[Cite as *Powers v. Gawry*, 2009-Ohio-5061.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

DAN POWERS,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2009-G-2883**
- vs -	:	
FRED GAWRY,	:	
Defendant,	:	
LORI GAWRY,	:	
Defendant-Appellant.	:	

Civil Appeal from the Chardon Municipal Court, Case No. 2008 CVI 1628.

Judgment: Affirmed.

Todd E. Petersen, Petersen & Ibold, Inc., 401 South Street, Bldg. 1-A, Chardon, OH 44024-1495 (For Plaintiff-Appellee).

James R. Flaiz, Carrabine & Reardon Co., L.P.A., 7445 Center Street, Mentor, OH 44060 (For Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, Lori Gawry, appeals from the January 12, 2009 judgment entry of the Chardon Municipal Court, overruling her objections to the magistrate's decision and denying her motion to vacate judgment.

{¶2} On October 16, 2008, appellee, Dan Powers, filed a small claims complaint against appellant and her ex-husband, Fred Gawry, for failure to pay for services rendered in the amount of $3,000, plus interest and costs.[1]

{¶3} The trial court scheduled a hearing for November 25, 2008. On October 22, 2008, appellee filed a motion to continue, which was granted by the trial court on October 31, 2008.

{¶4} The matter was rescheduled for December 2, 2008. Certified mail was returned as unclaimed with respect to appellant on November 6, 2008. It was reissued by regular mail with certificate of mailing that same day.

{¶5} A hearing was held before the magistrate on December 2, 2008. Appellee was present, however, appellant and Fred Gawry failed to appear.

{¶6} Pursuant to his December 3, 2008 decision, the magistrate recommended that since service had not been obtained on Fred Gawry, the action should be dismissed, without prejudice, against him, and judgment should be rendered against appellant in the amount of $3,000 plus interest at the rate of 24 percent per annum from May 28, 2007, plus costs.

{¶7} On December 10, 2008, the trial court adopted the magistrate's decision. The trial court ordered appellee to recover against appellant the sum of $3,000 plus interest at the rate of 24 percent per annum from May 28, 2007, and costs of $115, as well as dismissed the action, without prejudice, against Fred Gawry.

{¶8} On December 16, 2008, appellant filed objections to the magistrate's December 3, 2008 decision and a motion to vacate the trial court's December 10, 2008 judgment. Appellee filed a response on January 2, 2009.

1. Fred Gawry is not a named party to the instant appeal.

{¶9} Pursuant to its January 12, 2009 judgment entry, the trial court overruled appellant's objections to the magistrate's decision and denied her motion to vacate judgment. It is from that judgment that appellant filed a timely appeal, raising the following assignment of error:

{¶10} "THE TRIAL COURT ERRED WHEN IT SCHEDULED THE SMALL CLAIMS TRIAL LESS THAN TWENTY-EIGHT (28) DAYS AFTER SERVICE ON APPELLANT."

{¶11} In her sole assignment of error, appellant argues that the trial court erred by scheduling the small claims hearing less than 28 days after service. We disagree.

{¶12} "*** [T]he goal of small claims court is *** to provide fast and fair adjudication as an alternative to the traditional judicial proceedings. For example, attorneys may appear, but are not required to appear, on behalf of any party in small claims matters. R.C. 1925.01(D). Jurisdiction of the small claims division is limited to $3,000, and there is no subject-matter jurisdiction over claims for libel, slander, replevin, malicious prosecution, or abuse of process. R.C. 1925.02(A)(1) and (2)(a)(i). Claims for punitive damages, exemplary damages, and prejudgment attachment are not permitted. R.C. 1925.02(A)(2)(a)(iii) and 1925.07. There is no jury in small claims court. R.C. 1925.04(A). Since claims must be set for hearing within 15 to 40 days after the complaint is filed, cases move quickly. R.C. 1925.04(B). The hearings are simplified, as neither the Ohio Rules of Evidence nor the Ohio Rules of Civil Procedure apply. See Evid.R. 101(C)(8); Civ.R. 1(C)(4). Thus, by design, proceedings in small claims courts are informal and geared to allowing individuals to resolve uncomplicated disputes quickly and inexpensively. Pro se activity is assumed and encouraged. The

process is an alternative to full-blown judicial dispute resolution." *Cleveland Bar Assn. v. Pearlman*, 106 Ohio St.3d 136, 2005-Ohio-4107, at ¶15.

{¶13} Here, appellant relies on *D.E. Plumbing v. Basel*, 7th Dist. No. 02AP07777, 2002-Ohio-7181, for the proposition that the trial court should not have held a hearing until 28 days after the date of mailing of the summons.[2] In *Basel*, the appellant was never served with notice nor had any knowledge of the suit due to an incorrect address. Id. at ¶2-3. The trial court held a hearing, in which the appellee only appeared, and entered judgment in the appellee's favor. Id. at ¶2. The appellant later filed a motion to vacate the judgment. Id. at ¶3. The Seventh District held that the trial court erred in failing to provide the appellant with 28 days in which to answer the complaint. Id. at ¶10.

{¶14} In the case sub judice, the record establishes that service by regular mail was sent to appellant on November 6, 2008, 26 days before the December 2, 2008 hearing. Unlike *Basel*, there is no evidence nor does appellant provide any indication that service by regular mail was returned as undeliverable.

{¶15} Civ.R. 1(C) provides the exceptions to the general applicability of the Rules of Civil Procedure. Civ.R. 1(C)(4) states: "[t]hese rules, to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure *** in small claims matters under Chapter 1925, Revised Code ***." Because an answer is not required in small claims cases, the 28-day answer period is inapplicable. See *Pennington Paving, Inc. v. Bloedel*, 2d Dist. No. 2009CA2, 2009-Ohio-2425, at ¶13; *Miller v. McStay*, 9th Dist. No. 23369, 2007-Ohio-369, at ¶8. Rather, R.C. 1925.04

2. We note that *Basel* has not been cited by any court, including the Seventh District itself, positively or negatively, in more than six years since it was issued.

specifically contemplates shorter pre-hearing periods. R.C. 1925.04(B) provides in part: "[t]he time set for such trial shall be not less than fifteen or more than forty days after the commencement of the action." The record establishes that the trial court properly complied with the dictates of R.C. 1925.04(B).

{¶16} In addition, appellant contends that the trial court erred by adopting the magistrate's decision before the expiration of the 14-day objections period. We disagree.

{¶17} Civ.R. 53(D)(3)(b)(i) provides in part: "[a] party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i). ***."

{¶18} Civ.R. 53(D)(4)(e)(i) states: "[t]he court may enter a judgment either during the fourteen days permitted by Civ.R. 53(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by Civ.R. 53(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered."

{¶19} In the case at bar, again, a hearing was held before the magistrate on December 2, 2008. The magistrate filed his decision on December 3, 2008. The trial court adopted the magistrate's decision within the 14-day objection period on December 10, 2008. Appellant filed timely objections to the magistrate's decision on December

16, 2008. The trial court overruled appellant's objections on January 12, 2009. Thus, the record establishes that the trial court complied with Civ.R. 53(D)(4)(e)(i).

{¶20} For the foregoing reasons, appellant's sole assignment of error is not well-taken. The judgment of the Chardon Municipal Court is affirmed. It is ordered that appellant is assessed costs herein taxed. The court finds there were reasonable grounds for this appeal.

CYNTHIA WESTCOTT RICE, J., concurs,

MARY JANE TRAPP, P.J., concur in judgment only.