

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

TERRELL D. JORDAN,	:	APPEAL NO. C-240506
Plaintiff-Appellant,	:	TRIAL NO. 23CV06285
vs.	:	
WYNN GAP,	:	<i>JUDGMENT ENTRY</i>
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Plaintiff-appellant Terrell D. Jordan appeals (for the second time) the trial court’s judgment granting summary judgment in favor of defendant-appellee Wynn Gap on Jordan’s breach-of-contract claim. For the following reasons, we affirm.

Jordan sued Wynn Gap (“Wynn”) seeking \$10,000 in damages. In the complaint, Jordan alleged purchasing gap insurance from Wynn to cover any remaining installment payments owed under the financing agreement to purchase Jordan’s car. Jordan maintains that after reporting a car accident to Wynn and informing it that the police had declared the insured car a total loss, Wynn refused to cover the remaining installment payments Jordan owed under the financing agreement.

After the trial court referred the case to a magistrate, the magistrate granted summary judgment in favor of Wynn. The trial court then adopted the magistrate’s decision. Jordan appealed. In the appeal numbered C-230528, this court reversed the

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trial court's judgment and remanded the cause because Jordan had not been given the opportunity to object to the magistrate's decision.

On remand, the trial court gave Jordan 14 days to file objections, and Jordan did so. In the filed objections, Jordan merely reiterated the claim that Wynn owed Jordan \$10,000 under the terms of the gap coverage. The trial court reviewed the objections, overruled them, and adopted the magistrate's decision. The trial court then granted summary judgment in favor of Wynn, and denied Jordan's motions, which had been construed together as a competing motion for summary judgment.

Bringing forth a single assignment of error, Jordan now asserts that the trial court erred by ruling in favor of Wynn, and dismissing the breach-of-contract claim.

We review a grant of summary judgment de novo. *State ex rel. Armatas v. Plain Twp. Bd. of Zoning Appeals*, 2020-Ohio-2973, ¶ 8. A grant of summary judgment is appropriate “when (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.” *Id.*, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327 (1977).

Under this assignment, Jordan first argues that the trial court did not follow this court's instructions on remand because it “dismissed” the claim instead of giving Jordan the opportunity to object to the magistrate's decision. But the record demonstrates that the trial court gave Jordan 14 days to file objections, and Jordan did so. The trial court then ruled on those objections and granted summary judgment in favor of Wynn. After entering summary judgment in Wynn's favor, the trial court then dismissed Jordan's complaint with prejudice. Jordan argues this dismissal was

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error. We disagree. Under Civ.R. 56, summary judgment is an adjudication on the merits that operates as a dismissal of the claim with prejudice. *See Natl. Crime Reporting, Inc. v. McCord & Akamine, LLP*, 2008-Ohio-3950, ¶ 7 (10th Dist.). Thus, the trial court’s dismissal of Jordan’s claim after granting summary judgment in favor of Wynn was not erroneous.

Next, Jordan argues that the trial court’s grant of summary judgment constituted error because the trial judge was biased against Jordan due to Jordan’s sexual orientation. We are unpersuaded. Typically, appellate courts do not have authority to determine claims of bias against a trial judge on appeal. *In re A.H.*, 2019-Ohio-4063 (8th Dist.). Regardless, Jordan does not point to any part of the record that demonstrates bias based on Jordan’s sexual orientation. *See App.R. 16(A)(7)*.

Finally, Jordan argues that the trial court should not have granted summary judgment in favor of Wynn because Wynn breached the terms of the agreement by refusing to waive the remaining installments under the financing agreement after Jordan had reported the loss.

The record demonstrates that Wynn supported its motion for summary judgment with the affidavit of its general counsel, attesting that (1) Jordan had voluntarily purchased a “Wynn’s GAP Waiver Addendum” (the terms of which were attached to counsel’s affidavit) as part of the financing agreement, (2) Wynn is the name of the gap-waiver program, not a party to the financing agreement, and “Phoenix American” is the administrator of the waiver program, (3) Jordan had reported the claim to the administrator in May 2022, indicating that the insured car had been totaled in an accident on March 4, 2022, (4) under the terms of the addendum Jordan was to provide a specified list of documents to the administrator within 120 days of the total loss of the car, and (5) Jordan failed to submit all the documents (including a

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completed claim form and documents detailing the outstanding balance owed on the vehicle).

Once a moving party has supported its motion with evidence demonstrating that summary judgment should be granted in its favor, “the burden shifts to the nonmoving party to show why summary judgment is inappropriate.” *McCoy v. Usuani*, 2009-Ohio-3095, ¶ 10 (1st Dist.), citing Civ.R. 56(E). If the nonmoving party fails to respond or support its response with evidence contemplated under Civ.R. 56(C), the court may enter summary judgment in favor of the moving party. *Id.*

Here, Jordan failed to attach any evidence to demonstrate that summary judgment was inappropriate or show a genuine issue of material fact. Thus, given that Wynn attached evidence demonstrating it was entitled to summary judgment—the terms of the addendum indicating that a claim is void if the required documentation is not submitted within 120 days of the loss and that Jordan had failed to submit the required documents within that timeframe—and Jordan failed to submit any evidence to demonstrate a genuine issue of material fact, we cannot say that the trial court erred by granting summary judgment in favor of Wynn.

Accordingly, we overrule Jordan’s single assignment of error, and affirm the trial court’s judgment.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

KINSLEY, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on 1/15/2025 per order of the court.

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By: _____
Administrative Judge