**[Cite as *Kimmel v. Shaffer*, 2009-Ohio-5279.]**

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

PREBLE COUNTY

| | | |
|---|---|---|
| RAY KIMMEL, | : | |
| Plaintiff-Appellee, | : | CASE NO. CA2009-05-015 |
| | : | O P I N I O N |
| - vs - | | 10/5/2009 |
| | : | |
| ALLEN SHAFFER, | : | |
| Defendant-Appellant. | : | |

CIVIL APPEAL FROM EATON MUNICIPAL COURT
Case No. 07-CVF-428

Augustus L. Ross, III, 1614 U.S. Route 35 East, Eaton, OH 45320-0576, for plaintiff-appellee

H. Steven Hobbs, 119 North Commerce Street, Lewisburg, OH 45338-0489, for defendant-appellant

**YOUNG, J.**

**{¶1}** Defendant-appellant, Allen Shaffer, appeals the judgment of the Eaton Municipal Court in favor of plaintiff-appellee, Ray Kimmel, in the amount of $1,542.32, with interest.[1]

**{¶2}** Kimmel had rented land on Shaffer's farm for a number of years prior to the

1. Pursuant to Loc.R. 6(A), we sua sponte remove this appeal from the accelerated calendar and place it on the regular calendar for purposes of issuing this opinion.

events that lead to the case at bar. On November 2, 2006, Kimmel was picking corn in Shaffer's field. Shaffer rode with Kimmel in the combine for a period of time. When he got off the combine, Shaffer went to Kimmel's pickup truck, where Kimmel's wife presented him with a "Cash Rent Agreement for FSA Program Purposes Only." The document provided that Shaffer had "cash rented" his farm for the 2007 crop year to Kimmel.

**{¶3}** In the crop year 2006, Kimmel paid Shaffer rent of $100 per acre. Prior to taking his annual winter trip to Florida, Kimmel paid the balance of the rent due to Shaffer, and Shaffer did not mention any additional sums due for 2006.

**{¶4}** Relying upon their past practice and Shaffer's signature on the "Cash Rent Agreement," Kimmel ordered pot ash from Harvest Land, which was applied to Shaffer's farm on or about November 27, 2006.

**{¶5}** On or about January 10, 2007, Shaffer called Kimmel in Florida and asked him whether he was interested in renting the farm for $150 per acre. Kimmel advised Shaffer that he did not want to rent it at that price. Several days later, Shaffer called again and notified Kimmel that he had rented the farm to someone else for at least $150 per acre and that if Kimmel was not willing to pay that amount, the other man would farm the ground for the crop year 2007. During this conversation, Kimmel told Shaffer that he would speak with him upon his return from Florida.

**{¶6}** As a result of these conversations, the parties did not agree to a contract for crop year 2007.

**{¶7}** Kimmel brought this action in the Eaton Municipal Court seeking to recover $1,542.32 for pot ash applied for the 2007 crop year to Shaffer's property on or about November 10, 2006, and for $3,552.10 for seed corn that he was not able to plant on Shaffer's property or anywhere else. Shaffer brought a counterclaim denying the existence of any contract and seeking to recover $3,000 for an alleged balance due for the 2006 crop

year.

**{¶8}** Following a trial, the magistrate found in favor of Kimmel in the amount of $1,542.32 for the pot ash applied to Shaffer's land. Shaffer filed with the trial court objections to the magistrate's decision. The trial court overruled the objections and adopted the magistrate's decision. From that judgment, Shaffer timely appeals, asserting two assignments of error.

**{¶9}** Assignment of Error No. 1:

**{¶10}** "THE TRIAL COURT ERRED BY APPLYING THE WRONG STANDARD OF REVIEW TO THE MAGISTRATE'S DECISION."

**{¶11}** Shaffer argues the trial court failed to apply a de novo review to the magistrate's decision. The trial court, in its decision and entry, stated the following:

**{¶12}** "This Court acts as an Appellate Court in this type of proceeding. In such, where the Magistrate or Court acts as a trier of fact, review is restricted to whether there is some evidence in the record to support the trial court's findings. *Seasons Coal Co. vs. Cleveland* (1984), 10 Ohio St.3rd 77, 80: *State ex. rel. Fisher vs. McNutt* (1992). 73 Ohio App.3d 403, 406. [sic]

**{¶13}** "The Court has reviewed the entire record of these proceedings. Based on that review, the Court cannot say there were not facts and evidence in the record to support findings and conclusions reached by the Magistrate."

**{¶14}** Civ.R. 53(D)(4)(d) provides in pertinent part that "[i]n ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law." The trial court, as the ultimate finder of fact, must make its own factual determinations through an independent review of the issues and should not adopt the magistrate's findings of fact and conclusions of law unless the trial court fully agrees with them. *Inman v. Inman*

(1995) 101 Ohio App.3d 115; *Hampton v. Hampton*, Clermont App. No. CA2007-03-033, 2008-Ohio-868. See, also, *Hartt v. Munobe*, 67 Ohio St.3d 5, 1993-Ohio-177.

**{¶15}** Therefore, the trial court must conduct a de novo review of a magistrate's decision prior to adopting it and may not properly defer to the magistrate in the exercise of its review. *Marchal v. Marchal*, Champaign App. No. 2001 CA 29, 2002-Ohio-929, 2002 WL 254172, at *1, citing *Inman* at 118; *Quick v. Kwiatkowski*, Montgomery App. No. 18620, 2001-Ohio-1498.

**{¶16}** In this case, it appears the trial court applied an appellate standard of review used when determining whether a civil judgment is against the manifest weight of the evidence. See *Seasons Coal Co.* Because the other language in the court's entry is ambiguous in that regard, we cannot affirmatively determine whether the court conducted an independent review as required by Civ.R. 53. *Reese v. Reese*, Union App. No. 14-03-42; 2004-Ohio-1395, at ¶16. See, also, *Hampton* at ¶20; *Marchal* at *1; *In re Brewsaugh*, Warren App. No. CA2002-11-129, 2003-Ohio-4249, at ¶8. Therefore, we cannot conduct an appropriate review of the court's entry adopting the magistrate's decision. *Francis v. McDermott*, Darke App. No. 1744, 2008-Ohio-6723, at ¶17.

**{¶17}** Thus, Shaffer's first assignment of error is sustained.

**{¶18}** Assignment of Error No. 2:

**{¶19}** "THE TRIAL COURT ERRED BY GRANTING APPELLEE JUDGMENT FOR FERTILIZER PLACED UPON APPELLANT'S PROPERTY."

**{¶20}** In light of our disposition with respect to Shaffer's first assignment of error, we do not reach the merits of his second assignment of error.

**{¶21}** Accordingly, this matter is reversed and remanded to the trial court to conduct an independent review of the magistrate's findings.

POWELL, P.J., and RINGLAND, J., concur.

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