[Cite as *Bryant v. Mojtabaei*, 2012-Ohio-3140.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Soraya Bryant,	:	
Plaintiff-Appellee,	:	
		No. 11AP-1135
v.	:	(M.C. No. 2010CVG-26319)
Katherine Mojtabaei,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on July 10, 2012

Katherine A. Mojtabaei, pro se.

APPEAL from the Franklin County Municipal Court.

FRENCH, J.

{¶ 1} Defendant-appellant, Katherine Mojtabaei ("appellant"), appeals the judgment of the Franklin County Municipal Court, which adopted a magistrate's decision that awarded judgment in the amount of $8,800, plus costs and interest, to plaintiff-appellee, Soraya Bryant ("appellee"). For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} On July 6, 2010, appellee filed an eviction action against appellant. In her complaint, appellee alleged that, since December 2008, appellant had been living in a home owned by appellee, and appellant had not been paying any rent or making payments for utilities. The trial court scheduled an eviction hearing for July 20, 2010. Appellee appeared at the hearing, but appellant did not. That same day, a magistrate

issued a decision granting judgment in favor of appellee for restitution of the premises and costs, and the trial court adopted the magistrate's decision.

{¶ 3} The next day, appellant filed an objection to the trial court's decision. In her objection, she stated that appellee and her husband, appellee's brother, have a verbal lease agreement concerning the home, and she is not a party to that agreement. She said that she did not appear at the eviction hearing because appellee told her she was going to dismiss the action and "tricked" appellant into not attending. The trial court overruled appellant's objection.

{¶ 4} On July 26, 2010, appellant filed a motion to set aside the judgment, which the trial court considered as a motion for relief from judgment under Civ.R. 60(B). The court considered appellant's explanation that a toxic relationship existed between appellant and appellee and that appellee filed the eviction against her alone, despite the fact that she lives in the home with her husband, appellee's brother, out of animosity. The court found, however, that appellant admitted she had never paid rent to appellee, and therefore, she had no meritorious defense to the eviction action. The court also found that appellant's failure to attend the hearing was not the result of excusable neglect because she unreasonably relied on appellee's assertion, through appellant's husband, that she would not appear. On these grounds, the court denied appellant's motion.

{¶ 5} On September 7, 2011, appellee moved for default judgment against appellant because no responsive pleading had been filed to her July 6, 2010 complaint, which included a prayer for damages. On September 8, 2011, the trial court granted default judgment in favor of appellee as to liability and scheduled a damages hearing for September 27, 2011. The record contains a "File Copy" of notice concerning the hearing, and the docket indicates that notices were issued.

{¶ 6} Appellee appeared at the September 27 hearing, but appellant did not. In a decision filed on December 6, 2011, the magistrate found that the parties never agreed upon a monthly rental rate for the home owned by appellee. The magistrate found that $400 per month was a reasonable rental rate and that appellant had occupied the premises for 22 months. The magistrate issued a decision that granted judgment in

favor of appellee in the amount of $8,800, plus costs and interest. On December 7, 2011, the trial court adopted the magistrate's decision.

II. ASSIGNMENT OF ERROR

{¶ 7} Appellant filed a timely notice of appeal, and she raises the following assignment of error:

> The court erred because I never received notice for this court hearing. Also, this case was brought by my Sister-in-Law out of spite for me, and is failing to understand that my husband, her brother, are married and she can't just put all of this on me alone. We have been married for 15 years and have 3 kids together, all our finances are together. [Appellee] is being prejudice toward myself and is not telling the whole truth to the court about this case. I have never been a party to [appellee] and my husband's arrangement with the house to single me out as the sole party to this case.

III. DISCUSSION

{¶ 8} Before addressing appellant's assignment of error, we consider our standard of review. Civ.R. 53 imposes an affirmative duty on parties to make specific, timely objections in writing to the trial court, identifying any error of fact or law in the magistrate's decision. *Howard v. Norman's Auto Sales*, 10th Dist. No. 02AP-1001, 2003-Ohio-2834, ¶ 21. Pursuant to Civ.R. 53(D)(3)(b), a party may not raise on appeal any error pertaining to a trial court's adoption of any finding of fact or conclusion of law by a magistrate, unless that party timely objected to that finding or conclusion, as required by the rule. *State ex rel. Booher v. Honda of Am. Mfg., Inc.*, 88 Ohio St.3d 52, 53-54 (2000).

{¶ 9} Here, consistent with Civ.R. 53, the magistrate's decision included the following notice: "A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law contained in this decision (whether or not specifically designated as such under Civ.R. 53(D)(3)(a)(ii)) unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(D)(3)(b)." Appellant did not file objections to the magistrate's decision, which the trial court adopted.

{¶ 10} This court has held that, when a party fails to file objections to a magistrate's decision, we may still review the decision for plain error. *Brown v. Zurich US*, 150 Ohio App.3d 105, 2002-Ohio-6099, ¶ 27 (10th Dist.); *O'Connor v. Trans World Servs., Inc.*, 10th Dist. No. 05AP-560, 2006-Ohio-2747, ¶ 8. *See also* Civ.R. 53(D)(3)(b)(iv). The plain error doctrine is not favored in civil appeals, however, and we may apply it "only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process." *Goldfuss v. Davidson*, 79 Ohio St.3d 116 (1997), syllabus.

{¶ 11} Upon review, we cannot conclude that the trial court committed plain error. While appellant contends that she did not receive notice of the September 27, 2011 hearing, the docket indicates that the court issued the requisite notices to the parties. The record contains a "File Copy" of the notice, and it identifies appellant as the defendant in the action. The record contains one address for service upon appellant, and it is apparent from the record that she received notices prior and subsequent to the September 27 hearing. Therefore, we cannot conclude that the trial court committed plain error on this basis.

{¶ 12} Nor can we conclude that the trial court committed plain error in determining that appellant owes appellee $8,800 in unpaid rent for her occupation of the property over a period of 22 months. The record does not contain a transcript of the September 27 hearing. Therefore, we have no way of reviewing the evidence upon which the magistrate relied to determine the amount owed. *See Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980) ("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."). On its face, however, a rent of $400 per month does not appear to be unreasonable.

{¶ 13} Finally, we cannot conclude that the trial court erred by awarding judgment in favor of appellee simply because spite motivated her to file a complaint

against appellant alone. Unfortunately, spite is a common motivator in litigation; it does not preclude recovery.

{¶ 14} For all these reasons, we overrule appellant's assignment of error.

IV. CONCLUSION

{¶ 15} Having overruled appellant's assignment of error, we affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

BROWN, P.J., and DORRIAN, J., concur.