

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Donald W. Stoyer,	:	
Plaintiff-Appellant,	:	
v.	:	No. 11AP-737 (C.P.C. No. 10CVH-07-9917)
Ryan Fogelman,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on March 27, 2012

Donald W. Stoyer, pro se.

Benjamin E. Ritterspach, for appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Plaintiff-appellant, Donald W. Stoyer, appeals from a judgment of the Franklin County Court of Common Pleas that granted summary judgment to defendant-appellee, Ryan Fogelman, and released Stoyer's escrowed rent payments to Fogelman. For the following reasons, we affirm.

{¶ 2} On September 4, 2009, Stoyer filed an application to deposit his rent with the clerk of the Franklin County Municipal Court. In a "Notice of Escrow Action" that Stoyer attached to his application, he asserted that his leased residence at 753 Mithoff Street needed numerous repairs. The clerk accepted Stoyer's application and began escrowing his monthly rent payments, beginning with the September 4, 2009 payment.

{¶ 3} Fogelman, Stoyer's landlord, requested that the clerk release the rent to him because he had met his obligation to maintain the leased premises. Upon receiving

Fogelman's request, the clerk scheduled a hearing so the municipal court could determine whether Fogelman was entitled to the rent.

{¶ 4} On October 26, 2009, immediately before the scheduled hearing, Stoyer filed a complaint against Fogelman. Because the complaint sought damages that exceeded the monetary jurisdiction of the municipal court, Stoyer also moved to transfer the action to the Franklin County Court of Common Pleas. After filing his complaint and motion, Stoyer appeared at the hearing pro se. Fogelman was represented by an attorney, Darin Garcia. As reflected in a subsequent order, the magistrate informed the parties that, under R.C. 5321.09(B), Stoyer's "complaint" was actually a counterclaim in the action commenced by Fogelman's application for the release of the rent. To allow Fogelman an opportunity to respond to the counterclaim and motion, the magistrate continued the hearing to November 30, 2009.

{¶ 5} Fogelman answered Stoyer's counterclaim on November 13, 2009. The answer was not filed by Garcia, but by a different attorney, Benjamin Ritterspach. Ritterspach concurrently filed an entry of appearance that directed that all future documents be served upon him.¹ Fogelman followed up his answer with a motion to dismiss, filed November 25, 2009.

{¶ 6} The parties reconvened before a magistrate for the November 30, 2009 hearing. At that hearing, Stoyer asked the magistrate to strike the answer because it was filed by Ritterspach. Stoyer argued that Fogelman's change of counsel was ineffective because it did not comply with Loc.R. 3.03 of the Franklin County Municipal Court (hereinafter "Loc.R. 3.03"), which provides:

Once trial counsel has been designated, such designation shall remain until termination of the case. Change of trial counsel may be permitted by the judge assigned to the case upon the filing of an entry containing the designation of new trial counsel and the agreement of prior trial counsel.

{¶ 7} Apparently, the magistrate orally denied Stoyer's motion to strike. The court, however, did not incorporate its oral ruling into the written order entered after the hearing. That order only reflects the continuation of the case to permit Stoyer to respond

¹ Garcia subsequently requested leave to withdraw as counsel for Fogelman. The municipal court granted Garcia's request.

to Fogelman's motion to dismiss. Nevertheless, Stoyer filed an objection to the order and asserted that the magistrate erred in not striking the answer. Stoyer subsequently filed a motion to strike all the documents that Ritterspach had submitted to the municipal court.

{¶ 8} On December 31, 2009, Fogelman again moved for the release of the escrowed rent payments. In his motion, Fogelman represented that the parties had agreed on a list of repairs to be performed at Stoyer's residence. Through written correspondence, the parties had settled on December 29, 2009 as the date on which the repairs would commence. However, when Fogelman and his contractors arrived at Stoyer's residence to begin work, Stoyer refused to admit them into the residence. Fogelman pointed out that the statutory scheme allowing for the deposit of rent with the clerk was intended to pressure the landlord into complying with his obligation to make needed repairs to the leased premises. Stoyer defeated this purpose by preventing Fogelman from completing the requested repairs. Thus, Fogelman argued that the municipal court should release the escrowed rent payments to him.

{¶ 9} On January 4, 2010, the parties reappeared before a magistrate for a hearing. At the conclusion of the hearing, the magistrate issued an order releasing the funds held on deposit to Fogelman. In a judgment entered January 6, 2010, the municipal court adopted the magistrate's decision.

{¶ 10} Stoyer filed objections to the magistrate's order. In large part, Stoyer maintained that the magistrate erred in granting Fogelman relief without first ruling on Stoyer's motion to transfer the action to the common pleas court.

{¶ 11} The municipal court stayed enforcement of its January 6, 2010 judgment to provide itself time to consider and rule on Stoyer's objections. In its subsequent decision, the municipal court concluded that Stoyer's complaint was, indeed, a counterclaim under R.C. 5321.09(B). After reviewing the factual allegations in the counterclaim, the municipal court found that Stoyer had alleged that Fogelman allowed third parties to steal over \$15,000 of Stoyer's personal property from a residence that Stoyer had leased from Fogelman. According to the municipal court, these factual allegations stated a claim for relief. Because that claim exceeded the monetary limits of the municipal court's jurisdiction, the municipal court decided that it had to certify the action to the Franklin County Court of Common Pleas pursuant to R.C. 1901.22(F) and Civ.R. 13(J). The

municipal court then held that "all of the orders and decisions rendered in this action after Mr. Stoyer's Motion to Transfer are void and the pending matters related to those orders and decisions are moot, including Mr. Stoyer's several Objections to [the] Magistrate's Order and Mr. Fogelman's Motion to Dismiss." Decision, at 4.

{¶ 12} In a June 1, 2010 judgment entry, the municipal court certified the proceedings in the case to the Franklin County Court of Common Pleas and ordered the transfer of all escrowed funds to that court. Upon institution of the action before the common pleas court, Stoyer filed a trio of motions. First, Stoyer filed a "Motion for Summary Judgement [sic] on Transferred Moot Issues" in which he requested that the trial court strike the answer to the counterclaim because Ritterspach filed it. Stoyer repeated his argument that Garcia remained attorney of record—and the only attorney who could sign the answer—because Fogelman had not changed counsel in accordance with Loc.R. 3.03.

{¶ 13} Stoyer next moved for sanctions pursuant to Civ.R. 11. In that motion, Stoyer contended that, by signing and filing documents as Fogelman's attorney of record, Ritterspach committed falsification. Finally, Stoyer moved for a default judgment. Stoyer argued that the answer to the counterclaim was invalid because: (1) it was filed by Ritterspach, who was not the attorney of record, and (2) the municipal court had declared the answer moot in its June 1, 2010 decision. Stoyer then reasoned that he was entitled to default judgment because Fogelman failed to answer his counterclaim.

{¶ 14} Fogelman opposed each of Stoyer's motions. In addition, Fogelman moved for release of the escrowed funds and summary judgment. Stoyer then filed a second motion for summary judgment.

{¶ 15} On July 7, 2011, the trial court issued a decision granting Fogelman's motions for release of the escrowed funds and summary judgment, and denying Stoyer's two motions for summary judgment. The trial court reduced its ruling to judgment on July 27, 2011.

{¶ 16} Stoyer now appeals from the July 27, 2011 judgment, and he assigns the following errors:

[1.] Did the common pleas court *abused its discretion* by considering the landlords due process claim's first concerning of their *summary judgment* by not considering the tenant's

due process claims second regarding the *answer* to the *counterclaim* was not timely within the 28-day period or presenting *excusable neglect* within the common pleas court where this transferred state rent payment escrow action rendered all pleadings as *moot* after the transfer motion was filed where: 1) after the transfer the 28-day period begins to toll in which to file *answer*...rather than when transfer motion was made, which; 2) the common pleas court *abused its discretion* when it did not consider the *default judgment* pursuant to **O.R.C. § Civil Rule 55** where the Defendant did not file a timely *answer* pursuant to **O.R.C. § Civil Rule 5(D); 6(B), (B)(2); (D); 7(B)(1);** and to **O.R.C. § Civil Rule 12(A)(1); 55(A)** since it was well over the twenty-eight-day (28 days) or fourteen (14) days for a *responsive pleading* where a *summary judgment* is not a *affirmative defense* to the *counterclaim*?

[2.] Did the Common Pleas Court *abuse its discretion* by not protecting color of state law through its decision on that the Defendant's *summary judgment* as not an *affirmative defense* to an unanswered transferred *counterclaim* presenting *excusable neglect* that it lacked support of color of state law within its *arguments* of the same pleading regarding: 1) breach of contract of an: a) unsigned *lease* by the landlord pursuant to **O.R.C. § 1310.15**; since the *lease could* established a *waiver of forfeiture*, be *voidable*, be within *oral agreements*, or be within *assignments* of Exhibit "3;" b) where the actual contractual obligation of the tenant's signature was submitted under duress where the landlord refuses to support his *lease* through his signature; and c) a nonsupport claim that a non-bifurcated eviction solves a previous *breach of contract* issue where the *eviction* was lacking *subject matter jurisdiction* within common pleas court who did not exercise any *judgment* to that court; 2) where if thru the common pleas court's own *judgment* stated that it lacked *jurisdiction* of the *subject matter* over other actions and of federal laws or thru the transferring municipal court, except allowed oppositions that opportunity of original and concurrent *jurisdiction* of mere allegations against the federal housing discrimination laws pursuant to Title III of the **American Disability Act of 1990 (ADA)** or the **Fair Housing Act** submitted as *evidence* within the unsigned *lease agreement* where the landlord depends on as binding *evidence*?

[3.] Did the common pleas court *error* by *abusing its discretion* by allowing material facts of *prima facie evidence*

of the municipal court record transferred thru as certified presenting numerous of due process discrepancy by the Defendant's counsels that: 1) the original attorney of record did not appropriately withdraw; or 2) where the second chair counsel is; **a)** *fraudulently concealing material facts* concerning any fact's of his representation; **b)** by preparing pleadings for the landlord (layperson) encouraging violations of *unjust enrichment*; and **d)** through violations of the criminal code of *falsification* forcing *prejudice* to a Disabled Plaintiff in violation of **O.R.C. § Civil R. 11** where *sanction* or a crime through criminal laws of *falsification* pursuant to **O.R.C. § 2921.13** or any other *offense against justice* pursuant to **O.R.C. § Ch 2921** perpetually unethical of moral turpitude by this attorney where it becomes an absolute violation of the State's Code of Professional Responsibility where each state court has the power to enforce by the act of the Ohio General Assembly pursuant to **O.R.C. § Ch 4705** to suspend or remove; file a civil action if needed; disbarment proceedings if decided; and/or criminal imprisonment if under no choice that can be enforced by any state citizen or court where attorney lacks immunity powers when an moral turpitude act involves a disabled person protected under the **ADA**?²

{¶ 17} By his first assignment of error, Stoyer argues that the trial court erred in its treatment of his motion for default judgment. We disagree.

{¶ 18} Ordinarily, when a trial court decides a case without expressly ruling on a pending motion, an appellate court will presume that the trial court denied the motion. *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, ¶ 13; *Burkhart v. Burkhardt*, 191 Ohio App.3d 169, 2010-Ohio-5363, ¶ 30 (10th Dist.). Here, because the trial court granted Fogelman summary judgment and released the escrowed funds without first ruling on Stoyer's motion for default judgment, we will presume that the trial court denied Stoyer's motion. We thus turn to the question of whether the trial court erred in implicitly denying the motion.

{¶ 19} Pursuant to Civ.R. 55(A), "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the party entitled to a judgment by default shall apply in writing or orally to the

² We quote Stoyer's assignments of error without any alteration to the emphasis, grammar, or punctuation that Stoyer used.

court therefor." Here, through his counterclaim, Stoyer sought affirmative relief from Fogelman. Fogelman timely filed a responsive pleading, *i.e.*, an answer to the counterclaim, on November 13, 2009. Because Fogelman appropriately defended Stoyer's counterclaim, Stoyer was not entitled to default judgment.

{¶ 20} In arguing to the contrary, Stoyer asserts that the municipal court abrogated the answer by finding it "moot" in the June 1, 2010 decision. Stoyer argues that the trial court should have granted him a default judgment because Fogelman failed to renew his answer after the transfer of the case. Stoyer misreads the June 1, 2010 decision. The municipal court actually found moot "pending matters" related to the municipal court's orders and decisions, such as issues raised in Stoyer's objections to the magistrate's order and Fogelman's motion to dismiss. Fogelman's answer does not fall into this category. Given that the answer remained an effective pleading, the trial court did not err in denying Stoyer default judgment. Accordingly, we overrule Stoyer's first assignment of error.

{¶ 21} We next turn to Stoyer's second assignment of error, which is utterly incomprehensible. Appellate courts "[d]etermine [an] appeal on its merits on the assignments of error set forth in the briefs under App.R. 16." App.R. 12(A)(1)(b). In the absence of an assignment of error, an appellate court has nothing upon which to rule. *Discover Bank v. Doran*, 10th Dist. No. 10AP-496, 2011-Ohio-205, ¶ 6. The burden of affirmatively demonstrating error on appeal rests with the party asserting error. *State ex rel. Petro v. Gold*, 166 Ohio App.3d 371, 2006-Ohio-943, ¶ 94 (10th Dist.). If a court cannot comprehend the error asserted, it cannot grant the appellant any relief. *Williams v. Barrick*, 10th Dist. No. 08AP-133, 2008-Ohio-4592, ¶ 24.

{¶ 22} Here, we cannot make any sense of the second assignment of error. Accordingly, we overrule it.

{¶ 23} We also have great difficulty gleaning exactly what error Stoyer is challenging in his third assignment of error. From what we can discern, Stoyer argues that the trial court erred in considering facts that Fogelman first presented in the municipal court. Stoyer apparently believes that the trial court should have disregarded those facts because of alleged wrongdoing by Fogelman's attorney.

{¶ 24} Stoyer correctly observes that, in Fogelman's motions for summary judgment and release of the escrowed funds, Fogelman referred to facts he first presented in the second motion for release of the escrowed funds that he filed in the municipal court. In particular, Fogelman represented that the parties agreed to commence repairs on December 29, 2009, but Stoyer refused to allow Fogelman or his contractors access to the leased premises on that date. Fogelman, however, adduced those facts anew when he filed his motions in the common pleas court. In his memorandum in opposition to Fogelman's motions, Stoyer did not dispute Fogelman's rendition of those facts. Therefore, we conclude that the trial court did not err in relying on the facts that Fogelman advanced.

{¶ 25} Moreover, we reject Stoyer's numerous allegations that Ritterspach committed wrongdoing by signing filings as attorney of record for Fogelman. Stoyer's allegations arise from his objection as to how Fogelman changed his attorney of record. Stoyer reasons that because the switch did not comply with Loc.R. 3.03, Ritterspach could not act as Fogelman's attorney of record. Thus, according to Stoyer, Ritterspach's doing so amounted to falsification.

{¶ 26} Courts may adopt local rules of practice, such as Loc.R. 3.03, as long as those rules are not inconsistent with any rules governing practice and procedure that the Supreme Court of Ohio promulgates. Ohio Constitution, Article IV, Section 5(B); Civ.R. 83(A). A court's discretion to enforce its local rules includes the power to strike filings that do not comply with the rules. *Boggs v. Ohio Real Estate Comm.*, 186 Ohio App.3d 96, 2009-Ohio-6325, ¶ 42 (10th Dist.).

{¶ 27} Here, Stoyer asked the common pleas court to enforce a municipal court local rule. The common pleas court correctly held that it lacked authority to do so. More importantly, after the transfer of this matter from municipal court to common pleas court, the municipal court local rules no longer controlled any part of the litigation. A transferred case "proceed[s] as if it had been commenced originally in the court of common pleas." R.C. 1901.22(G). Thus, after transfer, the common pleas court local rules, not the municipal court local rules, governed this matter from the filing of the application to deposit rent. Unlike the municipal court, the common pleas court has no local rule requiring court approval for a change in the attorney of record. Under the Ohio

Rules of Civil Procedure, " '[a]n attorney becomes an attorney of record in the particular proceedings by his subscription of a pleading or paper served and filed in the action.' " *Citibank S. Dakota, N.A. v. Wood*, 169 Ohio App.3d 269, 2006-Ohio-5755, ¶ 17 (2d Dist.), quoting *Verber v. Wilson*, 10th Dist. No. 96APF09-1255 (June 5, 1997). Therefore, pursuant to the rules applying in the common pleas court, Ritterspach became Fogelman's attorney of record by signing the answer and notice of appearance, which he served and filed on November 13, 2009. Contrary to Stoyer's assertions, Ritterspach's subsequent filing of documents as Fogelman's attorney of record was neither fraudulent nor a dilatory tactic. As Ritterspach complied with the rules governing common pleas court proceedings, the trial court had no basis to sanction Ritterspach or Fogelman.

{¶ 28} Finally, we find no error in the trial court's refusal to disregard facts alleged by Fogelman because Fogelman, while acting pro se, filed a motion in a different case that quoted from a motion Ritterspach filed on Fogelman's behalf in the instant action. We do not join Stoyer in his assumption that Ritterspach prepared the motion for Fogelman or that Ritterspach violated any Rule of Professional Responsibility. Accordingly, we overrule Stoyer's third assignment of error.

{¶ 29} For the foregoing reasons, we overrule all of Stoyer's assignments of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN, P.J., and FRENCH, J., concur.
