

[Cite as *DMHA v. Sacksteder*, 2005-Ohio-122.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

DMHA	:	
Plaintiff-Appellee	:	C.A. CASE NO. 19253
v.	:	T.C. NO. 01 CVG 9103
BARRY SACKSTEDER	:	(Civil Appeal from Dayton Municipal Court)
Defendant-Appellant	:	

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OPINION

Rendered on the 14th day of January, 2005.

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Attorney for Plaintiff-Appellee

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FREDERICK N. YOUNG, J.

{¶ 1} Barry Sacksteder is appealing from the judgment of the Dayton Municipal Court that approved a magistrate's decision granting restitution to plaintiff, Dayton Metropolitan Housing Authority (DMHA), of the premises rented and occupied by Mr. Sacksteder. On appeal, Mr. Sacksteder, represented by counsel, presents the following

two assignments of error:

{¶ 2} “1. THE TRIAL COURT ERRED BY GRANTING APPELLEE RESTITUTION OF THE SUBJECT PREMISES AS APPELLANT WAS DENIED A HEARING.

{¶ 3} “2. THE TRIAL COURT ERRED BY GRANTING RESTITUTION OF THE PREMISES TO APPELLEE AS APPELLANT HAD CURED THE ALLEGED VIOLATION.”

{¶ 4} In his first assignment of error, the appellant is complaining that DMHA did not grant him a hearing before bringing its forcible entry and detainer action, as he claims its rules required. In his second assignment, he alleges that he had ceased the disorderly conduct by himself and his guests after being notified by a letter from DMHA that he would lose his premises because of this conduct. He claims that he presented testimony to the magistrate to this effect.

{¶ 5} The problem with his appeal, however, is that he did not file any objections to the magistrate’s decision as required by Civ.R. 53(E)(3)(b), which states that: “[A] party shall not assign as error on appeal the court’s adoption of any finding of fact or conclusion of law unless the parties objected to that finding or conclusion under this rule.” See *State ex rel. Booher v. Honda of Am. Mfg., Inc.* (2000), 88 Ohio St.3d 52, in which the Ohio Supreme Court held that the appellant’s failure to file objections in accordance with Civ.R. 53(E) precluded assigning error on appeal and requires the affirmance of the judgment. We have followed this rule in the past. See, e.g., *Hamilton v. Amazon.Com., Inc.*, Montgomery App. No. 19375, 2002-Ohio-7377; *Michael v. Michael* (June 22, 2001), Clark App. No. 2000 CA 70; *Swartzbaugh v. Swartzbaugh*

(Apr. 14, 2000), Montgomery App. No. 17855.

{¶ 6} Both of the errors assigned on appeal could easily have been filed as objections to the magistrate's report, but because they were not, they are not cognizable by this court. The two assignments of error are overruled and the judgment will be affirmed.

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WOLFF, J. and FAIN, J., concur.

Copies mailed to:

Randall J. Smith
Richard B. Reiling
Magistrate Dennis Greaney