

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

SHARON BERG

Appellee

v.

ANGELA E. REGIMBAL

Appellant

C. A. No. 21477

APPEAL FROM JUDGMENT
ENTERED IN THE
AKRON MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 02 CVF 10729

DECISION AND JOURNAL ENTRY

Dated: August 20, 2003

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

SLABY, Presiding Judge.

{¶1} Appellant, Angela Regimbal, appeals from the judgment of the Akron Municipal Court that denied her motion to vacate the judgment. We affirm.

{¶2} On November 4, 2002, Appellee, Sharon Berg, filed a complaint for breach of contract against Appellant in the Akron Municipal Court. In response, Appellant moved to dismiss the complaint on the basis that venue was improper; however, the trial court dismissed Appellant's motion because she failed to appear. Subsequently, Appellee moved for a default judgment, and the trial court granted this motion. Appellant then moved to vacate the judgment and contended the trial court lacked personal jurisdiction. The trial court denied Appellant's motion. Appellant now timely appeals and raises one assignment of error for review.

ASSIGNMENT OF ERROR

“The municipal court erred by assuming inpersonam [sic.] jurisdiction over [Appellant] and therefore prematurely scheduled a hearing for January 7, 2003. The court also erred by granting a default judgment to [Appellee] before settling the issue of jurisdiction.”

{¶3} In her sole assignment of error, Appellant avers that the trial court erred when it scheduled a hearing regarding Appellant's motion to dismiss and granted Appellee's motion for default judgment because it had not resolved the issue as to whether it had in personam jurisdiction over Appellant. We disagree.

{¶4} In the instant case, a review of the record reveals that Appellant never argued the trial court lacked in personam jurisdiction before scheduling the hearing or granting the motion for default judgment. Although Appellant moved to dismiss the complaint before the scheduled hearing and the decision on Appellee's motion, Appellant solely argued in this motion that the Akron

Municipal Court was not the proper venue. It was not until after the trial court scheduled the hearing on Appellant's motion and granted Appellee's motion for a default judgment that Appellant moved to vacate the judgment for want of jurisdiction. At this juncture, Appellant contended, for the first time, that the trial court lacked in personam jurisdiction. Accordingly, as Appellant did not raise the issue of in personam jurisdiction in the trial court prior to the scheduled hearing or the entry of default, it was not properly before the trial court. Consequently, we need not address this issue for the first time on appeal. See *Schade v. Carnegie Body Co.* (1982), 70 Ohio St.2d 207, 210; *Thatcher v. Goodwill Industries of Akron* (1997), 117 Ohio App.3d 525, 536. Appellant's sole assignment of error is overruled.

{¶5} Appellant's assignment of error is overruled. The judgment of the Akron Municipal Court is affirmed.

Judgment affirmed.

LYNN C. SLABY
FOR THE COURT

BATCHELDER, J.
CONCURS

BAIRD, J.
DISSENTS, SAYING:

{¶6} The order granting default judgment was final and appealable when it was made. There was no appeal therefrom filed within thirty days. This court, therefore, has no jurisdiction to do anything with respect to that order.

APPEARANCES:

ANGELA E. REGIMBAL, 7366 Akron Avenue, N. W., Canal Fulton, Ohio 44614, Appellant.

SHARON BERG, Attorney at Law, 754 Kenmore Boulevard, Akron, Ohio 44314, Appellee.