

[Cite as *Scott v. Gillespie*, 2002-Ohio-1510.]

IN THE COURT OF APPEALS OF LUCAS COUNTY

Herman Scott, et al. Court of Appeals No. L-01-1396

Appellants Trial Court No. CVI-01-06228

v.

Maxine Gillespie DECISION AND JUDGMENT ENTRY

Appellee Decided: March 29, 2002

\* \* \* \* \*

Walter J. Skotynsky, for appellant.

\* \* \* \* \*

Handwork, J.

{¶1} This appeal is from the August 31, 2001 judgment of the Toledo Municipal Court, which determined that appellant's objections to the magistrate's decision were not timely filed. Upon consideration of the record and assignments of error, we dismiss this appeal because it was not timely filed. On appeal, appellant asserts the following assignments of error:

{¶2} "First Assignment of Error

{¶3} "The trial court erred in finding that Defendant was not put on notice of the defect at her 2026 Clinton Street, [sic] rental property"

{¶4} "Second Assignment of Error

{¶5} "The trial court erred in not awarding damages for Defendants [sic] breach of duty to Plaintiff imposed by Ohio Revised Code Sec. 5321.04A(2) [sic]"

{¶6} By a decision filed on July 27, 2001, the magistrate in this case granted judgment in favor of the defendant. The parties were notified the same day. The judge approved the magistrate's decision on August 16, 2001, and pursuant to Civ.R. 53(E)(4)(a), the decision became effective. That same day, defendant filed objections to the magistrate's July 27, 2001 decision. Pursuant to Civ.R. 53(E)(3)(a), objections to the magistrate's decision are to be filed "within fourteen days of the filing of a magistrate's decision," or, in the present case, on or before August 10, 2001. On August 31, 2001, the judge denied the objections to the magistrate's decision because they were not timely filed.

{¶7} Appellant filed her notice of appeal on September 19, 2001, indicating that she was appealing from the August 31, 2001 judgment of the Toledo Municipal Court. Her notice of appeal did not mention the August 16, 2001 judgment in which the judge approved the magistrate's decision and entered final judgment in favor of defendant. Even if appellant had indicated in the notice of appeal that she was appealing from the August 16, 2001 decision, that portion of her appeal would have been dismissed because the notice of appeal was not timely filed as to that judgment.

{¶8} App.R. 4(A) provides that an appeal must be filed within thirty days from the " \*\*\* later of \*\*\* entry of the judgment or order appealed or, \*\*\* service of the notice of judgment and its

entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure." Appellant's notice of appeal was filed on September 19, 2001, thirty-four days after the August 16, 2001 judgment was entered on the court's journal and served on the parties. App.R. 4(B)(2), which states that timely filed objections to a magistrate's decision tolls the time to file a notice of appeal, does not extend the time in this case since the objections were not timely filed, as explained above.

{¶9} Since both of appellant's assignments of error relate to the August 16, 2001 judgment on the merits, which can no longer be appealed, and not the August 31, 2001 judgment overruling her objections to the magistrate's decision, they are stricken. Without assignments of error to review, we must dismiss the appeal.

Pursuant to App.R. 24, appellant is hereby ordered to pay the court costs incurred on appeal.

APPEAL DISMISSED.

Peter M. Handwork, J.

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JUDGE

Melvin L. Resnick, J.

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JUDGE

Mark L. Pietrykowski, P.J.  
CONCUR.

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JUDGE