

[Cite as *Lakeshore Northeast Ohio Computer Assn. v. Richmond Hts. Local School Dist. Bd. of Edn.*,
2011-Ohio-220.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95072

**LAKESHORE NORTHEAST OHIO COMPUTER
ASSOCIATION**

PLAINTIFF-APPELLANT

vs.

**RICHMOND HEIGHTS LOCAL SCHOOL DISTRICT
BOARD OF EDUCATION**

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas

Case No. CV-689090

BEFORE: Rocco, J., Sweeney, P.J., and Jones, J.

RELEASED AND JOURNALIZED: January 20, 2011

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ATTORNEYS FOR APPELLANT

David Kane Smith
Michael E. Stinn
Britton, Smith, Peters & Kalail Co.
3 Summit Park Drive, Suite 400
Cleveland, Ohio 44131-2582

ATTORNEYS FOR APPELLEE

James A. Climer
John T. McLandrich
Frank H. Scialdone
Mazanec, Raskin, Ryder & Keller Co., L.P.A.
100 Franklin's Row
34305 Solon Road
Solon, Ohio 44139

KENNETH A. ROCCO, J.:

{¶ 1} In this appeal assigned to the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1, plaintiff-appellant Lakeshore Northeast Ohio Computer Association (“Lakeshore”) appeals from the trial court order that granted the Civ.R. 60(B) motion for relief from a default judgment filed by defendant-appellee the Richmond Heights Local School District Board of Education (“Board”).

{¶ 2} The purpose of an accelerated appeal is to allow the appellate court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158, 463 N.E.2d 655; App.R. 11.1(E).

{¶ 3} Lakeshore presents one assignment of error in which it argues the trial court abused its discretion, because the Board failed to meet all the necessary requirements to justify relief, and thus used Civ.R. 60(B) as a substitute for a timely appeal. Upon a review of the record, this court disagrees. Consequently, Lakeshore’s assignment of error is overruled, and the trial court’s order is affirmed.

{¶ 4} The record reflects the parties entered into a contract for Lakeshore to provide computer services to the Board for the period from July 1, 2007 to June 30, 2008. According to the fee schedule, the Board was to pay a “Capital

Improvement Fee” of \$7000, an amount of \$.65 per student for an “Education Management Information System,” and for “Total Services,”¹ an amount of \$18.50 per student. “On-Going” fees amounted to \$3.25 per student. “Miscellaneous Fees” included, for example, “Computer (CPU) Time” billed at “\$125.00 / hour.”

{¶ 5} Charges for Lakeshore’s services were required to be billed to the Board “on a quarterly basis, in advance.” The contract also provided that any notice required to be given to the Board should be addressed to the attention of the “Superintendent.” The contract was not automatically renewable, and the Board failed to renew it.

{¶ 6} According to Lakeshore’s complaint, which was filed in the trial court on April 2, 2009, on the date of the termination of the contract, i.e., June 30, 2008, “the Board owed [Lakeshore] \$25,773.59.” Lakeshore alleged it made demand on the Board but the Board failed to pay. Lakeshore attached to its complaint a copy of the contract and the fee schedule, and a copy of a single invoice that indicated as of July 1, 2008, the Board owed “\$24.11 x 1069 students” for “computer and network hardware” for a total of “\$25,773.59.”

{¶ 7} The record reflects Lakeshore instructed the clerk to serve the Board by certified mail addressed to the “Treasurer, Brenda Brcak.” Brcak signed the receipt indicating she received a copy of the complaint on June 16, 2009.

¹ These included, inter alia, “Accounting,” “Payroll,” “Grade Reporting,” “Student Attendance,” and “Training Sessions.”

{¶ 8} On July 8, 2009, the trial court issued a journal entry scheduling a case management conference (“CMC”) for August 6, 2009. The court also permitted Lakeshore to “convert” the hearing “to a default hearing,” on the condition that Lakeshore “must provide notice of hearing date and time to Defendant via certified mail receipt [and] an affidavit of service via regular mail-both notices to be sent *no later than seven days prior to the hearing* * * * .” (Emphasis added.)

{¶ 9} On August 3, 2009, Lakeshore filed a motion to convert the CMC to a default hearing. The motion was supported by the affidavit of Lakeshore’s Executive Director John Mitchell, who reiterated the allegations of the complaint. The certificate of service indicated that a copy of Lakeshore’s motion for default judgment had been sent to the Board’s treasurer “via regular U.S. Mail” on “August 3, 2008 [sic].”

{¶ 10} On August 7, 2009, the trial court issued a journal entry that granted Lakeshore’s motion for a default judgment against the Board in the amount prayed for in Lakeshore’s complaint. The court noted that a default hearing had been held and the Board failed to appear. In late September 2009, Lakeshore filed requests for the issuance of judgment liens against the Board based upon the trial court’s journal entry.

{¶ 11} On March 26, 2010, the Board filed a Civ.R. 60(B) motion for relief from the default judgment. The motion was supported by Brcak’s affidavit.

Brcak admitted she had received the complaint, but stated it had “inadvertently” not been forwarded to legal counsel. She further stated she had “no recollection” of receiving notice of either the CMC or the default hearing.

{¶ 12} Brcak averred that Lakeshore had sent invoices to the Board in July 2008, that indicated a balance due for services in the amount of only “\$9800.11.” She stated that in November 2008, Lakeshore sent an invoice seeking payment in the amount set forth in the complaint, but provided no explanation for the increased amount. Finally, she stated that the Board had “meritorious defenses” to Lakeshore’s claims.

{¶ 13} Lakeshore filed a brief in opposition to the Board’s motion. As an exhibit, Lakeshore attached a letter dated November 21, 2008 addressed to the “Superintendent” in which Lakeshore justified its invoice amount.

{¶ 14} Lakeshore indicated to the school district superintendent in this letter that the “per student amount used in calculating the original invoice * * * did not include all of the outstanding debts and obligations” Lakeshore incurred for providing services under the contract. The new total was “the result of dividing the total debt and obligations by the aggregate total member headcount of [Lakeshore’s] members at that time.”

{¶ 15} On April 9, 2010, the trial court granted the Board’s motion for relief from judgment without opinion. Lakeshore argues in its sole assignment of error that the trial court abused its discretion in doing so. This court disagrees.

{¶ 16} Lakeshore's assignment of error is overruled on the authority of the following: *Maxim Fin., Inc. v. Dzina* (Dec. 2, 1993), Cuyahoga App. No. 65206; *Better Meat Products v. Koula, Inc.* (May 14, 1992), Cuyahoga App. No. 60455; *Mitchell v. Cleveland* (Jan. 15, 1987), Cuyahoga App. No. 51594.

{¶ 17} The Board demonstrated it could allege a meritorious defense, in that the amount Lakeshore prayed for in its complaint was not supported by the contract as it was written. *Maxim Fin., Inc.* In conjunction with the record, Brca's affidavit demonstrated excusable neglect, since the contract itself indicated "notices" were to be sent to the superintendent's attention, and since the record shows Lakeshore failed to comply with the trial court's requirements for converting the CMC to a default hearing. *Mitchell*. Finally, the Board's motion was filed within a reasonable length of time. *Better Meat Products*.

The trial court's order is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, JUDGE

JAMES J. SWEENEY, P.J., and
LARRY A. JONES, J., CONCUR