

[Cite as *Ohio Neighborhood Fin., Inc. v. Dotson*, 2010-Ohio-3366.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

OHIO NEIGHBORHOOD FINANCE, INC.
DBA CASHLAND,

Plaintiff-Appellant,

vs.

TAMMY DOTSON,

Defendant-Appellee.

:

Case No. 09CA27

:

:

DECISION AND JUDGMENT ENTRY

:

APPEARANCES:

COUNSEL FOR APPELLANT: Anthony M. Sharett and M. Breck Valentine, Bricker & Eckler, L.L.P., 100 South Third Street, Columbus, Ohio 43215¹

CIVIL APPEAL FROM MUNICIPAL COURT
DATE JOURNALIZED: 5-24-10

ABELE, J.

{¶ 1} This is an appeal from a Lawrence County Municipal Court default judgment in favor of Ohio Neighborhood Finance, Inc., d/b/a Cashland (Cashland), plaintiff below and appellant herein, against Tammy Dotson (Dotson), defendant below.

{¶ 2} Appellant assigns the following error for review:

¹ Tammy Dotson did not enter an appearance during the trial court proceedings or on appeal.

“THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN REDUCING TO 5% PER ANNUM, THE INTEREST RATE ON THE DEBT IN THE DEFAULT JUDGMENT GRANTED IN FAVOR OF APPELLANT OHIO NEIGHBORHOOD FINANCE, INC.”

{¶ 3} On November 15, 2008, Dotson obtained a \$460 loan from Cashland. She promised to repay the loan at an interest rate of twenty-five percent (25%) per annum. She issued a \$506.84 check to Cashland for payment, but the check was returned for insufficient funds.

{¶ 4} Cashland commenced the instant action and requested, inter alia, damages in the amount of the loan together with the agreed interest. Dotson did not answer the complaint. On August 13, 2009, Cashland filed a motion for default judgment and submitted a proposed entry that provided for \$551.46 in damages and interest at the rate of “25% per annum.” The trial court signed the proposed entry, but struck the provision for interest at the rate of 25% and substituted, in its place, “5% per annum.” This appeal followed.

{¶ 5} In its sole assignment of error, Cashland asserts that the trial court erred by reducing the interest rate. We agree.

{¶ 6} This issue has been before our Fifth District colleagues on three recent occasions and, in each case, they reversed a default judgment that reduced the twenty-five percent (25%) contracted interest rate to a five percent (5%) interest rate. See, e.g., Ohio Neighborhood Finance, Inc. v. Evert, Knox App. No. 09CA34, 2010-Ohio-797, at ¶¶6-11; Ohio Neighborhood Finance, Inc. v. Wilcox, Knox App. No. 09CA33, 2010-Ohio-796, at ¶¶6-11; Ohio Neighborhood Finance, Inc. v. Allen,

Muskingum App. No. CT2009-40, 2009-Ohio-6624. We agree with those cases and follow their reasoning. R.C. 1321.571 allows Cashland to contract for interest not to exceed an annual rate of twenty-five percent (25%). When a written contract contains a legal rate of interest, that rate should be applied to the judgment. Dutro Used Cars, Inc. v. Taylor, Muskingum App. No. CT08-50, 2009-Ohio-2908, at ¶9; Dutro Used Cars, Inc. v. Spohn, Muskingum App. No. CT08-47, 2009-Ohio-2912, at ¶9. The right to enter into contracts is “fundamental” in Ohio, see Wilborn v. Bank One Corp., 121 Ohio St.3d 546, 906 N.E.2d 396, 2009-Ohio-306, at ¶8, and courts should not re-write contracts absent an express statutory command from the Ohio General Assembly. Finding no such command in this case, we believe that the trial court erred by reducing the interest rate.

{¶ 7} Accordingly, appellant's assignment of error is well-taken and is hereby sustained. Thus, we hereby modify the judgment pursuant to App.R. 12(A)(1)(a) to provide that Cashland is entitled to interest on its judgment at the rate of twenty-five percent (25%) per annum.

JUDGMENT AFFIRMED
AS MODIFIED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed as modified and that appellant recover of appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of

the Rules of Appellate Procedure.
Judgment & Opinion

McFarland, P.J. & Harsha, J.: Concur in
For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.