

Judgment rendered June 26, 2019.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 52,734-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

CREDIT ACCEPTANCE
CORPORATION

Plaintiff-Appellee

versus

SHARUNDA PREVO

Defendant-Appellant

* * * * *

Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Webster, Louisiana
Trial Court No. 75,093

Honorable R. Lane Pittard, Judge

* * * * *

SHARUNDA PREVO

In Proper Person

WARREN WALLACE WINGERTER, JR.
By: Edward F. Bukaty, III

Counsel for Appellee

* * * * *

Before MOORE, McCALLUM, and THOMPSON, JJ.

MOORE, J.

ShaRunda Prevo, in proper person, appeals a summary judgment that ordered her to pay the balance due on a car loan after default, repossession and sheriff's sale. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Ms. Prevo bought a 2012 Ford Focus from Orr Nissan in August 2014. She financed the \$18,640 purchase price by retail installment contract calling for 60 monthly payments of \$536.14, at 23.99% interest and a 25% attorney fees in case of default. She made exactly one payment and, in June 2015, the holder of the note, Credit Acceptance Corp. ("CAC"), repossessed the Focus and had it sold at sheriff's sale. The deficiency after the sale was \$11,552.66. CAC filed this suit in January 2016 to recover the deficiency, costs, interest and attorney fees.

Ms. Prevo filed a pro se answer urging various deficiencies in the petition, such as lack of proof that CAC had purchased the debt. She also applied for pauper status, which was granted. Later, in March 2016, she filed an "affidavit of truth" asserting, inter alia, that she had "reserved" all her rights under the Uniform Commercial Code, and that the petition lacked a "Mini-Miranda Warning" and "verifiable proof" of the plaintiff's loss.

CAC filed this motion for summary judgment in June 2018. In support, it filed the affidavit of its legal assistant, Kimberly Cavazos, attesting to all the facts alleged and stating the balance due was \$11,552.66, plus interest, costs and attorney fees. Attached to the affidavit was a copy of the customer payment history, notice of plan to sell property and notice of disposition of repossessed vehicle. A memo in support contended that all

Ms. Prevo's alleged deficiencies were "frivolous at best" and bore the hallmarks of Sovereign Citizen Theory, making them "frivolous as a matter of law," *Mack v. Sweet*, 2017 WL 6756667 (N.D. Tex. 12/4/17).

Moments before the hearing on motion for summary judgment, on July 17, Ms. Prevo filed an "affidavit of fact" which bore the heading of the "Moorish National Republic" and identified herself as "Ashanti Imani Bey, authorized representative / Natural Person, In Propria Persona: Ex Relatione ShaRunda Lynette Prevo." This document (apparently copied from a website) quoted various constitutional passages, some pertaining to criminal law, but did not mention one fact about the case.¹

ACTION IN THE DISTRICT COURT

At the hearing, Ms. Prevo's conduct was bizarre. She identified herself as Ashanti Imani Bey, "an authorized representative" and "in reference to" Ms. Prevo. The court advised her that if she was not a lawyer, she could not represent anyone in court; she responded that her "ex-relationship" or "prior name" was Prevo. CAC's counsel conceded that Ms. Ashanti and Ms. Prevo were one and the same, and the person being sued on the note.

The court then asked CAC's counsel to present his case for summary judgment, but Ms. Prevo kept interrupting, demanding to "see the jurisdiction of this court," insisting she was there only "under threat, duress and coercion," and it was only a "special appearance." The court warned her that if she interrupted again, she would be removed. Almost immediately,

¹ She also filed a notice of removal to federal court, but the record does not show that she ever filed any documents in that court.

she interrupted again; the court held her in contempt and ordered her to jail for 24 hours.

CAC's counsel then presented its case, after which the court granted judgment as prayed for, actually reflecting an extra credit, for a principal of \$11,012.93, with legal interest from date of judicial demand, 25% attorney fees and all costs. The court fixed August 8 for form and content, and ordered Ms. Prevo released from jail at 4:00 pm the day of the hearing.

On August 3, Ms. Prevo fax-filed another sheaf of documents, "Affidavit of Fact / Answer," "Answer / For the record, to be read into the record," and another "Affidavit of Truth." These maintained her status as a citizen of the Moorish National Republic. She attached a copy of the proposed judgment, which she refused to sign, and instead wrote on the bottom, "I dispute this debt and all claims to contract in accordance with 15 USC 1692G. I do not consent to these proceedings. The Clearfield Doctrine. Inducement of Fraud."

CAC filed a Rule 9.5 certificate attesting that it had received no opposition to the proposed judgment. The court filed the signed judgment on August 20. On October 8, after receiving notice of judgment, Ms. Prevo filed a motion for findings of fact and conclusions of law, and a motion for a return date for a devolutive appeal.² The court rendered a written opinion and granted Ms. Prevo's appeal on October 26.

Meanwhile, Ms. Prevo filed a request for 10-days' notice of setting and notice of judgment, with a motion to traverse Ms. Cavazos's affidavit. The court granted a hearing on these motions, but that hearing, on November

² These and all subsequent filings have dropped the Moorish National and Sovereign Citizen rubric.

13, was very short: the court peremptorily advised Ms. Prevo that the motion to traverse was untimely, as judgment was already rendered.

Nevertheless, Ms. Prevo filed several more motions in the district court, which were all denied as repetitive or untimely.

Ms. Prevo has filed a pro se brief advancing 22 assignments of error and six “issues presented for review.”

DISCUSSION

In the interest of justice, this court will read pro se filings indulgently and try to discern the thrust of the appellant’s position and the relief she seeks. *Magee v. Williams*, 50,726 (La. App. 2 Cir. 6/22/16), 197 So. 3d 265. However, even with the latitude extended to a pro se litigant in the form of liberally construed pleadings, the appellant is required to meet her burden of proof. *Id.*; *Greenwood Comty. Ctr. v. Calep*, 48,737 (La. App. 2 Cir. 1/15/14), 132 So. 3d 470. Ms. Prevo’s assignments are mostly assertions of fact and conclusions, without citations to the record or legal authority. However, we have grouped them by topic and addressed the issues she was attempting to assert.

Subject-matter Jurisdiction

By her 14th assignment of error, Ms. Prevo disputes the jurisdiction of the district court. She contends that she “questioned” the court’s jurisdiction, but there was “no certification of the same” and that the court must “provide” its subject-matter jurisdiction.

A district court has original jurisdiction of all civil and criminal matters. La. Const. art. V, § 16 (A)(1). Jurisdiction over the subject matter is the legal power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the

amount in dispute, or other value of the right asserted. La. C.C.P. art. 2.

The record does not show that Ms. Prevo filed a declinatory exception contesting subject-matter jurisdiction, La. C.C.P. art. 925 A(6). Even if the issue were properly raised, when lack of subject-matter jurisdiction is not apparent on the face of the petition, the defendant has the burden of offering evidence that jurisdiction does not exist. *Lloyd v. Shady Lake Nursing Home Inc.*, 47,025 (La. App. 2 Cir. 5/9/12), 92 So. 3d 560, *writ denied*, 2012-1318 (La. 9/28/12), 98 So. 3d 844. Ms. Prevo has made absolutely no showing that this particular class of action, to recover the deficiency on a retail installment contract, or the object of the demand, to obtain a money judgment, is not appropriate for determination in the district court.

She has made no showing that personal jurisdiction was lacking, as by insufficient service of process, La. C.C.P. art. 6 A(1), thus distinguishing her situation from the case she cites from another jurisdiction, *Reynolds v. Volunteer State Life Ins. Co.*, 80 S.W. 2d 1087 (Tex. Civ. App.-Eastland 1935). She has also made no showing that she followed the procedure for removal to federal court, 28 U.S.C. § 1446, could present a federal question, 28 U.S.C. § 1331, or could meet the jurisdictional threshold for a diversity claim, 28 U.S.C. § 1332.

Finally, her claim of denial of due process is purely conclusory; nothing in this record begins to compare with the refusal of counsel in a felony criminal trial, as occurred in the case she relies on, *Johnson v. Zerbst*, 304 U.S. 458, 58 S. Ct. 1019 (1938). The other cases she cites, all from other jurisdictions, actually *support* those courts' exercise of jurisdiction. This argument lacks merit.

Insufficiency of the Petition

By eight of her assignments of error, Ms. Prevo urges the petition was not sufficient to establish the debt.³ Aside from factual assertions, she provides no legal argument.

A cursory glance at the record shows that, contrary to Ms. Prevo's contention, counsel signed the petition. Further, Ms. Prevo made absolutely no showing that counsel did not represent CAC. The petition contained a "short, clear, and concise statement" of all causes of action, La. C.C.P. art. 891; proof or evidence is not required until trial. Further, there is no requirement that this petition be verified by the plaintiff. La. C.C.P. art. 863 B. The argument that this petition was defective or insufficient to support a judgment is totally unfounded.

Summary Judgment Standard

By four of her assignments of error,⁴ Ms. Prevo contends that her own filings created a genuine issue of material fact. She also argues that Ms. Cavazos's affidavit was not based on personal knowledge, did not establish that the affiant was competent as an expert, and her supporting documents were neither sworn nor attested.

³ Assignments 1 (The petition did not bear a signature from plaintiff or attorney), 2 (The attorney failed to provide proper evidence to show he possessed authority to act in the matter), 3 (If the debt was purchased, there was no copy of the purchase agreement), 4 (CAC presented no evidence of what harm it suffered), 5 (The attorney was not competent to serve as a witness for CAC), 6 (The petition did not provide proof of claim of injuries), 8 (The petition was not verified), 9 (The court failed to address Ms. Prevo's prayer to dismiss the petition for lack of supporting evidence).

⁴ Assignments 5 (CAC failed to reply after Ms. Prevo filed a timely answer and affidavit of truth), 11 (Ms. Prevo provided an affidavit of truth, on March 30, 2016), 12 (CAC failed to rebut or refute her "affidavit of truth," so it stands as "truth in commerce"), 22 (The court erred in denying Ms. Prevo's motion to traverse Ms. Cavazos's affidavit).

A motion for summary judgment is a procedural device used when there is no genuine issue of material fact for all or part of the relief sought by a litigant. *Dunn v. City of Kenner*, 2015-1175 (La. 1/27/16), 187 So. 3d 404. An appellate court reviews a summary judgment de novo, determining whether there is any genuine issue of material fact and whether the mover is entitled to judgment as a matter of law. *Id.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. La. C.C.P. art. 967 A.

CAC's motion for summary judgment clearly sets out the basis of the obligation and its amount. The affidavit stated Ms. Cavazos's employment with CAC, how CAC maintains its records, and that the affiant's conclusions were based on those records. This was easily sufficient to establish her personal knowledge. *Citibank (South Dakota) N.A. v. Mayo*, 45,945 (La. App. 2 Cir. 1/26/11), 58 So. 3d 960. The affidavit, together with the payment history and the notices pertaining to the repossessed Focus, easily showed that there was no genuine issue of material fact and that CAC was entitled to judgment as a matter of law, La. C.C.P. art. 966 A(3). As noted above, Ms. Prevo's "Affidavit of Fact" contained copious citations to, and quotations from, the U.S. Constitution and various U.S. Supreme Court cases, but did not assert one single fact about the case. On de novo review, we see nothing that creates a genuine issue of material fact. This argument lacks merit.

Compliance with Time Delays

By her 13th assignment of error, Ms. Prevo contends that the court failed to follow all time delays for the entry of summary judgment. She contends that she was served with CAC's motion for summary judgment on June 24, 2018, with an order setting the hearing for July 17, 2018, less than the 30 days set out in La. C.C.P. art. 966 C(1)(b).

CAC concedes this fact, but shows that it requested the hearing by letter to the court on May 31, more than 30 days before the hearing.

La. C.C.P. art. 966 provides, in pertinent part:

C. (1) Unless otherwise agreed to by all of the parties and the court:

(a) A contradictory hearing on the motion for summary judgment shall be set not less than thirty days after the filing and not less than thirty days prior to the trial date.

(b) Notice of the hearing date shall be served on all parties in accordance with Article 1313(C) or 1314 not less than thirty days prior to the hearing.

The record shows that Ms. Prevo appeared for the hearing but did not ask for a continuance or argue that the hearing was being held in violation of Art. 966. In short, she waived this complaint. *Irons v. U.S. Bank Inc.*, 2007-0570 (La. App. 4 Cir. 8/14/07), 966 So. 2d 646; *Chatman v. Thor Offshore Boat Serv. Inc.*, 410 So. 2d 784 (La. App. 4 Cir. 1982). In fact, she attempted to oppose the summary judgment, so she cannot show that she suffered any prejudice from the procedure in the district court. *Irons v. U.S. Bank*, *supra*; cf. *Stewart v. Carter*, 33,203 (La. App. 2 Cir. 5/10/00), 759 So. 2d 297, in which the opposing party was absent from the hearing because of lack of notice. This argument lacks merit.

Fair Debt Collection Practices Act

By her seventh assignment of error, Ms. Prevo urges the petition failed to include a Mini-*Miranda* or the notice required by the Fair Debt Collection Practices Act.

The applicable section of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692e (11), provides, in pertinent part and with emphasis added:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: * * *

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that *this paragraph shall not apply to a formal pleading made in connection with a legal action.*

A plain reading of this statute shows that it does not apply to CAC's petition, which is a formal pleading made in connection with a legal action. This argument lacks merit.

Finding of Contempt

By three assignments of error, Ms. Prevo urges the court erred in finding her in contempt of court.⁵ She argues that the contempt was not warranted; she told the court, "With all due respect, I object to these proceedings."

Direct contempt of court is defined, in La. C.C.P. art. 222, in pertinent part:

⁵ Assignments 15 (The court erred in holding Ms. Prevo in contempt), 16 (The court erred in proceeding without Ms. Prevo present and in granting summary judgment without receiving any testimony from the plaintiff), 17 (The court recalled the order of contempt at 4:00 pm instead of the full 24 hours).

A direct contempt of court is one committed in the immediate view and presence of the court and of which it has personal knowledge, or a contumacious failure to comply with a subpoena or summons, proof of service of which appears of record.

Any of the following acts constitutes a direct contempt of court:

(1) Contumacious, insolent, or disorderly behavior toward the judge, or an attorney or other officer of the court, tending to interrupt or interfere with the business of the court, or to impair its dignity or respect for its authority;

(2) Breach of the peace, boisterous conduct, or violent disturbance tending to interrupt or interfere with the business of the court, or to impair its dignity or respect for its authority[.]

Proceedings for contempt are strictly construed; the law does not favor extending their scope. *In re Merritt*, 391 So. 2d 440 (La. 1980); *Winston v. Winston*, 41,766 (La. App. 2 Cir. 1/24/07), 951 So. 2d 448.

As noted, Ms. Prevo appeared at the hearing purporting to be Ashanti Imani Bey. On questioning by the court, she admitted she was not a licensed attorney; after the court refused to let her represent the defendant, she admitted she was, in fact, Ms. Prevo. The court wrote in its opinion:

In an attempt to proceed in an orderly fashion, the Court instructed [Ms. Prevo] to be silent to allow Mr. Blanchard [counsel for CAC] the opportunity to present his case, at which time she would be allowed to speak. [Ms. Prevo] would not stop talking and continued to interrupt Mr. Blanchard while he attempted to present his case.

* * *

Defendant would not stop talking, thereby interrupting Mr. Blanchard and the Court. After repeated warnings from the Court to be silent, and [Ms. Prevo's] refusal to do so, the Court warned [Ms. Prevo] that if she continued to interrupt the Court she would be held in contempt. After she again deliberately refused to allow Mr. Blanchard to speak without interruptions, the Court held her in contempt and had the bailiffs escort her from the courtroom. The Court found her in contempt of court for her continued interruptions and ordered that she be held in jail for 24 hours.

Although proceedings for contempt are strictly construed, this record fully supports the district court's findings. Ms. Prevo's deceit as to her true identity, followed by constant interruptions and disrespect for the court's instructions, satisfied the requirement of contumacious, insolent or disorderly conduct. *Godfrey v. Reggie*, 2011-1575 (La. App. 3 Cir. 5/2/12), 94 So. 3d 82. Moreover, the sentence of 24 hours, reduced to about six hours, was within the court's discretion, La. R.S. 13:4611 (1)(d)(i). This argument lacks merit.

Objection to Proposed Judgment

By three of her assignments of error, Ms. Prevo argues the district court erred in failing to consider her objections to the proposed judgment.⁶ She shows that CAC's counsel advised her, on July 30, 2018, that she had five working days to answer if she had any objections to the proposed judgment; on the fifth day, August 3, she called the clerk of court and got approval to fax her objections; she did so; but the final judgment, rendered August 20, did not acknowledge her objections.

CAC concedes that Ms. Prevo faxed her objections timely, but contends that the court did not render judgment until August 20, giving the court ample time to consider them.

URDC Rule 9.5 provides, in pertinent part:

(a) All judgments, orders, and rulings requiring the court's signature shall either be presented to the judge for signature when rendered or, if presented later, contain the typewritten name of the judge who rendered the judgment, order, or ruling.

⁶ Assignments 18 (Counsel for CAC gave Ms. Prevo five working days to object to the proposed judgment), 19 (On the fifth day, Ms. Prevo called the clerk of court's office and received permission to fax her objections), 20 (The court erred in rendering CAC's proposed judgment even though Ms. Prevo objected to it).

(b) If presented later, the responsible attorney or the self-represented party shall circulate the proposed judgment, order, or ruling to counsel for all parties and to self-represented parties and allow at least five (5) working days for comment before presentation to the court. When submitted, the proposed judgment, order, or ruling shall be accompanied by a Rule 9.5(b) certificate stating: the date of mailing; the method of delivery of the document to other counsel of record and to self-represented parties; whether any opposition was received; and the nature of the opposition.

The purpose of Rule 9.5 is to make formal or technical corrections to the proposed judgment. *Matter of Succession of Buhler*, 2017-0049 (La. App. 1 Cir. 2/22/18), 243 So. 3d 39, *writ not cons.*, 2018-0478 (La. 5/11/18), 241 So. 3d 1013. Changes of substance must be addressed by contradictory motion for new trial, consent of the parties, or timely appeal. *Bourgeois v. Kost*, 2002-2785 (La. 5/20/03), 846 So. 2d 692; *Entrada Co. v. Pressley*, 50,793 (La. App. 2 Cir. 8/10/16), 200 So. 3d 848. The substance of Ms. Prevo's "objections" was that she disputed the debt and did not consent to the proceedings, and was plainly outside the scope of Rule 9.5's circulation protocol. *Succession of Buhler, supra*. As the judgment was silent with respect Ms. Prevo's objections, it obviously rejected them. *Rand v. City of New Orleans*, 2017-0596 (La. 12/6/17), 235 So. 3d 1077; *Rodsuwan v. Christus Health N. La.*, 41,043 (La. App. 2 Cir. 5/17/06), 930 So. 2d 1116. The district court did not abuse its discretion in denying Ms. Prevo's objections to judgment. This argument lacks merit.

CONCLUSION

For the reasons expressed, the judgment is affirmed. All costs are to be paid by ShaRunda Prevo, in accordance with La. C.C.P. art. 5188.

AFFIRMED.