

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

TIMEPAYMENTS CORP.

C. A. No. 10CA009818

Appellee

v.

SOOSO, INC., et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
AVON LAKE MUNICIPAL COURT
COUNTY OF LORAIN, OHIO
CASE No. CVF 0900310

Appellants

DECISION AND JOURNAL ENTRY

Dated: December 6, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellants, Sooso, Inc. (“Sooso”) and Samie Salti, appeal from the judgment of the Avon Lake Municipal Court in favor of Plaintiff-Appellee, Timepayments Corp. (“Timepayments”). This Court affirms.

I

{¶2} In April 2008, Timepayments entered into a lease agreement with Sooso and Salti whereby Timepayments agreed to finance the lease of certain check cashing equipment to Sooso from a third-party vendor, Tranzonix, Inc. Salti personally guaranteed the agreement. Although Sooso received the equipment it sought to lease, Timepayments only ever received one payment from Sooso. According to Salti, he never agreed to enter into the lease agreement. Salti claimed that someone forged his signature on both the lease and personal guarantee. He further claimed that someone at his company signed and sent Timepayments a check without his permission.

{¶3} On May 19, 2009, Timepayments filed suit against Sooso and Salti based on Sooso's default and Salti's breach of guarantee. The trial court held a bench trial on March 25, 2010. On April 8, 2010, the trial court found Sooso and Salti jointly and severally liable in the amount of \$9,290.52, plus interest.

{¶4} Sooso and Salti now appeal from the trial court's judgment and raise one assignment of error for our review.

II

Assignment of Error

"THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN ADMITTING APPELLEE'S EXHIBITS, INCLUDING THE PROMISSORY NOTE AT ISSUE, OVER APPELLANTS' OBJECTION, WHEN THE DOCUMENTS IN QUESTION DID NOT HAVE ORIGINAL SIGNATURES; THE DOCUMENTS DID NOT COMPORT WITH THE BEST EVIDENCE RULE AND NO FOUNDATION WAS LAID BY APPELLEE AUTHENTICATING THE EXHIBITS:

"1) THE EVIDENCE PRESENTED BY THE APPELLEE AT TRIAL WAS VIOLATIVE OF THE BEST EVIDENCE RULE, AND WHETHER THE TRIAL COURT ERRED IN ADMITTING AS EXHIBITS COPIES OF DOCUMENTS RECEIVED BY A PARTY OTHER THAN APPELLEE, VIA FACSIMILE TRANSMISSION, WITHOUT HAVING TO EXPLAIN WHY THE ORIGINALS WERE NOT AVAILABLE, IN VIOLATION OF EVID.R. 1001 THROUGH 1004, THUS VIOLATING APPELLANTS' STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO A FUNDAMENTALLY FAIR TRIAL; AND,

"2) THE JUDGMENT GRANTED BY THE TRIAL COURT, IN FAVOR OF PLAINTIFF, WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE WHERE THE DEFENDANT DENIED HE SIGNED FAXED CONTRACTS AND WHERE THE PLAINTIFF FAILED TO PRODUCE ANY PERSON WHO WITNESSES DEFENDANT SIGN THE CONTRACT."

{¶5} In their sole assignment of error, Sooso and Salti argue that the trial court erred by admitting Timepayments' exhibits because the exhibits did not comply with the best evidence rule, did not have original signatures, and were not properly authenticated. Sooso and Salti also

argue that the court's verdict is against the manifest weight of the evidence because the evidence tended to show that Salti never signed any agreement with Timepayments.

{¶6} Due to the inadequacy of the record presented on appeal, this Court cannot reach the merits of Sooso and Salti's assignment of error. The court reporter in this case was not present at the parties' bench trial. She prepared the trial transcript based on an audiotape recording. The sixty-seven page transcript contains, by this Court's count, two hundred ninety-one "indistinguishable[s]." The portion of the transcript to which Sooso and Salti point in order to prove that a non-party entity was responsible for obtaining Salti's alleged signature reads as follows:

"THE COURT: *** So it was submitted from whomever signed this on 4-9-08 (indistinguishable)?

"THE WITNESS: (indistinguishable.)

"THE COURT: (indistinguishable.)

"THE WITNESS: (indistinguishable) I'm assuming that it came probably (indistinguishable).

"THE COURT: All right. So it was somehow mailed by someone to the (indistinguishable)?

"THE WITNESS: Yeah, (indistinguishable.)

"THE COURT: Right.

"WITNESS: (indistinguishable.)"

The remainder of the transcript reads much the same way. At times, entire questions or responses are marked as "indistinguishable." At other times, portions of questions or responses are present, but it is impossible to determine whether the "indistinguishable[s]" refer to one word or many.

{¶7} The Ohio Rules of Appellate Procedure contain mechanisms for ensuring the adequacy of an appellant’s record. See, e.g., App.R. 9(C) (providing for the preparation of a statement of the evidence where transcript unavailable). If an appellant fails to take advantage of these mechanisms, he or she must bear the consequences of that failure as the party who has the burden of demonstrating error on appeal. *Shumate v. Shumate*, 9th Dist. No. 09CA009707, 2010-Ohio-5062, at ¶6, citing *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 19 (holding that it is an appellant’s burden to provide this Court with an adequate record in support of his or her assigned errors on appeal). This Court cannot review the merits of an appeal when an appellant’s arguments depend upon a “grossly inadequate” transcript. *In re C.S.*, 9th Dist. Nos. 04CA0044 & 04CA0045, 2004-Ohio-6078, at ¶8 (concluding sua sponte that a transcript was grossly inadequate where it contained numerous inaudible portions and that a review of the merits was not possible). Rather, this Court must presume regularity in the trial court proceedings. *Id.* at ¶9, citing *Rose Chevrolet, Inc.*, 36 Ohio St.3d at 19.

{¶8} The transcript in this case is “grossly inadequate,” as it is replete with “indistinguishable” portions, the contents of which are impossible to determine. Absent an adequate transcript, this Court cannot address Sooso and Salti’s arguments that the trial court erred by admitting certain evidence during trial or that the court’s verdict is against the manifest weight of the evidence. Instead, we must presume regularity and affirm the trial court’s judgment. *Shumate* at ¶9; *In re C.S.* at ¶8. Sooso and Salti’s sole assignment of error is overruled.

III

{¶9} Sooso and Salti’s sole assignment of error is overruled. The judgment of the

Avon Lake Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Avon Lake Municipal Court, County of Lorain, 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

MOORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

LAURYNMAE YELSKY, Attorney at Law, for Appellants.

JOHN S. SHELLEY, Attorney at Law, for Appellee.