

[Cite as *White v. Fifth Third Bank, Inc.*, 2010-Ohio-4611.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Darrell White,	:	
Plaintiff-Appellant,	:	
v.	:	No. 10AP-236
Fifth Third Bank, Inc.,	:	(C.P.C. No. 09CVH06-8546)
Defendant-Appellee.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on September 28, 2010

Darrell White, pro se.

Dinsmore & Shohl LLP, and Adam R. Todd, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, Darrell White ("appellant"), filed this appeal seeking reversal of a judgment by the Franklin County Court of Common Pleas granting summary judgment in favor of appellee, Fifth Third Bank, Inc. ("appellee"). For the reasons that follow, we affirm.

{¶2} Appellant filed the complaint in this action on June 8, 2009. The heading on the complaint stated that it was a "COMPLAINT TO RESOLVE MATTER OF CONTRACTUAL DISPUTE." The only factual statement made in the complaint was that "ON JULY-AUGUST-SEPT. 2007 I WAS DENIED ENTRY TO WITHDRAW FUNDS AFTER DEPOSITING AND WITHDRAWING FUNDS ON THAT ACCOUNT I WAS DENIED ACCESS MAKING ME LOSE OUT FINACIAL ENDEAVOR'S AND CAUSING ME FINACIAL SUFFRAGE BECAUSE OF THE DENIAL." (Sic passim.) The complaint sought compensatory damages, plus punitive damages in the amount of 1.412 trillion dollars. Appellee filed an answer generally denying liability.

{¶3} During the pendency of the action, appellant filed a large number of motions (over 40, according to the trial court's decision) on a variety of topics, including a number of motions relating to discovery. Several of the motions sought leave to amend the complaint to allege additional claims and damages, but none of the proposed amended complaints contained any additional factual allegations.

{¶4} Appellee filed a motion for summary judgment, arguing that it was entitled to judgment as a matter of law. In support of its motion, appellee pointed to the allegations in the complaint and to responses appellant provided to written requests for discovery. Based on those responses, it appeared that appellant's complaint involved a bank account belonging to appellant's minor daughter and appellant's attempt to withdraw money from that account. Appellee argued that nothing in either the complaint or in appellant's discovery responses established the existence of any contract between

the parties, and that it was therefore entitled to summary judgment on appellant's contract claim.

{¶5} Appellant filed a memorandum contra the motion for summary judgment. Appellant's memorandum contra did not point to any evidentiary materials in the record other than the discovery responses cited by appellee in its motion. The memorandum contra consisted solely of appellant's argument that he had been improperly denied access to a joint account, and that appellee had improperly allowed funds to be taken from the account.

{¶6} The trial court issued a decision granting appellee's motion for summary judgment. The court stated that, in spite of its best efforts, it was unable to discern any claim set forth by appellant for which relief could be granted. In the same decision, the court denied all outstanding motions filed by appellant.

{¶7} Appellant then filed this appeal. Although not separately numbered, it appears that appellant asserts the following assignments of error:

[1.] [T]he trial court erred in its findings[.]

[2.] [T]he trial court erred in not enforcing civil rule 33 and 34[.]

[3.] [T]he trial court erred in not going in camera [to] see account which was requested in motion for in camera[.] [E]xhibit 1 is the reason ssn. [withheld] is the account holder of acct no. [withheld] which plaintiff gave and established on defendants interrogatories.

[4.] The trial court erred in default judgment ruling[.]

[5.] [T]he trial court erred in not looking and recognizing witness list submitted by plaintiff with federal reserve bank

investigation to testify as a material fact violating civil rule 56[.]

[6.] [T]he trial court erred in not allowing plaintiff to prove his case beyond the pleadings which was a miscarriage of justice and violation of civil rules[.]

{¶8} Appellant's brief does not set forth any separate argument regarding the second, third, and fourth assignments of error. Because appellant's brief fails to set forth any separate argument regarding those assignments of error, we need not address them. App.R. 12(A)(2); *Martin v. CSX Transp., Inc.*, 185 Ohio App.3d 1, 2009-Ohio-6054.

{¶9} In his first, fifth, and sixth assignments of error, appellant takes issue with the trial court's decision granting summary judgment in appellee's favor. We review the trial court's grant of summary judgment de novo. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38. Summary judgment is proper only when the party moving for summary judgment demonstrates: (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, when the evidence is construed in a light most favorable to the non-moving party. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 1997-Ohio-221.

{¶10} Under summary judgment motion practice, the moving party bears an initial burden to inform the trial court of the basis for its motion, and to point to portions of the record that indicate that there are no genuine issues of material fact on a material element of the non-moving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 1996-

Ohio-107. Once the moving party has met its initial burden, the non-moving party must produce competent evidence establishing the existence of a genuine issue for trial. *Id.*

{¶11} In its motion for summary judgment, appellee argued that neither the complaint nor appellant's responses to appellee's written discovery requests established the existence of any contractual relationship between the parties. This was sufficient to carry appellee's burden of showing it was entitled to summary judgment on the claim set forth by appellant in his complaint.

{¶12} In response to the motion for summary judgment, appellant argued that genuine issues of material fact existed. However, appellant did not point to any evidentiary materials in the record that would be sufficient to establish the existence of such disputed facts. In his fifth assignment of error, appellant argues that the trial court failed to consider a witness list he submitted identifying witnesses who would support his claim. However, a witness list by itself is not evidentiary material of the sort that can be considered in regards to a motion for summary judgment. In the absence of affidavits or other evidentiary materials establishing how the witnesses would have supported his claims, appellant failed to carry his burden of demonstrating the existence of any genuine issues of material fact.

{¶13} Like the trial court, we can discern no other even arguably valid claims in any of the pleadings filed by appellant. We are cognizant that appellant is acting pro se; however, it is well established that pro se litigants are held to the same standard as litigants who are represented by counsel. *Zukowski v. Brunner*, 125 Ohio St.3d 53, 2010-Ohio-1652.

{¶14} The trial court did not err in granting appellee's motion for summary judgment. Accordingly, we overrule appellant's first, fifth, and sixth assignments of error.

{¶15} Having overruled those assignments, and having declined to address those assignments for which no separate argument was made, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK, P.J., and FRENCH, J., concur.
