
	:	
Defendant-Appellee	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Appeal from the Muskingum County Court Case No. CVI-0900849
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JUDGMENT:	AFFIRMED
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DATE OF JUDGMENT ENTRY:	December 20, 2010
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APPEARANCES:

For Plaintiff-Appellant:

LESTER W. ABELE, Pro Se
133 Hogan Drive
Zanesville, Ohio 43701

For Defendant-Appellee:

DONALD A. WIETMARSCHEN 0016423
320 Main Street
Zanesville, Ohio 43702

Delaney, J.

{¶1} Plaintiff-Appellant appeals the judgment of the Muskingum County Small Claims Court, dismissing his lawsuit against Defendant-Appellee, McHugh Dodge Jeep.

{¶2} On February 23, 2009, Appellant entered Appellee's Dodge dealership and expressed interest in purchasing a vehicle. Appellant stated that he had some credit issues in the past, but that he had been working on cleaning up his credit report.

{¶3} The sales consultant informed Appellant that Appellee worked with various banks and would try to get Appellant approved for financing if he so desired. On February 25, 2009, Appellant called the Sales Consultant and provided him with Appellant's credit information over the phone and asked if he would have the Business Manager pull his credit and check his scores. Appellant expressed that he was unsure of what his credit scores actually were, as they were all different on the internet.

{¶4} The Sales Consultant asked Appellant if he wanted the Business Manager to submit his information to the banks for approval and Appellant said, "yes." The Sales Consultant then turned Appellant's credit application over to the Business Manager to submit for approval.

{¶5} On September 3, 2009, Appellant filed an action in Small Claims Court in Muskingum County against Appellee for accessing Appellant's credit report and submitting the information to various lenders without his consent or authorization. Appellee filed a motion to dismiss in the lower court on September 22, 2009. Appellant filed an answer to Appellee's motion to dismiss, and a hearing was held on October 7, 2009.

{¶6} On January 21, 2010, the trial court held, “that pursuant to 15 USCS 1681o that Defendant negligently accessed Plaintiff’s credit. The Court specifically finds based on the evidence presented that Plaintiff suffered no actual damages. Defendant is ordered to pay Plaintiff’s court costs per 15 USCS 1681o(a)(2).” Appellee promptly paid the court costs on January 28, 2010.

{¶7} Appellant now appeals, raising one Assignment of Error:

{¶8} “I. THE TRIAL COURT ERRED BY FAILING TO GRANT PLAINTIFF ACUTAL [SIC] DAMAGES FOR DEFENDANT’S NEGLIGENTLY ACCESSED PLAINTIFF’S CREDIT, PURSUANT TO OHIO REVISED CODE 1343.03 ET AL AND UNITED STATES CODE TITLE 15, CHAPTER 41 ET AL.

I.

{¶9} In his sole assignment of error, Appellant argues that the trial court erred in failing to grant him damages because the Appellee negligently accessed his credit. We disagree.

{¶10} We would first note that Appellant has failed to comply with App. R. 16(A)(7), which provides that Appellant must include in its brief:

{¶11} “(7) An 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. The argument may be preceded by a summary.”

{¶12} Appellant provides no citations to authority, statutes, or parts of the record upon which he relies to support his argument. Accordingly, it is within this Court’s discretion to decline to address Appellant’s argument. *In re Estate of Poling*, 4th Dist.

No. 04CA18, 2005-Ohio-5147. We will however, in the interest of finality, briefly address the merits of the case below.

{¶13} Appellant filed a cause of action in small claims court under 15 U.S.C. §1681o, which is part of the Fair Credit Practices Act (FCPA), and provides as follows:

{¶14} “(a) In general

{¶15} “Any person who is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of--

{¶16} “(1) any actual damages sustained by the consumer as a result of the failure; and

{¶17} “(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.”

{¶18} Appellant did appropriately file this action in state court, even though the cause of action falls under federal law. 15 U.S.C. §1681p provides, in pertinent part:

{¶19} “An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of--

{¶20} “(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

{¶21} “(2) 5 years after the date on which the violation that is the basis for such liability occurs.”

{¶22} In order to prevail on an action under 15. U.S.C. §1681o, a plaintiff must show that the defendant was (1) negligent in complying with the FCPA and that as a result of that negligence, the plaintiff suffered actual damages. The court must essentially determine whether the plaintiff has made out his case by a preponderance of the evidence. *Jacobs v. Bd. of County. Commrs.* (1971), 27 Ohio App.2d 63, 65. Thus, this Court must determine whether or not Appellant established by a preponderance of the evidence in order to withstand a motion to dismiss. *Mills v. Saxon Real Estate* (April 27, 1995), 10th Dist. No. 94APE09-1304. Upon proof of negligence accompanied by actual damages, the plaintiff may be awarded actual damages and attorney fees.

{¶23} During the hearing, Appellant had an opportunity to present evidence that he suffered actual damages as a result of Appellee's negligent inquiry into his credit in violation of the FCPA. Appellant, however, was unable to provide any evidence of actual damages, but instead chose to focus on mental anguish, punitive damages, and damage to his credit. He was not able to produce any evidence that his credit had actually been damaged, however. The trial court repeatedly tried to elicit evidence from Appellant that he suffered any actual damages. Appellant vaguely referred to an impact on his credit; however, he was unable to present any credible evidence that as a result of Appellee negligently accessing his credit, that he suffered any actual damages.

{¶24} Accordingly, Appellant's assignment of error is overruled.

{¶25} The judgment of the Muskingum County Court is affirmed.

By: Delaney, J.

Gwin, P.J. and

Farmer, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

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Plaintiff-Appellant	:	
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-vs-	:	JUDGMENT ENTRY
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MCHUGH DODGE JEEP,	:	
	:	
Defendant-Appellee	:	Case No. CT2010-0008
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Muskingum County Court is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER