[Cite as *Ford Motor Credit Co., L.L.C., v. Ryan & Ryan, Inc.*, 2010-Ohio-2905.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ford Motor Credit Co., L.L.C.,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-809 (C.P.C. No. 07CVH-05-6566)
Ryan & Ryan, Inc. et al.,	:	(ACCELERATED CALENDAR)
Defendants-Appellees,	:	
(James M. Ryan,	:	
Defendant-Appellant).	:	

D E C I S I O N

Rendered on June 24, 2010

Weltman, Weinberg & Reis Co., LPA, and *Andrew J. Sonderman*, for plaintiff-appellee.

James M. Ryan, pro se.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Defendant-appellant, James M. Ryan ("appellant"), appeals from the judgment of the Franklin County Court of Common Pleas granting summary judgment in favor of plaintiff-appellee, Ford Motor Credit Co., L.L.C. ("appellee").

{¶2} This matter arises out of a promissory note and security agreement ("agreement"), executed on October 31, 2001, by Ryan & Ryan, Inc., for the purchase of a Mercury Villager ("Villager"). Appellant executed the agreement as a "co-buyer" and

signed a "Notice to Cosigner" stating that if the borrower failed to pay, appellant would have to pay up to the full amount of the debt including late fees or collection costs. After Ryan & Ryan, Inc. defaulted on the note, appellee made a demand for payment, but it was rejected. Thereafter, appellee filed a complaint in the Franklin County Municipal Court on November 13, 2006, seeking damages of $7,231.56. On January 18, 2007, appellant filed an answer and counterclaim seeking damages in excess of $25,000, resulting in the matter being transferred to the common pleas court.

{¶3} On May 27, 2009, appellee filed a renewed motion to dismiss counterclaims and a motion for summary judgment. On August 20, 2009, the trial court rendered a decision granting appellee's motions for summary judgment and to dismiss counterclaims. On August 26, 2009, appellant voluntarily dismissed his counterclaims, and on September 18, 2009, the trial court filed a judgment entry rendering this matter final and appealable.

{¶4} This appeal followed, and appellant brings the following six assignments of error for our review:

> [1.] The Trial Court Erred in that the September 18, 2009 Entry does not meet the requirements of Section 2505.02 Ohio Revised Code and Civ. Rule 54(B) as there are Issues, rights and liabilities still before the Court that have Not been fully adjudicated and the Court failed to include Civ. Rule 54(B) language of "no just reason for delay" In its Entry of September 18, 2009 in support of a Determination that the Entry is a final appealable Interlocutory Order.
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> [2.] The Trial Court Erred by considering in its deliberations a partial transcript purportedly from case # 06 CVH 6659 to the prejudice of Appellant.
>
> [3.] The Trial Court Erred by failing to consider the "note" as part of the Retail Installment Contract for personal use

> thereby eliminating the Court[']s consideration of Defendants defenses available under the Retail Installment Sales Act, consumer Sales Practices Act, Fair Debt Collection Act, and Section 433.02 Title 16 C.F.R. (Notice of Preservation of Claims and Defenses), failure to Complete Truth in Lending disclosures as well as The Court failed to consider Defendant James M. Ryan's Co-ownership of the Villager all to the clear prejudice of Defendant as the Retail Installment Contract permits Defenses, Claims and facts that would permit reasonable minds to come to differing conclusions considering these genuine issues of material facts which the Trial Court failed to consider.
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> [4.] The Trial Court Erred in its computation of the Principal balance due of $7,231.56 and daily interest of $67.76 from November 9, 2006.
>
> [5.] The Trial Court Erred in finding Appellant made a personal guaranty of the "note" with joint liability.
>
> [6.] The Trial Court, Judge Charles A. Schneider, abused his discretion by failing to recuse (withd[r]aw) from the case for the reason of his admitted very close relationship with FMCC's Counsel Andrew J. Sonderman Esq. which the Court conceded was a[n] issue and needed to disclose which raises the possibility of partiality which Appellant believes has been shown in this case.

{¶5} In his first assignment of error, appellant contends this court lacks jurisdiction over this matter because we are not presented with a final appealable order. According to appellant, there are issues, rights and liabilities still before the trial court that have not yet been adjudicated, and the trial court failed to include language from Civ.R. 54(B). However, it is clear that the trial court granted summary judgment in favor of appellee on all claims, and appellant fails to identify any claim or claims that remain pending.[1] Additionally, Civ.R. 54(B) states that a court may enter final judgment as to one

[1] As mentioned previously, the trial court also granted appellee's motion to dismiss counterclaims, but appellant voluntarily dismissed his counterclaims prior to the trial court entering judgment on its decision. Therefore, our discussion concerns only the summary judgment motion.

or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay. Because no claims remain pending in the trial court, Civ.R. 54(B) is inapplicable here. *Commercial Natl. Bank v. Deppen* (1981), 65 Ohio St.2d 65 (Civ.R. 54(B) "no just reason for delay" language only applicable when a court enters final judgment as to one or more but fewer than all of the claims or parties). Accordingly, appellant's first assignment of error is overruled.

{¶6} This matter was decided in the trial court by summary judgment, which under Civ.R. 56(C) may be granted only when there remains no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to but one conclusion, that conclusion being adverse to the party opposing the motion. *Tokles & Son, Inc. v. Midwestern Indemn. Co.* (1992), 65 Ohio St.3d 621, 629, citing *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64. Additionally, a moving party cannot discharge its burden under Civ.R. 56 simply by making conclusory assertions that the nonmoving party has no evidence to prove its case. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. Rather, the moving party must point to some evidence that affirmatively demonstrates that the nonmoving party has no evidence to support his or her claims. Id.

{¶7} An appellate court's review of summary judgment is de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588; *Bard v. Society Natl. Bank, nka KeyBank* (Sept. 10, 1998), 10th Dist. No. 97APE11-1497. Thus, we conduct an independent review of the record and stand in the shoes of the trial court. *Jones v. Shelly Co.* (1995), 106 Ohio App.3d 440, 445. As such, we must affirm the trial court's judgment if any of the grounds raised by the movant at the trial court are found to support it, even if

the trial court failed to consider those grounds. See *Dresher*, supra; *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶8} In his second assignment of error, appellant contends it was error for the trial court to rely on a partial transcript of his deposition taken in another case. Initially, we note there is no indication the trial court relied on such testimony. The deposition is mentioned by the trial court in two places of the trial court's decision. The first reference noted that in addition to supporting its position with documentation and various affidavits "[appellee] also cites [appellant's] deposition." (Aug. 24, 2009 Decision at 5.) The second reference is setting forth appellant's position "that [appellant's] deposition testimony is from another case and does not admit to a default." (Decision at 6.) Other than these two instances, there is no other reference to the deposition testimony. Thus, there is no indication whether or not the trial court relied on the same when rendering the decision.

{¶9} Secondly, our review of this matter is de novo. As will be discussed infra, appellee met its initial burden under Civ.R. 56 establishing there was no genuine issue of material fact and that it was entitled to judgment as a matter of law. This was done without consideration of the partial deposition testimony; thus, to the extent it can be argued that the trial court erroneously relied on the testimony, such error is harmless and does not warrant a reversal of the trial court's decision. Accordingly, we overrule appellant's second assignment of error.

{¶10} In his third assignment of error, appellant contends because he is a co-owner of the vehicle and the vehicle was for personal use, he was entitled to defenses available under the "Retail Installment Sales Act, Consumer Sales Practice Act, Fair Debt Collection Act and Section 433.02, Title 16 CFR." (Appellant's brief at 9.) According to

appellant, when construed together, it is clear the note and retail installment contract establish him as a "consumer" of the vehicle. The undisputed evidence, however, belies appellant's position.

{¶11} The note and security agreement denote the purchaser of the Villager as "Ryan & Ryan, Inc." with appellant signing as a "co-buyer" and a "co-borrower," and appellant also signed a "Notice to Cosigner" that denotes appellant was being asked to guarantee the debt. Another purchase agreement dated October 13, 2001, states Ryan & Ryan, Inc. is the purchaser of the Villager. Additionally, the memorandum title for the Villager lists Ryan & Ryan, Inc. as the *owner* of the vehicle, and appellant's affidavit states he executed a purchase contract "on behalf of Ryan & Ryan, Inc." Given the undisputed evidence in the record, we find no error in the trial court's determination that the purchaser of the vehicle at issue was Ryan & Ryan, Inc., a corporation, and that this was not a consumer transaction. Accordingly, we overrule appellant's third assignment of error.

{¶12} In his fourth assignment of error, appellant contends the trial court erred in its computation of the principal balance due of $7,231.56, plus accrued interest in the amount of $67.76 through November 9, 2006, and interest thereafter on the principal balance at the statutory rate per annum and costs. According to appellant, the principal balance is only $3,761.47. Initially, we note appellee has provided evidence establishing that $7,231.56 remained as the principal balance and accrued interest through November 9, 2006 of $67.76 via the affidavit of its center operations manager, who is the representative and keeper of records for appellee. The affidavit of the center operations manager also included reference to the account payment history for the Villager from the

beginning of the loan to the date of the loan's charge off reflecting a principal balance remaining of $7,231.56. In response, appellant has submitted only his affidavit, which states: "At all times during the pending of this case and before denied he has denied owing Ford Motor Credit Company the sum of $7,231.56." (Affidavit at 1.) This, self-serving affidavit, which was not corroborated by any evidence, is insufficient to establish the existence of material issues of fact. *Fifth Third Bank v. Jones-Williams,* 10th Dist. No. 04AP-935, 2005-Ohio-4070, ¶27; see also *Bell v. Beightler,* 10th Dist. No. 02AP-569, 2003-Ohio-88 ("Otherwise, a party could avoid summary judgment under all circumstances solely by simply submitting such a self-serving affidavit containing nothing more than bare contradictions of the evidence offered by the moving party."). Based on the foregoing, we find appellant has not satisfied his reciprocal burden as the nonmoving party to identify evidence to demonstrate that any genuine issue of material fact exists that must be preserved for trial. Accordingly, we overrule appellant's fourth assignment of error.

{¶13} In his fifth assignment of error, appellant contends the trial court erred in finding appellant made a personal guaranty on the note with joint liability. It appears appellant is attempting to argue that because the "Notice to Cosigner" states: "This notice is not the contract that makes you liable for the debt," he cannot be held personally liable on the subject loan. Appellant's position is untenable as the evidence demonstrates the note and agreement executed by appellant establish him as a cosigner for Ryan & Ryan, Inc., the purchaser. The Notice to Cosigner signed by appellant as "cosigner" states the following:

> You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.
>
> You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.
>
> The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of YOUR credit record.
>
> This notice is not the contract that makes you liable for the debt.

{¶14} While indeed this notice indicates that it is not the contract that makes appellant personally liable on the debt, such is irrelevant because the accompanying contracts undisputedly make appellant personally liable. Accordingly, appellant's fifth assignment of error is overruled.

{¶15} In his sixth assignment of error, appellant contends the trial judge abused his discretion by failing to recuse himself from the case in light of his "very close relationship" with appellee's counsel. (Appellant's brief at 13.) According to appellant, the trial judge disclosed his friendship with appellee's counsel at a pretrial conference, and the parties, including appellant's counsel, indicated they were comfortable with the trial judge remaining on the case.

{¶16} Despite this acknowledgment, appellant contends on appeal that the trial judge should have recused himself from this case. It is well-settled that:

> If a [party] believed the trial judge was biased or prejudiced against him, his remedy was to file an affidavit of prejudice

> with the clerk of the Ohio Supreme Court. R.C. 2701.03 "provides the exclusive means by which a litigant may claim that a common pleas judge is biased and prejudiced." *Jones v. Billingham* (1995), 105 Ohio App.3d 8, 11. Only the Chief Justice of the Ohio Supreme Court or his designee has the authority to determine a claim that a common pleas court judge is biased or prejudiced. *Beer v. Griffith* (1978), 54 Ohio St.2d 440, 441-442. Thus, an appellate court is without authority to pass upon issues of disqualification or to void a judgment on the basis that a judge should be disqualified for bias or prejudice. Id.; *State v. Ramos* (1993), 88 Ohio App.3d 394, 398.

Polivka v. Cox, 10th Dist. No. 02AP-1364, 2003-Ohio-4371, ¶29.

{¶17} Here, the record does not indicate that appellant raised a claim of prejudice or bias by filing an affidavit of prejudice with the Supreme Court of Ohio pursuant to R.C. 2701.03. Thus, we lack authority to assess appellant's claim that the trial court's actions were the result of bias and prejudice.

{¶18} Even if we had authority to determine appellant's allegations, however, we would overrule this assigned error. " 'A judge is presumed not to be biased or prejudiced, and a party alleging bias or prejudice must present evidence to overcome the presumption.' " *Wardeh v. Altabchi*, 158 Ohio App.3d 325, 2004-Ohio-4423, ¶20, citing *In re Disqualification of Kilpatrick* (1989), 47 Ohio St.3d 605, 606, and *Eller v. Wendy's Internatl., Inc.* (2000), 142 Ohio App.3d 321, 340. " 'The existence of prejudice or bias against a party is a matter that is particularly within the knowledge and reflection of each individual judge and is difficult to question unless the judge specifically verbalizes personal bias or prejudice toward a party.' " *Wardeh* at ¶20, quoting *Eller*. A judge's rulings of law are legal issues, subject to appeal, and are not by themselves evidence of bias or prejudice. *Okocha v. Fehrenbacher* (1995), 101 Ohio App.3d 309, 322.

{¶19} In the record, appellant identifies what he terms "ex parte" communications that resulted in a stay of a prior "Order to Return a Vehicle to James M. Ryan." (Appellant's brief at 14.) First we note that this stay order relates to appellant's counterclaim that he voluntarily dismissed prior to the trial court's entry of final judgment in this case. Secondly, appellant's vague and unsupported accusations of improper conduct are insufficient to overcome the presumption of judicial integrity. *Cooke v. United Dairy Farmers*, *Inc.*, 10th Dist. No. 05AP-1307, 2006-Ohio-4365, ¶46. Accordingly, we overrule appellant's sixth assignment of error.

{¶20} For the foregoing reasons, appellant's six assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed. Additionally, on February 10, 2010, appellant filed a "motion to compel the clerk of the Franklin County Common Pleas Court to file with this Court the corrected record of case number 07CVH 05-6566, forthwith." Upon review, said motion is denied.

Motion denied; judgment affirmed.

BRYANT and KLATT, JJ., concur.

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