

[Cite as *Whitt v. Whitt*, 2005-Ohio-117.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

PATRICIA L. WHITT	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2004 CA 31
v.	:	T.C. CASE NO. 02 CV 291
PATSY SUE WHITT	:	(Civil Appeal from
Defendant-Appellant	:	Common Pleas Court)
	:	

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**OPINION**

Rendered on the 14<sup>th</sup> day of January, 2005.

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CHRIST THEODOR, Atty. Reg. No. 0020042, 67 West Main Street, Xenia, Ohio 45383  
Attorney for Plaintiff-Appellee

PATSY SUE WHITT, P. O. Box 340912, Beavercreek, Ohio 45434  
Defendant-Appellant

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FREDERICK N. YOUNG, J.

{¶ 1} Patsy Sue Whitt is appealing from the decision of the trial court ordering damages to the plaintiff, Patricia L. Whitt, following the plaintiff's successful forcible entry and detainer action against defendant, Patsy Sue Whitt.

{¶ 2} The appellant brings two assignments of error, as follows:

{¶ 3} “1. THE TRIAL COURT ERRED IN AWARDING THE APPELLEE THIRTY THOUSAND EIGHT HUNDRED SEVEN DOLLARS AND SEVENTY FIVE CENTS (\$30,807.75) FOR ATTORNEY FEES EXPENDED IN LITIGATION WITH THE APPELLANT.

{¶ 4} “2. THE TRIAL COURT ERRED IN AWARDING THE APPELLEE EIGHTEEN (18) MONTHS RENT AT THREE THOUSAND FOUR HUNDRED DOLLARS (\$3,400.00) A MONTH OR SIXTY ONE THOUSAND TWO HUNDRED DOLLARS (\$61,220.00) [sic] TOTAL.”

{¶ 5} The facts of the matter before us and the rationale of the decision of the trial court are set forth in its following decision and entry:

{¶ 6} “This matter is before the Court upon the Plaintiff’s motion to determine an award of attorney fees and damages. A hearing was held on December 5, 2003 and presided over by the Honorable Judson L. Shattuck, Jr., sitting by assignment.

{¶ 7} “Plaintiff filed suit to forcibly remove the Defendant from 2376 Alder Wood Court, Beavercreek, Ohio, after Plaintiff purchased it on February 2, 2002. The house, and other assets involved in a trust established by the Defendant’s deceased husband, has been the basis for numerous lawsuits filed by the Defendant in Greene County. Summary Judgment was filed in September 2, 2002, awarding the residence to Plaintiff and ordering the Defendant to vacate. Defendant appealed the judgment and the Court of Appeals affirmed the Decision on June 13, 2003. The Plaintiff took possession of the house on August of 2003.

{¶ 8} “To prosecute the case and remove the Defendant, the Plaintiff incurred fees in the amount of thirty thousand eight hundred seven dollars and seventy-five

cents (\$30,807.75). Attorney Paul W. Barrett testified regarding the reasonableness and necessity of the fees. Mr. Barrett stated the fees were appropriate due to the complexity of the actions, the pending appeals, and the numerous courts the parties were litigating in. Therefore, the Plaintiff is AWARDED attorney fees in the amount of \$30,807.75.

{¶ 9} “An additional issue is the fair rental value 2376 Alder Wood Court and the amount of rent the Plaintiff could have expected to receive from the real property had the Defendant vacated after the property was sold. The Plaintiff asserts she could have rented the property for three thousand five hundred ninety dollars (\$3,590) per month. However, Plaintiff’s expert witness testified the property has a fair rental value of three thousand four hundred dollars (\$3,400) per month, based upon comparable rental properties in the area. Therefore, based upon the Defendant’s eighteen month continuous occupancy after the property was purchased, the Plaintiff is AWARDED sixty one thousand two hundred dollars (\$61,200) as and for rent.

{¶ 10} “The Clerk of Courts is ORDERED to release the fifteen thousand dollar (\$15,000) bond, posted by the Defendant, to the Plaintiff as a partial payment against the \$61,200 award. The Plaintiff is AWARDED a judgment in the amount of ninety-two thousand seven dollars and seventy-five cents (\$92,007.75) minus the \$15,000 cash bond, for a total judgment in the amount of seventy-seven thousand seven dollars and seventy-five cents (\$77,007.75).

{¶ 11} “The other damages the Plaintiff is seeking are determined to be ordinary costs any homeowner or landlord would incur. Pursuant to the Plaintiff’s expert witness testimony, it is also determined that these costs, including the real property taxes and

homeowner's insurance are built into the monthly rental proceeds a landlord would charge. The Plaintiff's request for the costs listed on Plaintiff's Exhibit two is OVERRULED. Since there is no need for further delay, this is a FINAL APPEALABLE ORDER.

{¶ 12} "SO ORDERED."

{¶ 13} As to the first assignment of error, the appellant claims the trial court erred in awarding attorney fees without making a specific finding that the lawsuits against the plaintiff by the defendant were frivolous. On the contrary, the record of this case provides ample evidence that the three years of litigation initiated by the appellant against appellee was vexatious and frivolous. See Tr. 69-78 of the December 5, 2003, hearing. This court is personally familiar with the history of the numerous lawsuits and litigation about the residence which the appellant had to be forcibly evicted from. If there were ever a case that is replete with substantial evidence of the vendetta pursued by the appellant against the appellees, this is it. The trial court even specifically recognized during the testimony of one of the appellees that they were alleging "vexation." Tr. 73. The attorney fees awarded against the appellant were supported by the testimony of Attorney Barrett, as noted in the decision of the trial court, and upon review of the record, we find that they were reasonable and supported by the evidence. The trial court was well aware of the futile series of lawsuits pursued by the appellant against the appellee over a three-year period and its recognition of the frivolous and vexatious nature of these suits is transparently explicit in its decision on the issue. The first assignment of error is overruled.

{¶ 14} In her second assignment of error, the appellant argues that the trial court

abused its discretion in awarding an eighteen-month rental value to the appellee because they did not take into account expenses the appellee as a landlord would normally have to pay in renting property, including maintenance, real estate taxes, and insurance. Appellant's brief, page 13. The trial court dealt with this argument in the last paragraph of his decision finding that these costs are built in with the monthly rental proceeds. See above. Furthermore, upon review of the record, we find that the testimony before the court was that the appellee paid the taxes (Tr. 24) and the insurance (Tr. 25) and, therefore, is entitled to be reimbursed for these expenses, including maintenance costs, which was evidenced by testimony in the record by means of the court's award of rental proceeds which the appellee should have received. The second assignment of error is overruled, and the judgment will be affirmed.

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WOLFF, J. and GRADY, J., concur.

Copies mailed to:

Christ Theodor  
Patsy Sue Whitt  
Hon. Judson L. Shattuck, Jr.  
(By assignment)