[Cite as *Babbitt & Weiss, L.L.P. v. Flynn*, 2011-Ohio-4835.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Babbitt & Weis, LLP,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-2 (C.P.C. No. 10CVH-03-3810)
Patrick M. Flynn,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 22, 2011

Thomas E. Friedman, for appellee.

Patrick M. Flynn, pro se.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Appellant, Patrick M. Flynn, appeals the judgment rendered by the Franklin County Court of Common Pleas in favor of appellee, Babbitt & Weis, LLP. For the reasons that follow, we affirm.

{¶2} This appeal presents a straightforward procedural posture. Appellee filed its complaint on March 10, 2010 and presented claims for breach of contract and for an amount due on an account. On March 16, 2010, the Franklin County Clerk of Courts sent the complaint via certified mail to appellant's address in Dublin, Ohio. This initial attempt at service failed as unclaimed. As a result, on April 13, 2010, appellee requested service

via ordinary mail at the same address, which the Franklin County Clerk of Courts issued on April 16, 2010. This attempt at service was never returned by the postal authorities with an endorsement showing a failure of delivery. Appellant never responded to the complaint and, on June 17, 2010, appellee filed a motion for default judgment. This motion was unopposed.

{¶3} On July 26, 2010, the trial court granted a default judgment and thereafter referred the matter to a magistrate for a damages hearing. The court's order of reference was sent to appellant's Dublin address.

{¶4} On September 23, 2010, appellant appeared before the magistrate for the damages hearing. In a decision filed on September 27, 2010, the magistrate found that appellee was entitled to $25,358.55 in damages and recommended that the trial court enter judgment in this amount. The magistrate's decision described the method for filing objections and was mailed to appellant's Dublin address.

{¶5} On October 12, 2010, appellant filed objections to the magistrate's decision. Within these objections was a challenge to the finding that appellant had been served with a copy of the complaint. Appellant also challenged the magistrate's refusal to grant a continuance to the damages hearing. Appellant also argued that appellee suffered no damages based upon the allegations of the complaint. Finally, appellant challenged the substantive allegations presented in the complaint. Appellee filed a response to appellant's objections and argued that appellant had failed to file a transcript of the damages hearing in accordance with Civ.R. 53. On November 23, 2010, the trial court overruled appellant's objections. Then, on December 16, 2010, the court issued

judgment in favor of appellee. It is from this judgment that appellant has timely appealed and raises the following assignments of error:

> ASSIGNMENT OF ERROR I
> THE TRIAL COURT ERRED IN ASSUMING THAT SERVICE PERFECTED WHEN IT WAS NOT AND TAKING AWAY MR. FLYNN[']S RIGHT TO RESPOND AND DEMAND A JURY TRIAL AND GET DISCOVERY.
>
> ASSIGNMENT OF ERROR II
> THE FACT THAT PLAINTIFF DID NOT REPRESENT MR. FLYNN PROPERLY IN ACCORD[A]NCE WITH PROPER LAW[,] AS THIS VERY COURT SAID.

{¶6} Service of process is necessary to notify interested parties of an action and afford them an opportunity to respond. *Akron-Canton Regional Airport Auth. v. Swinehart* (1980), 62 Ohio St.2d 403, 406, quoting *Mullane v. Cent. Hanover Bank & Trust Co*. (1950), 339 U.S. 306, 314, 70 S.Ct. 652, 657. The duty falls upon a plaintiff to accomplish proper service. *Cincinnati Ins. Co. v. Emge* (1997), 124 Ohio App.3d 61, 63. A rebuttable presumption of proper service attaches when a plaintiff follows the civil rules on service. *Calvary Invests., L.L.C. v. Clevenger*, 6th Dist. No. L-05-1103, 2005-Ohio-7003, ¶10; see also *State ex rel. Fairfield Cty. CSEA v. Landis*, 5th Dist. No. 2002 CA 00014, 2002-Ohio-5432, ¶17. A defendant may rebut this presumption by presenting sufficient evidence. *Jacobs v. Szakal*, 9th Dist. No. 22903, 2006-Ohio-1312, ¶14, quoting *Rafalski v. Oates* (1984), 17 Ohio App.3d 65, 66.

{¶7} Civ.R. 4.6 permits service to be completed by ordinary mail if an attempt at service via certified mail fails as unclaimed. In these circumstances, "[s]ervice shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery." Civ.R. 4.6(D).

{¶8} Again, in this matter, service via certified mail failed as unclaimed. Service via ordinary mail was then attempted. The ordinary mail envelope was never returned by the postal authorities as having failed. As a result, a rebuttable presumption of proper service upon appellant arose.

{¶9} The record is completely devoid of evidence to rebut this presumption. Instead, appellant simply contends that he never received the summons and the complaint. According to the magistrate's decision, appellant may have offered testimony on the issue of service during the September 23, 2010 damages hearing. However, appellant never filed the transcript from this hearing. Thus, we cannot find error in the magistrate's conclusion that appellant's testimony was not credible.

{¶10} As a result, we find that the trial court did not err in granting a default judgment in favor of appellee. We therefore overrule appellant's first assignment of error.

{¶11} Within appellant's second assignment of error, he seemingly challenges the legal services appellee provided on his behalf nearly a decade ago. Because he raises this argument for the first time in this appeal, we find that he has waived any such challenge. We accordingly overrule appellant's second assignment of error.

{¶12} Based upon the foregoing, we overrule appellant's two assignments of error and, accordingly, affirm the judgment rendered by the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER and TYACK, JJ., concur.

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