

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

DANA STALLWORTH,	:	
	:	
Plaintiff-Appellee,	:	No. 108543
	:	
v.	:	
	:	
DOUG WOODS,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: January 16, 2020

Civil Appeal from the Garfield Heights Municipal Court
Case No. CVF-1402358

Appearances:

Jason L. Carter, *for appellee.*

Doug Woods, *pro se.*

PATRICIA ANN BLACKMON, P.J.:

{¶ 1} This cause came to be upon the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1. Defendant-appellant, Doug Woods, appeals from the judgment of the trial court that dismissed both his motion to show cause

stemming from plaintiff-appellee, Dana Stallworth's nonpayment of costs, and his motion to disqualify a magistrate. He assigns the following error for our review:

The trial court's dismissal of the order to show cause and subsequent determination that [Woods] was not entitled to court costs, to proceed with a debtor's examination or disqualify the magistrate was erroneous, against the manifest weight of the evidence, constituted a denial of due process, violation of [Woods's] rights as a creditor and was an abuse of discretion.

{¶ 2} Having reviewed the record and the controlling case law, we affirm the decision of the trial court.

{¶ 3} This matter arises in connection with a 2014 landlord-tenant dispute between landlord Woods d.b.a. What a Lovely Home ("WALH") and former tenant Stallworth. *See Stallworth v. Woods*, 8th Dist. Cuyahoga No. 106633, 2018-Ohio-3185 ("*Stallworth I*"). Woods eventually initiated eviction proceedings against Stallworth in Garfield Heights M. C. No. CVG 1402113. *Stallworth v. Woods*, 8th Dist. Cuyahoga No. 107832, 2019-Ohio-2828, ¶ 2 ("*Stallworth II*"). The parties later entered into a settlement agreement, and Stallworth voluntarily moved out of the premises. *Id.*

{¶ 4} Several months later, Stallworth filed the instant matter in Garfield Heights Municipal Court against Woods "c/o [WALH]" for breach of contract and retaliatory eviction. *Stallworth I* at ¶ 2. Woods filed a counterclaim, and on September 23, 2015, he was granted judgment against Stallworth in the amount of \$815.99, plus interest at the rate of 3 percent per year, and costs. *Id.* Thereafter, in 2016, Stallworth filed a complaint against Woods and WALH in the Cuyahoga

County Court of Common Pleas, alleging fraud, intentional infliction of emotional distress, conversion, and invasion of privacy. Following trial, a verdict was entered in favor of defendant. *Id.* at ¶ 4.

{¶ 5} On May 11, 2016, Woods “d.b.a. WALH, L.L.C.” began collection efforts on his 2015 judgment on his counterclaim. He also sought sanctions against Stallworth for vexatious litigation. *See Stallworth II*. The trial court denied Woods’s motion, and this court affirmed. *Id.*

{¶ 6} Woods eventually recovered \$898.88 on his 2015 judgment from the counterclaim, thereby satisfying the base judgment award of \$815.99. However, Woods asserted that interest and costs remain unpaid, and he filed a summons for Stallworth to appear for a debtor’s examination. After Stallworth failed to appear for the debtor’s examination, Woods filed a motion to show cause. Following a hearing before a magistrate, Woods’s motion to show cause was dismissed. The magistrate determined that Woods “has effectively received full payment on the judgment amount including interest [and therefore, there] was no reason to conduct the debtor’s exam in this matter because the Court finds that [Woods’s] judgment has been satisfied.”

{¶ 7} Woods filed objections to the magistrate’s decision and also filed a motion to disqualify the magistrate. Woods supported his objections with a “partial transcript of relevant testimony.” The trial court overruled the objections, adopted the magistrate’s findings, dismissed the motion to show cause, and denied the motion to disqualify.

***Claim that Woods Engaged in Unauthorized
Practice of Law***

{¶ 8} Before addressing Woods’s assigned error, we must first consider Stallworth’s claim that Woods is engaging in the unauthorized practice of law by representing both himself and “WALH L.L.C.” in the collection proceedings.

{¶ 9} The filing with the Ohio Secretary of State indicates that Woods filed a fictitious name registration entitled, “Doug Woods dba What a Lovely Home.” Thus, it appears that WALH is in use as a fictitious name, not a limited liability company. Indeed, In *Stallworth I*, this court recognized that “the judge found that “Doug Woods and [WALH] are one and the same.” 2018-Ohio-3185, at ¶ 13. In any event, a corporate officer who prepares and files a complaint and presents the claim in small-claims court does not engage in the unauthorized practice of law so long as he or she does “not cross-examine witnesses, argue, or otherwise act as an advocate.” *Cleveland Bar Assn. v. Pearlman*, 106 Ohio St.3d 136, 2005-Ohio-4107, 832 N.E.2d 1193, ¶ 24. Moreover, a motion panel of this court also denied Stallworth’s motion to dismiss the instant appeal that raised the same unauthorized practice of law challenge. *Stallworth v. Woods*, 8th Dist. Cuyahoga No. 108543, motion No. 528673 (June 6, 2019). There is no basis in the record to reach a different conclusion herein. Accordingly, we do not find that Woods is engaging in the unauthorized practice of law in the instant matter.

Magistrate Bias

{¶ 10} In the first portion of his assigned error, Woods asserts that the magistrate was biased against him, and trial court erred in denying his motion to disqualify the magistrate.

{¶ 11} Civ.R. 53(D)(6) provides that disqualification of a magistrate for bias or other cause is within the discretion of the court. *See In re Disqualification of Wilson*, 77 Ohio St.3d 1250, 1251, 674 N.E.2d 360 (1996). Accordingly, we will not reverse the trial court's decision absent an abuse of discretion. *Id.*

{¶ 12} Judicial bias has been described as:

“[A] hostile feeling or spirit of ill will or undue friendship or favoritism toward one of the litigants or his or her attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.”

State v. Dean, 127 Ohio St.3d 140, 2010-Ohio-5070, 937 N.E.2d 97, ¶ 48, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956), paragraph four of the syllabus.

{¶ 13} A magistrate is presumed not to harbor bias or prejudice against a party, so the party alleging bias must set forth evidence to overcome the presumption of integrity. *Angus v. Angus*, 2016-Ohio-7789, 73 N.E.3d 1143, ¶ 20 (10th Dist.), citing *Melick v. Melick*, 9th Dist. Summit No. 26488, 2013-Ohio-1418, ¶ 9. The court's opinions do not arise to the level of bias unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. *See State v. Hough*, 2013-Ohio-1543, 990 N.E.2d 653, ¶ 11 (8th Dist.), quoting *Dean*,

¶ 49, quoting *Liteky v. United States*, 510 U.S. 540, 555, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994).

{¶ 14} In this matter, only a partial transcript has been provided. On appeal to this court, the appellant bears the burden of showing error by reference to matters in the record. App.R. 9(B); *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980). “This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record.” *Id.* at 199. When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm. *Id.*

{¶ 15} In any event, having thoroughly reviewed the partial transcript provided, we find nothing to question the magistrate's impartiality. There is no basis from which we may conclude that the magistrate was biased or that the findings of fact and conclusions of law were the product of antagonism toward Woods or favoritism toward Stallworth. To the contrary, the magistrate simply disagreed with Woods's position and determined that he had been adequately compensated. The magistrate found it significant that Woods received \$898.88, which fully satisfied the compensatory damages and most of the interest, and left only a deficiency of \$3 for interest. Although the recovery did not satisfy Woods's claim for \$381 in court costs, we find no bias.

Dismissal of Woods's Motion to Show Cause

{¶ 16} In the remainder of his assigned error, Woods argues that the trial court erred by dismissing his motion to show cause because he has not received all of his claimed court costs.

{¶ 17} This court reviews a claims of contempt for failure to pay costs for an abuse of discretion. *Hirzel v. Ooten*, 4th Dist. Meigs Nos. 06CA10 and 07CA13, 2008-Ohio-7006, ¶ 62.

{¶ 18} This court explained the award of costs in *Vanadia v. Hansen Restoration, Inc.*, 8th Dist. Cuyahoga No. 101033, 2014-Ohio-4092, as follows:

Civ.R. 54(D) governs the award of costs and provides, “[e]xcept when express provision therefore is made either in a statute or in these rules, costs shall be allowed to the prevailing party unless the court otherwise directs.” A “decision to award or decline to award costs is within the sound discretion of the trial court. Therefore, such a decision will not be disturbed on appeal absent an abuse of that discretion.” *Holmes Cty. Bd. of Commrs. v. McDowell*, 169 Ohio App.3d 120, 2006-Ohio-5017, 862 N.E.2d 136, ¶ 43 (5th Dist.).

The Ohio Supreme Court has limited what may be considered costs and awarded to a successful plaintiff. *Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 69 Ohio St.2d 50, 430 N.E.2d 925 (1982). “Costs are generally defined as the statutory fees to which officers, witnesses, jurors and others are entitled for their services in an action and which the statutes authorize to be taxed and included in the judgment.” *Benda v. Fana*, 10 Ohio St.2d 259, 227 N.E.2d 197 (1967), paragraph one of the syllabus. This court has set forth the appropriate evidentiary standard:

[T]he prevailing party has the burden of establishing that the expenses it seeks to have taxed as costs are authorized by applicable law. Once the court determines that an allowable cost is established, the burden rests upon the objecting party to overcome the presumption favoring an award of costs to the prevailing party. * * * *Naples v. Kinczel*, 8th Dist. Cuyahoga No. 89138, 2007-Ohio-4851, ¶ 6.

Id. at ¶ 32-34.

{¶ 19} The collection of court costs was explained in *GMS Mgmt. Co. v. Unpaid Court Costs, Fees & Delinquencies*, 187 Ohio App.3d 426, 2010-Ohio-2203, 932 N.E.2d 405 (7th Dist.):

GMS [notes that] Chapter 2335 [requires] outstanding costs to be collected from the person who was said to be liable for them. *See* R.C. 2335.18 (costs shall be taxed); 2335.19 (costs of party recovering shall be carried in that person's judgment and costs against whom judgment is rendered shall be separately stated in the record or docket; party in whose favor judgment for costs rendered cannot release debtor from obligation to pay costs unless that party previously advanced costs to the clerk), (B) (judgment for costs allows clerk to issue certificate of judgment to collect against person liable for costs); R.C. 2335.21 (remedy is to execute against indebted party).

Id. at ¶ 37.

{¶ 20} Here, Woods's base damage award was \$815.99, plus interest. Woods subsequently received payments totaling \$898.88, thereby satisfying the base judgment award plus \$82.89 in interest. Although Woods claimed that he was entitled to \$85 in interest, we find the deficiency in interest insufficient to justify the granting of Woods's motion to show cause.

{¶ 21} As to court costs, Woods argued that he is entitled to \$381. After reviewing the record, we note that immediately after the 2015 judgment awarding Woods costs, a court-issued notice of garnishment dated February 24, 2016, indicates that the costs totaled \$107. Thereafter, from the date of judgment onward, Woods filed numerous motions, and an additional \$202.35 in costs accrued. By the date of the hearing on Woods's show cause motion, Woods maintained that he was entitled to \$381 in costs. However, we do not read the 2015 judgment awarding

costs to further authorize the awarding of post-judgment costs incurred after 2015. Therefore, we are unable to conclude that the trial court abused its discretion in dismissing Woods's motion to show cause in connection with Woods's claim of nonpayment of \$381 in court costs.

{¶ 22} Judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
LARRY A. JONES, SR., J., CONCUR