

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

DAIMLERCHRYSLER FINANCIAL SERVICES AMERICAS, LLC,	:	APPEAL NO. C-070105 TRIAL NO. 06CV-15257
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
JAMES W. MCNAIR,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant DaimlerChrysler Financial Services Americas, LLC, (“DCFSA”) appeals the trial court’s judgment granting defendant-appellee James W. McNair’s motion to vacate a default judgment entered in a breach-of-contract case.

The trial court’s order vacating the default judgment states that DCFSA had not contested McNair’s affidavit filed in support of his motion to vacate. The record indicates, however, that DCFSA did file an affidavit contesting McNair’s affidavit prior to the entry of the trial court’s order.

In its first assignment of error, DCFSA argues that the trial court erred by failing to consider DCFSA’s affidavit when ruling on McNair’s motion. McNair argues for the first

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

time that the trial court was not required to consider the affidavit because it was untimely filed and because it was not accompanied by a memorandum in opposition.

We sustain the assignment of error because the language used in the order, which was drafted by defense counsel, indicates that the trial court was not aware of DCFSA's filing. Thus, we reverse the trial court's order and remand the case for further proceedings.

Our resolution of the first assignment of error renders moot DCFSA's second assignment of error, which challenges the trial court's failure to hold an evidentiary hearing on the motion to vacate.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R.24.

PAINTER, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 7, 2007

per order of the Court _____
Presiding Judge