

[Cite as *Capital One Bank v. Simes*, 2010-Ohio-558.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

CAPITAL ONE BANK	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23369
v.	:	T.C. NO. 08 CVF 01900
KISHA SIMES	:	(Civil appeal from Municipal Court)
Defendant-Appellant	:	

OPINION

Rendered on the 19th day of February, 2010.

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Attorney for Plaintiff-Appellee

KISHA SIMES, P. O. Box 3153, Dayton, Ohio 45401
Defendant-Appellant

DONOVAN, P.J.

{¶ 1} This matter is before the Court on the pro se Notice of Appeal of Kisha Simes, filed April 2, 2009. Capital One Bank (“Capital One”) did not file a brief in response.

{¶ 2} Capital One filed a complaint against Simes in March, 2008, alleging that she

owed \$1045.12 on her Capital One credit card account. Service of the complaint failed, and it was returned unclaimed. Capital One filed a written request for ordinary mail service with the clerk, pursuant to Civ.R. 4.6. The docket reflects that service of the complaint was accomplished and that Simes' answer was due on June 2, 2008.

{¶ 3} On June 2nd, Simes filed a “Motion to Dismiss, Presenting Defenses of Failure to State a Claim, of Lack of Service of Process, of Improper Venue, and of Lack of Jurisdiction.” Therein Simes argued in part that she is a corporation and that she is not subject to service within the Southern District of Virginia. Capital One opposed the motion. Simes then filed a document captioned, “Move this Court to Strike and Disregard Plaintiff’s Memorandum in Opposition and Move for Dismissal.” On September 15th, Simes filed a “Motion and Demand Dismissal Sponged (sic) from Credit Report Immediately without Prejudice & Unproper Filing of Second Summons of Civ.R. 4.4,” arguing that Capital One “did not file an affidavit as stated in Civ.R. 4.4.”

{¶ 4} Capital One filed its motion for summary Judgment on September 23rd, arguing that Simes failed to reply to Capital One’s combined interrogatories, requests for admissions and requests for production of documents, and accordingly, there was no genuine issue of material fact since, pursuant to Civ.R. 36(A), Capital One’s requests for admissions are deemed admitted. Admission # 19 provided, “Admit that the balance due and owing on the account, which is the subject matter of this lawsuit, is the amount set forth in Plaintiff’s Complaint.”

{¶ 5} On September 25th, the municipal court overruled Simes’ motions to dismiss and to strike. The municipal court determined in part that Simes is not a corporation, and

that Capital One “properly completed service” via ordinary mail. The municipal court granted summary judgment in favor of Capital One “in the principal amount of \$1045.12, together with accrued interest of \$189.90 through February 25, 2008, plus interest thereafter on the principal balance at the rate of 24.990% per annum, and costs.”

{¶ 6} Simes’ Notice of Appeal indicates that she is appealing from the March 4, 2009 Entry granting summary judgment in favor of Capital One. A copy of that Entry is attached to her Notice, as is a copy of the Entry overruling her motions.

{¶ 7} Simes’ brief does not set forth any assigned errors, and she does not argue that the trial court erred in granting summary judgment in favor of Capital One, despite her Notice of Appeal. Simes initially alleges that the judgment entries denying her motions and granting summary judgment are initialed and not signed by the municipal court judge. She then asserts the following “arguments”:

{¶ 8} “The appellant argues that the Ohio Civ.R. 4.4 was disregarded when Appellee and Court neglected to present an affidavit to the Appellant before publications were made regarding the case.

{¶ 9} “The Appellant also argues that the Constitution, Civil Rule, and Canon Code of Judicial Conduct have been broken by the Appellee and the Court causing negligence to be committed.”

{¶ 10} First, Simes offers only allegations regarding the “initials” of the municipal court judge, and we have no basis to conclude that the Entries are not properly signed, as required by Civ.R. 58. The Entries bear signatures and not punctuated initials, and Simes accordingly has failed to demonstrate that the journal entries are invalid. We note that

Civ.R.4.4 is addressed to service of process by publication. As the trial court correctly determined, Capital One perfected service by ordinary mail, pursuant to Civ.R. 4.6(D), and Civ.R.4.4 does not apply herein. Regarding Simes' allegations of negligence, she has failed to identify in the record any error for our review. See App.R. 16(A)(3). There being no merit to Simes' arguments, the judgments of the municipal court are affirmed.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

Joseph D. DeGiorgio
Kisha Simes
Hon. Daniel G. Gehres