IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DOCTORS URGENT CARE,	:	APPEAL NO. C-140738 TRIAL NO. 14CV-20712
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
CHERIE MOORE HAWKINS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellee Doctors Urgent Care ("Doctors") sued defendant-appellant Cherie Moore Hawkins in small claims court for an outstanding balance due on an account. The matter was referred to a magistrate and set for trial. Hawkins failed to appear at the time scheduled for trial. The magistrate therefore entered a default judgment in favor of Doctors. Hawkins did not object to the magistrate's decision of default judgment, but did move the court for a new trial. A magistrate overruled Hawkins's motion, and Hawkins objected to that decision. The trial court overruled her objection, adopted the decision of magistrate overruling Hawkins's motion for a new trial, and also adopted the decision of the magistrate granting Doctors a default judgment. Hawkins now appeals from the trial court's judgment adopting the magistrate's decision granting Doctors' default judgment.

In one assignment of error, Hawkins contends that the trial court erred in adopting the denial of her motion for a new trial and the granting of default judgment as judgments of the court. For the following reasons, we affirm.

The record reflects that Hawkins appealed only from the trial court's adoption of the magistrate's decision granting Doctors a default judgment. We therefore do not have jurisdiction to review the trial court's judgment denying Hawkins's motion for a new trial. *See* App.R. 3(A) and (D); App.R. 4; *TransAmerica Ins. Co. v. Nolan*, 72 Ohio St.3d 320, 649 N.E.2d 1229 (1995), syllabus.

In regard to the court's judgment granting Doctors a default judgment, because Hawkins failed to file objections to that decision, she has forfeited all but a claim of plain error on appeal. *See* Civ.R. 53(D)(3)(b)(iv); *Neu v. Neu*, 1st Dist. Hamilton No. C-140170, 2015-Ohio-1466; *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997).

Hawkins contends that she was not properly served under Civ.R. 4.6 with Doctors' complaint, in violation of her right to due process of law. In this case, the clerk of courts first attempted to serve Hawkins with a copy of Doctors' complaint via certified mail, but the mail was returned "unclaimed." The clerk of courts then sent notice via ordinary mail. Where certified mail has been returned unclaimed and ordinary mail is sent, Civ.R. 4.6 states that "[a]nswer day shall be twenty-eight days after the date of mailing." Here, Hawkins's trial date had been set 16 days after the date of mailing. Hawkins therefore claims that service was never perfected and that this court must reverse the trial court's judgment entering a default judgment in favor of Doctors.

Civ.R. 4.6, however, does not apply to small claims court. *See* Civ.R 1(C); R.C. 1925.04; *Powers v. Gawry*, 11th Dist. Geauga No. 2009-G-2883, 2009-Ohio-5061. Instead, R.C. Chapter 1925 governs small claims court proceedings. R.C. 1925.05(B) provides if notice is returned undelivered, as it was in this case, "at the request of the plaintiff or his attorney, a further notice shall be issued, setting the trial for a subsequent date, to be served in the same manner as a summons is served in an ordinary civil action."

Here, counsel for Doctors requested ordinary mail service after certified mail service had been returned unclaimed. Notice was resent containing the original trial date—not a "subsequent date" as required by R.C. 1925.05(B). However, the original trial date was still within the time limits set forth under R.C. 1925.04, which governs the time for setting a trial upon the initial filing of a complaint. That code section provides that a trial date "shall be not less than fifteen or more than forty days after the commencement of the action." R.C. 1925.04(B). In this case, Hawkins's trial date was set 16 days after notice was sent via ordinary mail. Under these circumstances, we see no prejudice to Hawkins because she was given adequate notice, as contemplated by R.C. 1925.04(B), to appear in court and to defend against Doctors' claim. *See Cunningham v. Miller*, 11th Dist. Trumbull No. 2009-T-0092, 2010-Ohio-2526. And in fact the record reflects that Hawkins did appear for trial on the proper date, albeit after her case had been called and after a default judgment had been granted.

Under these circumstances we hold that the failure to set a new trial date did not rise to the level of plain error. Hawkins's sole assignment of error is overruled.

We affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DEWINE and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on October 2, 2015
per order of the court _____.

Presiding Judge