[Cite as *Curtis v. Cline*, 2009-Ohio-6034.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

BRIAN C. CURTIS, d.b.a. DRIFTWOOD ACRES,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2009-A-0020**
- vs -	:	
GARLAND CLINE, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Ashtabula County Court of Common Pleas, Case No. 2007 CV 1392.

Judgment: Affirmed.

Brian C. Curtis, pro se, 6800 Lake Road, West, Geneva, OH 44041 (Plaintiff-Appellant).

Marley Ford Eiger and *Agustin Ponce De Leon*, The Legal Aid Society of Cleveland, 8 North State Street, #300, Painesville, OH 44077 (For Defendants-Appellees).

DIANE V. GRENDELL, J.

{¶1} Plaintiff-appellant, Brian C. Curtis, appeals the Judgment Entry of the Ashtabula County Court of Common Pleas, in which the trial court vacated Judgment for Restitution and ordered Curtis to pay $400, in accordance with the parties' settlement agreement, to defendants-appellees, Garland and Marie Cline. For the following reasons, we affirm the decision of the trial court.

{¶2} In 2007, Garland Cline and his wife, Marie, entered into an agreement with Curtis for the sale of a manufactured home, located in Curtis' mobile home park. After the Clines had been living in the home for a few months, Curtis filed an eviction against the Clines, who in turn, filed various counterclaims. The parties, in an attempt to resolve the case, signed a Settlement Agreement which provided that the sales contract would be terminated and Curtis would retain the home. The Clines were to "remove their belongings from the [p]roperty" and "make reasonable efforts to maintain the [p]roperty in the same fashion in which they found it." Once the Clines had vacated the property, there was to be a walk-through inspection of the home by Curtis, Curtis' attorney, and the Clines' attorney, at the conclusion of which Curtis was to pay the Clines $400, provided that there were "no intentional acts of vandalism perpetrated against the [p]roperty by [the Clines]."

{¶3} The Clines and Curtis also agreed to sign a Writ of Restitution, whereby Curtis was to receive a right of entry for the premises. The Writ was to be held by Curtis' attorney. If the Clines failed to vacate the property, Curtis was then authorized to file the Writ and the authorities were required to execute the Writ against the Clines.

{¶4} The Clines vacated the home; however, in cleaning up the property, they piled numerous items on the tree lawn to be hauled away as trash. The walk-through was to be conducted the day before regularly scheduled trash pickup at the mobile home park.

{¶5} On the day of the walk-through inspection, Curtis believed that the Clines had not "vacated" the property due to the remaining items on the tree lawn. He refused

to participate in a walk-through and retained the $400. The next day, Curtis filed the Judgment for Restitution.

{¶6} The Clines subsequently filed a Motion to Vacate Judgment for Restitution and a Motion to Hold Plaintiff in Breach of Settlement Agreement. After a hearing, the trial court determined that the Clines "had clearly vacated the property, in accordance with the Settlement Agreement. *** Since the [Clines] had otherwise substantially complied with the agreement, this rather minor issue does not constitute a breach of the settlement." Further, "it is [Curtis] who breached the agreement by filing the Judgment for Restitution and refusing to pay the agreed sum of $400.00 to the [Clines]."

{¶7} The trial court vacated the Judgment of Restitution, ordered Curtis to pay the Clines $400, and, upon payment of the settlement proceeds, dismissed all claims and counterclaims involved in the litigation with prejudice.

{¶8} Curtis timely appeals and raises the following assignments of error:

{¶9} "[1.] The trial court erred by asserting that the defendants in this action had physically moved out of the mobile home by April 15, 2008 and it was not necessary for the Plaintiff to execute the Writ of Restitution.

{¶10} "[2.] The trial court erred by finding that it was the 'cost of doing business' when discarded items were left on the property.

{¶11} "[3.] The trial court erred by not ruling that the defendants' counsel did not provide keys on the appointed date to the plaintiff, as required in the Settlement Agreement.

{¶12} "[4.] The trial court erred in its determination that 'based on the evidence, the Court finds that the Defendants had clearly vacated the property in accordance with the Settlement Agreement.'"

{¶13} While we note that while Curtis is proceeding pro se, "pro se litigants are bound by the same rules and procedures as those litigants who retain counsel. They are not to be accorded greater rights and must accept the results of their own mistakes and errors." *R.G. Slocum Plumbing v. Wilson*, 11th Dist. No 2002-A-0091, 2003-Ohio-1394, at ¶12 (citation omitted).

{¶14} Since each of Curtis' assignments of error assert an error pertaining to an issue of fact, we will review his arguments under a civil manifest weight of the evidence standard and address them jointly. Under the civil manifest weigh of the evidence standard, "[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, at syllabus.

{¶15} When reviewing a trial court's decision on a manifest weight of the evidence basis, an appellate court is guided by the presumption that the findings of the trial court were correct. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. The rationale for this presumption is that the trial court is in the best position to evaluate the evidence by viewing the witnesses and observing their demeanor, voice inflections, and gestures, and may use these observations in assessing the credibility of the testimony. Id.

{¶16} At trial, Marie Cline testified that the Cline family had left the house on the day specified in the parties' Settlement Agreement. She stated that "[a]s soon as I got my new house, I started moving out. So I was out probably three -- totally out, three days before the date" because her counsel advised her not to "leave the place empty" prior to the walk-through inspection. Additionally, Curtis testified that after the specified move out date, "they [the Clines] were gone" from the house.

{¶17} Testimony also revealed that the Clines paid a fee to Curtis for monthly trash collection, which entitled them to two large trash cans per weekly garbage pickup. The Clines testified that the trash collector would pick up trash from various residents of the park which did not fit into the provided cans, including furniture, and did not charge extra for the removal. Marie stated that the trash collector had, in the past, picked up carpet from the Clines' tree lawn without incident. Additionally, Marie testified that there was a dumpster on Curtis' property that she used for larger items which would not fit into the trash can. She said that Curtis' son, whom she thought was co-owner of the park, told her she could use the dumpster. Curtis testified that around the time of the Clines' move, he parked the bucket of his Bobcat front-end loader on top of the dumpster, preventing anyone from disposing of trash in the dumpster.

{¶18} Marie testified, after looking at pictures of the tree lawn entered into evidence, that there were several items in the pile that were not the Clines'. Marie stated that there was an animal cage, flooring planks, and various boxes and/or trays in the pile that were from her family's discarded items. Further, Marie stated that a large child's toy (a gym with a slide), which was depicted in the picture of the tree lawn entered into evidence, was later removed by a friend of the Clines for her grandchildren.

Additionally, Marie testified that the pictures of the tree lawn did not portray the manner in which she left the tree lawn; she said that the discarded items depicted in the pictures were "spread out" and not "all up together" as she left them.

{¶19} Marie also stated that her husband made arrangements with the "garbage man" to pick up the extra trash from the move. Garland Cline confirmed that the garbage man told him "there would be no problem [with the additional trash]" and "he would pick it up."

{¶20} The Settlement Agreement, made part of the record as an exhibit, did not address the circumstance that the Clines might leave more than the usual amount of trash. Curtis testified that he removed the trash from the tree lawn at his own expense, which he estimated at $50; however, he failed to provide evidence of the cost.

{¶21} Furthermore, "testimony concerning personal property of [the Clines] that remained in the home" which Curtis alleges the trial court failed to consider, was not at issue due to the following stipulation that took place between the parties' attorneys at trial:

{¶22} The Clines' counsel: "Well, if we can agree that there was no problem with the way the property inside was left, in at least as good a condition as when they moved in, then we could – we could – I could stop with this – going through these pictures."

{¶23} Curtis' counsel: "Judge, yeah. We would join in a stipulation that the agreement and dispute is limited to the exterior of the trailer."

{¶24} Testimony also indicated that, after viewing the tree lawn, Curtis refused to perform the walk-through inspection. Garland testified that he gave the keys to his

attorney; however, “there was no opportunity to say or do nothing with [Curtis]. He had an attitude that day that was out of this world.” Therefore, according to testimony, the walk-through inspection was never performed, the keys were not turned over to Curtis, and the $400 was not given to the Clines.

{¶25} “[T]he trier of fact *** is in the best position to observe and evaluate the demeanor, voice inflection, and gestures of the witnesses.” *State v. Dach*, 11th Dist. No. 2005-T-0048 and 2005-T0054, 2006-Ohio-3428, at ¶42 (citation omitted). It is well-settled that “the factfinder is free to believe all, part, or none of the testimony of each witness appearing before it.” *Warren v. Simpson*, 11th Dist. No. 98-T-0183, 2000 Ohio App. LEXIS 1073, at *8. Moreover, if the evidence is susceptible to more than one interpretation, a reviewing court must interpret it in a manner consistent with the verdict. Id.

{¶26} Based upon the foregoing, there is competent, credible evidence to support the following determinations: that the Clines had physically moved out of the mobile home by April 15, 2008, the specified date in the Settlement Agreement, and that it was not necessary for Curtis to execute the Writ of Restitution; that the items left on the Clines’ tree lawn were not unusually excessive, it was reasonable to leave items on the tree lawn, and this did not create grounds to repudiate the Settlement Agreement, thereby justifying the finding that it was the “cost of doing business” when discarded items were left on the property; and that the Clines had vacated the property according to the Settlement Agreement and had otherwise substantially complied with the Settlement Agreement.

{¶27} The judge witnessed the credibility of the witnesses and evidence, as well as any conflicting testimony, before rendering his decision. We determine that the trial court's decision was supported by competent, credible evidence and therefore, is supported by the manifest weight of the evidence. See *In re Memic*, 11th Dist. Nos. 2006-L-049, 2006-L-050, and 2006-L-051, 2006-Ohio-6346, at ¶21, citing *C.E. Morris*, 54 Ohio St.2d 279, at syllabus.

{¶28} Curtis' assignments of error are without merit.

{¶29} For the foregoing reasons, the Judgment Entry of the Ashtabula County Court of Common Pleas, vacating the Judgment for Restitution and ordering Curtis to pay $400, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.