**[Cite as *Cardservice Internatl., Inc. v. Farmer*, 2009-Ohio-3692.]**

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| STATE OF OHIO | ) | IN THE COURT OF APPEALS |
| | )ss: | NINTH JUDICIAL DISTRICT |
| COUNTY OF SUMMIT | ) | |

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| CARDSERVICE INTERNATIONAL, INC.<br><br>Appellee<br><br>v.<br><br>RUSSELL FARMER, d.b.a.<br>NORTHSTAR SATELLITE<br><br>Appellant | C.A. No. 24642<br><br>APPEAL FROM JUDGMENT<br>ENTERED IN THE<br>BARBERTON MUNICIPAL COURT<br>COUNTY OF SUMMIT, OHIO<br>CASE No. 08CVF1850 |

DECISION AND JOURNAL ENTRY

Dated: July 29, 2009

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WHITMORE, Judge.

**{¶1}** Defendant-Appellant, Russell Farmer, d.b.a. Northstar Satellite ("Farmer"), appeals from the judgment of the Barberton Municipal Court, granting summary judgment in favor of Plaintiff-Appellee, Cardservice International, Inc. ("Cardservice"). This Court affirms.

I

**{¶2}** On July 25, 2008, Cardservice filed a complaint against Farmer for $7,320.91 plus interest based on Farmer's defaulting on his account. On August 19, 2008, Farmer responded by letter, which the court construed as his answer. In the letter, Farmer denied owing the $7,320.91 amount and indicated that he was "currently in negotiation" with Cardservice's attorney in an attempt to settle the dispute. Subsequently, Cardservice notified the court that it had served Farmer with interrogatories, a request for admissions, and a request for production, and the trial court set the matter for trial.

**{¶3}** On October 17, 2008, Cardservice filed a motion to compel because Farmer had not responded to its discovery requests. The trial court granted the motion to compel and ordered Farmer to respond to discovery within thirty days. On October 30, 2008, the trial court received another letter from Farmer, requesting a continuance of the trial due to medical problems that he was experiencing. The court rescheduled the trial for February 25, 2009.

**{¶4}** Once again, Farmer failed to respond to Cardservice's discovery requests, and on December 3, 2008, Cardservice filed a motion to strike Farmer's answer and to issue a default judgment in its favor. The trial court denied Cardservice's motion several days later. On December 24, 2008, Cardservice filed a motion for summary judgment to which it attached an affidavit, Farmer's account agreement, and its unanswered request for admissions. Farmer did not respond to any of Cardservice's motions. On January 12, 2009, the trial court granted summary judgment in favor of Cardservice.

**{¶5}** Farmer now appeals from the trial court's judgment and raises a single assignment of error for our review.

II

Assignment of Error

> "THE TRIAL COURT ABUSED ITS DISCRETION IN THIS MATTER WHEN IT GRANTED THE APPELLEE'S MOTION FOR SUMMARY JUDGMENT BASED ON THE APPELLANT PROCEEDING IN THIS MATTER *PRO SE*."

**{¶6}** In his sole assignment of error, Farmer argues that the trial court erred in granting Cardservice's motion for summary judgment on the basis that he did not respond to Cardservice's request for admissions. Specifically, he argues that he had no legal duty to respond to the request because "[it] was defective."

**{¶7}** This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. We apply the same standard as the trial court, viewing the facts of the case in the light most favorable to the non-moving party and resolving any doubt in favor of the non-moving party. *Viock v. Stowe-Woodward Co.* (1983), 13 Ohio App.3d 7, 12.

**{¶8}** Pursuant to Civ.R. 56(C), summary judgment is proper if:

> "(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 party against whom the motion for summary judgment is made, that conclusion is adverse to that party." *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327.

The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and pointing to parts of the record that show the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292-93. Specifically, the moving party must support the motion by pointing to some evidence in the record of the type listed in Civ.R. 56(C). Id. Once this burden is satisfied, the non-moving party bears the burden of offering specific facts to show a genuine issue for trial. Id. at 293. The nonmoving party may not rest upon the mere allegations and denials in the pleadings but instead must point to or submit some evidentiary material that demonstrates a genuine dispute over a material fact. *Henkle v. Henkle* (1991), 75 Ohio App.3d 732, 735.

**{¶9}** Civ.R. 36 governs requests for admissions. The rule provides that a party receiving a request must serve a written answer or objection upon the requesting party within twenty-eight days of being served with the request, or a different period of time if the court provides one. Civ.R. 36(A)(1). "[U]nanswered requests for admissions cause the matter requested to be conclusively established for the purpose of the suit, *** and [] a motion for

summary judgment may be based on such admitted matters." *L.E. Sommer Kidron, Inc. v. Kohler*, 9th Dist. No. 06CA0044, 2007-Ohio-885, at ¶45. This Court has held that the conclusively established admissions "satisfy[y] the written answer requirement of Civ.R. 56(C) in the case of a summary judgment." Id., quoting *Klesch v. Reid* (1994), 95 Ohio App.3d 664, 675.

**{¶10}** The record reflects that on September 11, 2008 Cardservice filed a notice of service, indicating that it had served Farmer with a request for admissions. When Farmer failed to respond within twenty-eight days, Cardservice filed a motion to compel on October 17, 2008. The trial court granted the motion and gave Farmer an additional thirty days to respond to Cardservice's request. Once again, Farmer failed to respond. Even after Cardservice indicated in its summary judgment motion on December 24, 2008 that it was relying in part upon the admissions because they were "now deemed admitted," Farmer took no action. Accordingly, the admissions contained in Cardservice's unanswered request were conclusively established. *L.E. Sommer Kidron, Inc.* at ¶45. The request for admissions asked Farmer to admit, among other things, that he was responsible for the full balance and interest due on the account as specified in Cardservice's complaint. Farmer limits his argument on appeal to an assertion that Cardservice's request for admissions "[was] defective" and so he "had no legal duty to respond." Farmer fails to offer any explanation as to why he believes the request was defective. An appellant bears the burden of demonstrating error on appeal by developing an argument and supporting that argument with citations to the record and to applicable legal authority. App.R. 16(A)(7). "If an argument exists that can support this assignment of error, it is not this [C]ourt's duty to root it out." *Cardone v. Cardone* (May 6, 1998), 9th Dist. No. 18349, at *8. Consequently, we need not address Farmer's claim that Cardservice's request was defective.

**{¶11}** Moreover, our review of the record convinces us that Farmer's appeal is wholly frivolous. "Under App.R. 23, a frivolous appeal is one that presents no reasonable question for review." *W. Res. Logistics v. Hunt Machine & Mfg. Co.*, 9th Dist. No. 23124, 2006-Ohio-5070, at ¶14. Farmer provides this Court with an unsubstantiated, conclusory argument from which no appealable issue can be gleaned. The record reflects that Farmer's repeated failure to respond to discovery in the court below resulted in the conclusive establishment of Cardservice's claims against him. With the claims against him conclusively established, Farmer's wholly unsupported appeal epitomizes the very definition of frivolity.

**{¶12}** Once a court of appeals determines an appeal is frivolous, "it may require the appellant to pay reasonable expenses of the appellee including attorney fees and costs." App.R. 23. "This [C]ourt has previously held that a frivolous appeal has been grounds for the imposition of sanctions against [an] appellant." *W. Res. Logistics* at ¶14. We exercise our discretion in this case and require Farmer to pay $500 towards Cardservice's attorney fees as a sanction for unnecessarily consuming the resources of this Court and for imposing an improper burden upon Cardservice to develop and present its own argument on appeal. Farmer's sole assignment of error is overruled.

III

**{¶13}** Farmer's sole assignment of error is overruled. The judgment of the Barberton Municipal Court is affirmed. Farmer is ordered to pay $500 towards the attorney fees of Cardservice.

Judgment affirmed.

We order that a special mandate issue out of this Court, directing the Barberton Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

DICKINSON, J.
CONCURS

MOORE, P. J.
CONCURS IN JUDGMENT ONLY, SAYING:

**{¶14}** I concur in the majority's determination that the appeal in this matter is wholly frivolous. Inasmuch as the trial court had the opportunity to preside over the case, I would remand to allow the trial court in its discretion to decide the amount of any sanction.

APPEARANCES:

JEFFREY V. HAWKINS, Attorney at Law, for Appellant.

SCOTT RUSSO MILLER, Attorney at Law, for Appellee.