

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

FARRELL G. BELKNAP, JR.,	:	O P I N I O N
Plaintiff-Appellant,	:	
- VS -	:	CASE NO. 2012-P-0007
ROGER D. SHEARS, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Portage County Court of Common Pleas, Case No. 2010 CV 0173.

Judgment: Affirmed.

Farrell G. Belknap, Jr., pro se, 11286 Kyle Road, Garrettsville, OH 44231 (Plaintiff-Appellant).

Timothy J. Hart, 136 North Water Street, Suite 209, Kent, OH 44240 (For Defendants-Appellees).

THOMAS R. WRIGHT, J.

{¶1} This appeal has been taken from a final judgment of the Portage County Court of Common Pleas. In that judgment, the trial court overruled certain objections to a prior magistrate's decision and entered its final rulings on the merits of the remaining claims of appellant, Farrell G. Belknap, Jr. Before this court, appellant primarily submits that the magistrate's and trial court's disposition of his remaining claims was against the manifest weight of the evidence.

{¶2} In 1999, appellant purchased from his father certain real property located at 11328 Kyle Road, Garrettsville, Ohio. Since appellant already owned a residence on Kyle Road, he did not move into the home on his father's former property. Instead, over the next two years, he remodeled a substantial portion of the home's interior, painted its exterior, and installed new landscaping in the yard.

{¶3} Beginning in 2001, appellant rented the remodeled residence to appellees, Roger D. Shears and Tammy Dowling. Over the next three years, appellees paid the monthly sum of \$700 to appellant for use of the home and four sheds which were also on the property. Shears primarily employed the sheds to store equipment and paint that he used in his seasonal construction business.

{¶4} In August 2004, appellees informed appellant that they were interested in purchasing the leased premises. Accordingly, the parties executed a land installment contract, under which appellees agreed to pay a total of \$115,000 for the real property. Under the terms of the contract, appellees made an initial down payment of \$10,000 to appellant, and then were required to make a monthly payment of \$818.40 over the next five years. Furthermore, at the end of the five-year period, appellees would be liable for a "balloon" payment of approximately \$100,000. In addition, the contract provided that appellees could not make changes to the property without obtaining written permission.

{¶5} Over the five-year period, appellees did not miss any of the sixty monthly installment payments. However, in August 2009, they told appellant that they would not be able to make the final balloon payment, which was due on September 1, 2009. Over the ensuing few weeks, Shears and appellant tried to negotiate a new lease agreement for the premises, since appellees hoped to remain in the home until their son graduated

from high school. At the conclusion of this process, during which two separate lease agreements were executed, appellees agreed to make a monthly rent payment of \$850. But, even though they continued to reside in the home until May 2010, appellees only made one rent payment.

{¶6} After appellees had not paid any rent for three months, appellant brought the underlying civil action against them and two other defendants. Under his first claim, appellant sought foreclosure under the terms of the land installment contract. Under his second claim, he alleged that appellees had failed to pay the fair rental value for the real property during the five-year period in which they made the installment payments; thus, he sought the difference between the fair rental value and those monthly installments. Under his final claim, appellant requested compensatory damages for alleged changes appellees had made to the home without his written consent. As part of the latter claim, he also alleged that appellees had damaged the home beyond normal wear and tear.

{¶7} Once appellees had filed their answer to the complaint, appellant moved for partial summary judgment on his foreclosure claim. When appellees did not submit a response, the trial court granted appellant's motion on that specific claim, and a sheriff's sale was scheduled for October 2011. At that time, appellant essentially repurchased the property for the sum of \$33,334, and the sale was immediately confirmed by the trial court.

{¶8} The remaining aspects of the case were subsequently assigned to a court magistrate, who then conducted an evidentiary hearing on April 25, 2011. In addition to testifying on his own behalf, appellant presented the testimony of Robert Barrett, a local contractor whom appellant hired to make certain repairs to the residence. In response,

Shears testified on behalf of appellees. As part of that testimony, Shears asserted that, while in possession of the home, he had made certain improvements which would offset any damage to the structure.

{¶9} At the close of the evidentiary hearing, the magistrate noted that neither side had presented any receipts to support their respective statements as to the amount of funds they had spent in making repairs or improvements to the disputed home. The magistrate then indicated that he would be willing to consider additional evidence from either side if the two attorneys were able to “resolve” the matter. Approximately three months after the hearing, appellant moved to supplement the trial record with copies of certain receipts. After appellees had submitted a notice of opposition to the motion, the magistrate overruled it, thereby basing his ensuing decision solely upon the evidence presented at trial.

{¶10} In his written decision, the magistrate first found that appellant had failed to demonstrate that the monthly fair rental value of the property had been greater than the monthly installments appellees had paid under the terms of the land contract. Thus, it was recommended that final judgment be entered in favor of appellees on the second claim in appellant’s complaint. As to the third claim, the magistrate found that appellant had established that appellees had unnecessarily damaged many items throughout the home, including windows, doors, and walls. However, the magistrate further found that appellant had only shown that he had expended the sum of \$15,000 in repairing those damages. Therefore, it was recommended that judgment be entered in favor of appellant for that amount, plus interest from the date of the confirmation of the sheriff’s sale.

{¶11} In objecting to the magistrate’s decision, appellant contested the propriety of the factual findings made in relation to both of the remaining claims; i.e., he asserted that the findings were against the manifest weight of the evidence. Concerning his “fair rental value” claim, appellant also argued that the magistrate had erred in not awarding him damages for the period of time in which appellees had continued to live in the home without paying any rent. Finally, he challenged the denial of his motion to supplement the record with copies of his receipts.

{¶12} After conducting an oral hearing on the objections, the trial court issued its separate judgment overruling the objections and adopting the magistrate’s decision. As a result, the court ordered that appellees were individually and jointly liable to appellant for the sum of \$15,000. As to the question of interest, the trial court further ordered that interest on the sum would not begin to accrue until the date of its final judgment.

{¶13} In appealing the foregoing determination to this court, appellant has raised four assignments of error for review:

{¶14} “[1.] The trial court abused its discretion and committed prejudicial error in overruling plaintiff-appellant’s motion to supplement the record.

{¶15} “[2.] The trial court committed prejudicial error in denying plaintiff-appellant’s claim for fair rental value.

{¶16} “[3.] The trial court committed prejudicial error in determining the amount of award for damages to plaintiff-appellant.

{¶17} “[4.] The trial court committed prejudicial error in setting interest on damages awarded to plaintiff-appellant.”

{¶18} Under his first assignment, appellant contests the denial of his motion to

supplement the record with copies of various receipts that were generated while he was repairing the disputed damage to the residence. In claiming that the magistrate and trial court abused their discretion, he asserts that the receipts should have been considered because they merely corroborated his trial testimony and did not create any new issues for review.

{¶19} As noted above, the possibility of the submission of additional evidence was first raised by the court magistrate at the close of the evidentiary hearing. After he had listened to the abbreviated closing arguments from the attorneys for both sides, the magistrate stated:

{¶20} “THE COURT: Okay. The only real problem I had with this case, and there’s testimony, but I didn’t have any receipts for any materials from either party as to an offset or to as to the actual claim, so that’s the only thing that’s troubling me.

{¶21} “If you guys can resolve it in between the time that I write an opinion, that’s fine. If not, I’ll take it under advisement, and I’ll get you an opinion as soon as possible.”

{¶22} While not artfully stated, the second portion of the foregoing quote readily shows that the magistrate was giving both sides the opportunity to submit documentary evidence, i.e., copies of receipts, to support their respective arguments. However, any consideration of this additional evidence would be conditioned upon the two attorneys’ ability to “resolve” the point. That is, each attorney would have to be willing to stipulate as to the authenticity of the opposing party’s receipts before they would be accepted.

{¶23} The need for such a stipulation was obvious. Since the hearing was over and no additional testimony would be heard, neither side would have an opportunity to

lay a proper foundation for the admission of the documentary evidence. Therefore, the receipts could not be considered unless the opposing party was willing to stipulate as to their authenticity.

{¶24} In moving to supplement the record with copies of his receipts, appellant never indicated that opposing counsel was willing to stipulate as to the authenticity of the documents. In fact, appellees' counsel filed a notice of opposition to the motion to supplement. Accordingly, since it is evident that a proper foundation for the admission of appellant's additional evidence did not exist, neither the magistrate nor the trial court abused their discretion in refusing to consider the receipts. For this reason, appellant's first assignment is not well taken.

{¶25} Appellant's second assignment pertains to the merits of his "fair rental value" claim. In holding that appellant was not entitled to any relief under that claim, the court magistrate found that he had failed to prove that the fair rental value of the property had been greater than the monthly amount appellees paid under the land contract. In now contending that this finding was against the manifest weight of the evidence, appellant maintains that his testimony concerning the amount of rent appellees were willing to pay in September 2009 was sufficient to establish that the fair rental value was greater than \$818.40.

{¶26} At the outset of our analysis, this court would note that the enforcement of a land installment contract is governed by R.C. Chapter 5313. Under R.C. 5313.07 and 5313.08, the vendor under such a contract has the right to bring an action in restitution and foreclosure when the vendee has failed to pay in accordance with the terms of the contract. R.C. 5313.10 then sets forth what other remedies the vendor can pursue:

{¶27} “The election of the vendor to terminate the land installment contract by an action under section 5313.07 or 5313.08 of the Revised Code is an exclusive remedy which bars further action on the contract unless the vendee has paid an amount less than the fair rental value plus deterioration or destruction of the property occasioned by the vendee’s use. In such case the vendor may recover the difference between the amount paid by the vendee on the contract and the fair rental value of the property plus an amount for the deterioration or destruction of the property occasioned by vendee’s use.”

{¶28} In attempting to satisfy the elements of a “fair rental value” claim, appellant presented testimony regarding ads he had seen in a local newspaper which set forth the rental value of an allegedly comparable home. However, instead of citing that evidence in support of his second assignment, appellant relies upon his testimony concerning the new lease agreement he negotiated with appellees after they did not make the balloon payment under the land contract. According to appellant, since appellees were willing to pay \$850 per month in rent, this established that the fair rental value of the property was greater than \$818.40. Appellant also cites Shears’ trial testimony, in which he said that he was presently paying \$850 per month to rent the home which appellees moved into after they vacated the disputed residence.

{¶29} Pursuant to R.C. 5313.10, the vendor is entitled to recover the difference between the fair rental value of the property and “the amount paid by the vendee on the contract * * *.” Given this statutory language, it is obvious that a “fair rental value” claim is intended to compensate the vendor for any additional amount he could have earned *during the period in which he was receiving payments under the contract.* Accordingly,

it follows that the vendor must establish the fair rental value of the property during the period in which the payments were made.

{¶30} In the instant case, appellees made payments under the land installment contract from September 2004 through August 2009. A review of the hearing transcript indicates that none of the evidence presented by appellant, including his testimony as to the subsequent lease agreement, was directly related to the five-year period in which he received payments under the contract. In other words, appellant's evidence only related to the period after the payments had ended. Under such circumstances, the magistrate could justifiably find that appellant had failed to carry his burden of proof as to the fair rental value of the property. Hence, the trial court did not err in rejecting his objection concerning the disposition of his second claim.

{¶31} As a separate issue under this assignment, appellant further asserts that the magistrate and trial court erred in not awarding him damages for the period of time in which appellees resided in the home without paying rent after the land contract had been terminated. As to this point, this court would note that appellant's complaint did not contain any specific allegations regarding the post-contract "rent" issue. In fact, our review of the record shows that the "rent" issue was not raised until appellant filed his objections to the magistrate's decision. To the extent that the issue was never properly pled and was not referenced during the evidentiary hearing, the magistrate and the trial court was not required to go forward on the matter. Therefore, since the court properly disposed of appellant's "fair rental value" claim, his second assignment lacks merit.

{¶32} Under his third assignment, appellant contends that the court magistrate's determination as to the amount of damages under his "destruction of the property" claim

was not supported by the evidence. As previously mentioned, in ruling upon this claim, the magistrate found that appellees and their children had seriously damaged a number of items throughout the home, but only awarded appellant \$15,000 to compensate for the “destruction.” In now asserting that he was entitled to a substantially larger award, appellant emphasizes that the evidence he presented regarding the extent of the harm to the home was never contradicted by appellees.

{¶33} During his trial testimony, appellant stated that, even though considerable work had already been done on the home, many of the “repair” jobs still needed further work. In relation to the materials needed to perform the repairs, he testified that he had already spent between \$20,000 to \$25,000, and that he anticipated that he would need to spend an additional \$7,000 to \$10,000 to complete the process. As to the installation of the new materials, appellant’s contractor, Robert Barrett, testified that his company had already performed between \$8,000 to \$9,000 worth of work on the residence, and that additional work worth between \$4,000 to \$5,000 would be necessary in the future. Based upon the foregoing testimony, it is appellant’s position that the magistrate should have found that his total damages had been between \$39,000 to \$49,000.

{¶34} Even though appellant and Barrett gave direct statements concerning the amount of money involved, the remainder of their testimony as to damages was vague and generalized. In other words, the two witnesses never attempted to connect any of the cited funds to any specific materials or any specific work. Moreover, appellant never tried to submit copies of any pertinent receipts in accordance with the governing rules of evidence.

{¶35} In considering similar questions regarding the sufficiency of the plaintiff’s

evidence for damages, the courts of this state have concluded that a trial court has the discretion to reject the plaintiff's submissions when there is no pinpoint testimony and no supporting documentary evidence. See *Effingham v. XP3 Corp.*, 11th Dist. No. 2006-P-0083, 2007-Ohio-7135, at ¶¶34-35; *Rogers v. Slavin*, 6th Dist. No. L-86-052, 1986 Ohio App. LEXIS 8242, at *4. In the absence of any specific evidence connecting the alleged expenditures to necessary repairs to the home, the trial court in this appeal could justifiably find that, although the evidence had established that appellees and their children had imposed needless harm to the structure, appellant's submissions were not sufficient to show that the extent of the damages was as great as the amount of funds he sought to recover. Hence, appellant has failed to demonstrate that the trial court's finding as to the extent of the funds he would need to pay to repair the residence was against the manifest weight of the evidence.

{¶36} As an alternative "damages" argument, appellant asserts that, instead of basing his calculation of damages upon the payment of funds for repairs, the magistrate could have predicated his finding upon the depreciation in the value of the residence over the period from 2004 through 2009. In support of this assertion, he notes that, in response to a specific question asked by the magistrate, he stated his opinion that the value of the property had decreased \$75,000 during the five years in which appellees made monthly payments under the land installment contract.

{¶37} As to this point, this court would indicate that, in stating his opinion on the amount of the depreciation, appellant did not present any evidence showing what percentage of the decrease was attributable solely to the destruction of the items by appellees. That is, appellant failed to prove that other unrelated factors, were not

involved in causing the value of the property to fall. In this regard, appellant did not give his “value” opinion as part of his direct testimony, but in response to a distinct query from the magistrate at the end of his testimony; in light of this, it is evident that he did not intend to base his measure of damages upon the decrease in the fair market value of the property, and the magistrate was permitted to disregard the testimony as unpersuasive. Because the magistrate’s method for calculating damages was proper, appellant has not shown any error in the magistrate’s analysis that would have warranted its rejection by the trial court. For this reason, his entire third assignment lacks merit.

{¶38} Appellant’s final assignment of error pertains to the payment of interest on the \$15,000 judgment in his favor. In the magistrate’s decision, it was held that interest would be paid from November 2, 2010, the date that the sheriff’s sale of the real estate was confirmed. In its final judgment, the trial court ordered that interest on the \$15,000 was to be paid from December 20, 2011, the date of its judgment. In now claiming that both of these rulings were incorrect, appellant submits that he is entitled to prejudgment interest, covering the entire period from the date on which appellees failed to make the balloon payment and did not pay any new rent.

{¶39} Under Ohio law, the payment of interest on a civil judgment is governed by R.C. 1343.03. Division (B) of the statute provides that, in regard to a money judgment rendered in a civil action which was based upon tortious conduct or a contract, interest “shall be computed from the date the judgment * * * is rendered * * *.” However, division (C) of the statute then states that prejudgment interest can be awarded on a money judgment if, after a motion for such relief has been filed, the trial court finds that the

party liable under the judgment failed to make a good faith effort to settle the case.

{¶40} In this case, the trial record readily shows that appellant never moved for prejudgment interest under R.C. 1343.03(C). Thus, since appellant did not comply with the mandated procedure for such relief, R.C. 1343.03(B) was applicable in this instance; i.e., the trial court correctly ordered that interest on the \$15,000 judgment could only be paid from the date of its own judgment. For this reason, appellant's fourth assignment of error is lacking in merit.

{¶41} Pursuant to the foregoing discussion, none of appellant's four assignments of error have merit. Accordingly, it is the judgment and order of this court that the judgment of the Portage County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.