

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Tariq Hussain,	:	
Plaintiff-Appellee,	:	
v.	:	No. 14AP-686 (C.P.C. No. 13CV-12584)
Taria Sheppard et al.,	:	(REGULAR CALENDAR)
Defendants-Appellants.	:	

D E C I S I O N

Rendered on February 24, 2015

Omar Tarazi, for appellee.

Jeffrey L. McClelland, for appellant.

APPEAL from the Franklin County Court of Common Pleas

T. BRYANT, J.

{¶1} Defendants-appellants, Taria Sheppard and Sheppard Development Group, appeal from a judgment of the Franklin County Court of Common Pleas in a forcible entry and detainer action granting restitution of the premises at 1440-1444 East Broad Street, Columbus, Ohio, to plaintiff-appellee, Tariq Hussain.

I. BACKGROUND

{¶2} On August 6, 2013, in the Franklin County Municipal Court, appellee filed a complaint for forcible entry and detainer, rental/option to purchase payments, and damages against appellants. In response, appellants filed an answer and a counterclaim. Because the counterclaim amount exceeded the monetary jurisdiction of the municipal court, the case was transferred to the Franklin County Court of Common Pleas.

{¶3} In the common pleas court, the case was referred to a magistrate for a hearing on the forcible entry and detainer action only. The magistrate subsequently issued a decision determining that appellee complied with the notice requirements in R.C. 1923.04(A) and that appellants breached the parties' lease agreement by failing to make monthly rental/option to purchase payments. Accordingly, the magistrate concluded that appellee was entitled to immediate restitution of the premises. Appellants timely filed objections to the magistrate's decision. On August 4, 2014, the trial court overruled in part and sustained in part appellants' objections, entered judgment in favor of appellee, and ordered a writ of restitution to issue.¹ Appellants did not move for a stay of execution pending appeal.

{¶4} The trial court issued a writ of restitution, which was received by the Franklin County Sheriff's Office on August 6, 2014. The Sheriff's return of writ indicates that the writ was executed and the eviction was completed on August 20, 2014.

II. ASSIGNMENT OF ERROR

{¶5} On September 2, 2014, appellants filed a timely appeal of the trial court's judgment, asserting the following single assignment of error:

The Court below erred in holding that a Notice to Leave Premises was served by Landlord Plaintiff-Appellee in accordance with § 1923.04(A), Ohio Revised Code.

III. DISCUSSION

{¶6} Forcible entry and detainer actions decide only the right to immediate possession and nothing else. *Franklinton Senior, L.L.C. v. Timson*, 10th Dist. No. 14AP-171, 2014-Ohio-3255, ¶ 6, citing *C & W Invest. Co. v. Midwest Vending, Inc.*, 10th Dist. No. 03AP-40, 2003-Ohio-4688, ¶ 9, citing *Seventh Urban, Inc. v. Univ. Circle Property Dev., Inc.*, 67 Ohio St.2d 19, 25 (1981), fn. 11, and *Long v. MacDonald*, 3d Dist. No. 3-02-10, 2002-Ohio-4693. If immediate possession is no longer an issue because the tenant

¹ In its August 4, 2014 entry, the trial court sustained appellants' objection to the magistrate's imposition of attorney fees, but overruled appellants' remaining objections, including the objection to the magistrate's finding that appellee complied with the notice requirements of R.C. 1923.04(A). The court further averred that "[a]ll remaining causes of action contained in Plaintiff's Complaint shall remain pending until determined in accordance with law," and "there is no just reason for delay and that this Judgment is a **final appealable order** as to the First Cause of Action only contained in Plaintiff's Complaint[.]" (Emphasis sic.) (Aug. 4, 2014 Entry, 6.)

vacated the premises and the property has been restored to the landlord, then continuation of the forcible entry and detainer action is unnecessary, as there is no further relief that may be granted. *Id.* This is true regardless of whether the tenant's vacation of the premises is voluntary or not. *Id.*

{¶7} The only method by which a defendant appealing a judgment of forcible entry and detainer may prevent the cause from becoming moot is by obtaining a stay of execution and posting a supersedeas bond. R.C. 1923.14; *Cherry v. Morgan*, 2d Dist. No. 2012 CA 11, 2012-Ohio-3594, ¶ 5. If the defendant fails to avail himself of this remedy, all issues relating to forcible entry and detainer are rendered moot by his eviction from the premises. *Id.*

{¶8} In the present case, appellants failed to obtain a stay of execution and were evicted from the premises pursuant to a writ of restitution; accordingly, their appeal of the trial court's judgment granting restitution of the premises to appellee is moot. *See, e.g., Miami Valley Hous. v. Jackson*, 12th Dist. No. 25020, 2012-Ohio-5103, ¶ 7 (finding appeal of FED action moot where appellant failed to obtain a stay of execution and was ejected from the premises pursuant to a writ of restitution); *AVB Properties, L.L.C. v. Chesler*, 9th Dist. No. 05CA008702, 2006-Ohio-4306, ¶ 15-16 (holding that, where no stay of execution is perfected and tenant is ousted by execution of a writ, the appeal of the FED action is moot); *Mountaineer Invests., L.L.C. v. Performance Home Buyers, L.L.C.*, 2d Dist. No. 24173, 2011-Ohio-3614, ¶ 12 ("[b]ecause the Joneses failed to obtain a stay of execution and were ejected pursuant to a writ of restitution, we find that their appeal from the writs of restitution is moot"); *Valente v. Johnson*, 4th Dist. No. 06CA31, 2007-Ohio-2664 (finding appeal of forcible entry and detainer action moot where appellant failed to post the required bond to obtain a stay of the writ of restitution and was ousted from the premises).

{¶9} Because the appeal is moot, we do not reach the merits of appellants' assignment of error. *See Millennia Housing Mgmt., Ltd. v. Withrow*, 4th Dist. No. 12CA2, 2013-Ohio-278, ¶ 5 ("the Supreme Court of Ohio has advised us that it is reversible error for an appellate court to consider the merits of an appeal that has become moot.").

IV. DISPOSITION AND MOTION TO STRIKE

{¶10} Appellants' appeal from the trial court's judgment ordering restitution of the premises to appellee is sua sponte dismissed as moot. Having sua sponte dismissed the appeal, appellants' motion to strike appellee's argument regarding mootness is denied.

Motion to strike denied; appeal dismissed.

SADLER and DORRIAN, JJ., concur.

T. BRYANT, J., retired, of the Third Appellate District,
assigned to active duty under authority of the Ohio
Constitution, Article IV, Section 6(C).
