[Cite as *Bank of New York v. Brunson*, 2010-Ohio-3978.]

STATE OF OHIO))ss: COUNTY OF SUMMIT)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
THE BANK OF NEW YORK AS TRUSTEE Appellee v. JEANETTA BRUNSON, et al. Appellants	C.A. No. 25118 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV 2009 09 6557

DECISION AND JOURNAL ENTRY

Dated: August 25, 2010

BELFANCE, Judge.

{¶1} Appellant, Jeanetta Brunson appeals the judgment of the Summit County Court of Common Pleas that granted summary judgment in favor of Appellee, The Bank of New York. We reverse the judgment and remand the matter to the trial court.

BACKGROUND

{¶2} On December 31, 2003, Brunson executed a promissory note and mortgage in favor of National City Mortgage Co. The note and mortgage were subsequently assigned to The Bank of New York, as Trustee ("Bank"). On September 2, 2009, Bank filed a complaint in which it alleged that Brunson was in default and sought foreclosure on the home securing the promissory note.

{¶3} On October 14, 2009, Brunson, pro se, filed a request for mediation, a 21-day leave to plead, and an answer asserting several affirmative defenses.

{¶4} On October 21, 2009, Bank filed a motion for default judgment and a motion for summary judgment.

{¶5} On October 29, 2009, the trial court granted Bank's motion for summary judgment and ordered the foreclosure of Brunson's home.

{¶6} Brunson has appealed that decision, arguing (1) the trial court erred by granting Bank's motion for summary judgment nine days after the motion was served and (2) summary judgment was not appropriate because Brunson's answer to the complaint demonstrated material disputes of fact.

{¶7} Bank has not filed a brief in response to Brunson's merit brief. Accordingly, we are permitted to "accept [Brunson's] statement of the facts and issues as correct and reverse the trial court's judgment if [Brunson's] brief reasonably appears to sustain such action." *Hall v. Nazario*, 9th Dist. No. 07CA009131, 2007-Ohio-6401, at ¶8, citing App.R. 18(C).

NINE DAYS

{¶8} In her first assignment of error, Brunson contends that the trial court could not have granted summary judgment without providing a notice of a hearing and an opportunity for Brunson to respond to the motion. In the alternative, Brunson argues that the trial court's ruling was premature.

{¶9} The trial court is not required to hold an oral hearing on a motion for summary judgment and may instead consider the memoranda and evidentiary materials submitted by the parties. *Brown v. Akron Beacon Journal Publishing Co.* (1991), 81 Ohio App.3d 135, 139. The Supreme Court of Ohio has recognized that if an oral hearing is not held, the non-moving party should receive notice of the date its brief is due or notice "of the date on which the motion [for summary judgment] is deemed submitted for decision." *Hooten v. Safe Auto Ins. Co.*, 100 Ohio

St.3d 8, 2003-Ohio-4829, at ¶17. "A trial court's better practice is to schedule an explicit cutoff date for submission of materials on the motion for summary judgment and to set a date for any hearing. However, if a local rule provides notice of either of these dates, the trial court's scheduling of such dates is not an implicit requirement of Civ.R. 56." Id. at ¶35. Accordingly, the trial court need not provide any notice to the parties "if a local rule of court provides sufficient notice of the hearing date or submission deadlines." Id. at ¶33.

{¶10} In the instant matter, the trial court did not issue any order setting an oral hearing, delineating deadlines for briefs, or notifying the parties of the date upon which the court would deem the motion submitted for decision. Brunson argues that the applicable local rule of the Summit County Court of Common Pleas does not provide sufficient notice. We do not agree. With respect to motions for summary judgment, the rule states in pertinent part:

> "A party opposing a motion for summary judgment made pursuant to Civil Rule 56 may file a brief in opposition with accompanying evidentiary materials (as permitted by Civil Rule 56(C)) within fourteen (14) days of service of the motion. The movant may file a reply brief in support of the motion within ten (10) days of service of the brief in opposition." Loc.R. 7.14(C)(1).

The local rule provides a party opposing a motion for summary judgment fourteen days from the date of service of the summary judgment motion in which to file a brief in opposition. Id. If a brief in opposition is filed, the moving party then has ten days from the date of service of that motion in which to file a reply brief. Id. Pursuant to Loc.R. 7.14(C)(1), Brunson was permitted up to fourteen days to respond to Bank's motion for summary judgment. See, also, *Vinylux Products, Inc. v. Commercial Financial Group*, 9th Dist. No. 22553, 2005-Ohio-4801, at ¶¶8-9 (holding that Loc.R. 7.14(C)(1) grants the non-moving party fourteen days in which to file a motion in opposition to summary judgment). Although the local rule is clear, the trial court issued its decision on Bank's motion for summary judgment only nine days after the motion was

served on Brunson. "Civ.R. 56's procedural fairness requirements place significant responsibilities on all parties and judges to ensure that summary judgment should be granted only after all parties have had a fair opportunity to be heard." *Hooten* at ¶34. By prematurely ruling on Bank's motion for summary judgment, the court below did not provide Brunson with an opportunity to be heard, thus, we sustain Brunson's first assignment of error and reverse the trial court's order granting summary judgment. Further, we remand the matter to the trial court to allow Brunson time to respond to Bank's motion for summary judgment, and to allow for any timely response by Bank, before the trial court issues a ruling on Bank's motion. See *Midland Funding, LLC v. Starks*, 9th Dist. No. 23966, 2008-Ohio-2963, at ¶12.

DISPUTES OF FACT

{¶11} Brunson next argues that summary judgment was not proper because Brunson demonstrated material disputes of fact.

{¶12} Our resolution of Brunson's first assignment of error has rendered her second assignment of error moot, thus, we decline to address it. See App.R. 12(A)(1)(c).

CONCLUSION

{¶13} We sustain Brunson's first assignment of error and do not reach the merits of the second assignment of error. We reverse the judgment of the Summit County Court of Common Pleas granting summary judgment in favor of Bank and remand this matter to the trial court for proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, 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 Appellee.

EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

JOHN E. CODREA, Attorney at Law, for Appellant.

CARLA R. BULFORD, Attorney at Law, for Appellant.

MANBIR S. SANDHU, Attorney at Law, for Appellee.