[Cite as *Fantozz v. Bryan*, 2013-Ohio-1259.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Jo Dee Fantozz, etc.

Plaintiff

v.

John R. Bryan

Appellant

and

Ronald E. Stokey

Appellee

Court of Appeals No. E-12-042

Trial Court No. 2007-CV-0123

DECISION AND JUDGMENT

Decided: March 29, 2013

* * * * *

William H. Smith, Jr., for appellant.

Theodore J. Lesiak, for appellee.

* * * * *

JENSEN, J.

{¶ 1} In 1999, Ronald Stokey obtained a judgment in Cuyahoga County Common Pleas Court against John Bryan in the amount of $46,534, plus interest at 10 percent.

Four years later, Ronald Stokey obtained a second judgment against Mr. Bryan in the amount of $18,150, plus interest at 10 percent. Certificates of judgment were filed with the Clerk of Courts of Erie County creating liens on real estate owned by John Bryan in that county. In 2004, Ronald Stokey filed a lawsuit against John Bryan in Cuyahoga County asserting claims for past due rent.

{¶ 2} In May 2005, Bryan and Stokey entered into a settlement agreement addressing all of the claims mentioned above. The agreement required Bryan to pay Stokey $92,500 on or before January 30, 2006. It further required Bryan to remove certain personal property from Stokey's storage facilities on or before June 30, 2005. In return, Stokey would discharge all liens and dismiss all claims against John Bryan.

{¶ 3} John Bryan did not remove the personal property from Stokey's storage facilities by the agreement's June 2005 deadline. Ronald Stokey attempted to contact Mr. Bryan, to no avail. Thereafter, Stokey sold a large portion of Bryan's personal property to a private buyer for $31,000.

{¶ 4} The instant action began in 2007 when the Erie County Treasurer filed a foreclosure complaint against John Bryan for unpaid real estate taxes and assessments. Ronald Stokey was named as a defendant. Stokey filed an answer to the treasurer and a cross-claim against John Bryan. In time, the tax liens were satisfied and the treasurer dismissed her claims. The case proceeded to bench trial before the magistrate on Stokey's cross-claim. On February 17, 2012, the magistrate issued a decision concluding the then current value of the judgment liens to be $83,796.87. The magistrate further

concluded that Stokey was entitled to enforce the liens by foreclosing on the subject parcels. The magistrate's decision stated, pursuant to Civ.R. 53, any party could file written objections to the decision within 14 days of the filing of the decision. Written objections were due on or before Friday, March 2, 2012.

{¶ 5} John Bryan filed his objections to the magistrate's decision on March 7, 2012, 19 days after the filing of the magistrate's decision.

{¶ 6} On July16, 2012, the trial court struck Bryan's objections as untimely, adopted the magistrate's decision, and granted judgment and a decree of foreclosure. In its judgment entry, the trial court stated that it "reviewed the magistrate's decision and did not find any error of law or other defect evident on its face."

{¶ 7} John Bryan appeals the trial court's entry of judgment, asserting the following assignments of error:

> ASSIGNMENT OF ERROR NO. 1: TRIAL COURT ERRORED BY NOT PROPERLY APPLYING THE PROVISION OF CIVIL RULE 15(B) AS TO THE EVIDENCE OF BRYAN'S CROSS CLAIM ESTABLISHED BY THE EVIDENCE RECEIVED DURING THE TRIAL.
>
> ASSIGNMENT OF ERROR NO. 2: TRIAL COURT'S DECISION WAS PLAIN ERROR AND MANIFESTLY AGAINST THE WEIGHT OF THE EVIDENCE FOR NOT FINDING THAT STOKEY HAD CONVERTED BRYAN'S PERSONAL PROPERTY.

ASSIGNMENT OF ERROR NO. 3: TRIAL COURT ERRORED BY FINDING THAT THE AGREEMENT DATED MAY 5, 2005 ALLOWED STOKEY TO BE AWARDED TEN PERCENT (10%) INTEREST ON THE OUTSTANDING BALANCES OF THE TWO CUYAHOGA COUNTY JUDGMENTS.

{¶ 8} The procedure for objecting to a magistrate's decision is located in Civ.R. 53(D)(3)(b), and requires objections be filed within 14 days of the filing of the magistrate's decision. Civ.R. 53(D)(3)(b)(iv) explains "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule." In other words, the failure to raise a timely objection to the magistrate's decision waives all but plain error on appeal.

{¶ 9} Here, John Bryan failed to file a timely objection to the magistrate's decision. This failure deprived the trial court of the opportunity to correct any errors therein; consequently, Mr. Bryan has waived all but plain error. *Corliss v. Corliss*, 2d Dist. No. 25098, 2012-Ohio-3715, ¶ 7, citing *Bowers v. Bowers*, 2d Dist. No. 1699, 2007-Ohio-1739. Thus, we review Bryan's assignments of error under the plain error doctrine.

{¶ 10} In civil cases, the plain error doctrine applies only in "the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process

itself." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997), syllabus. The doctrine implicates errors that are "obvious and prejudicial although neither objected to nor affirmatively waived which, if permitted, would have a material adverse affect on the character and public confidence in the judicial proceedings." *Schade v. Carnegie Body Co.*, 70 Ohio St.2d 207, 209, 436 N.E.2d 1001 (1982). Review under the plain error doctrine is limited on appeal to review of "the trial court's adoption for failure 'to correct an obvious error of law or other such defect in the decision.'" *Timbercreek Village Apts. v. Myles*, 2d Dist. No. 17422, 1999 WL 335307 (May 28, 1999), quoting *Divens v. Divens*, 2d Dist. No. 97 CA 0112, 1998 WL 677163 (Oct. 2, 1998).

{¶ 11} John Bryan asserts it was plain error for the trial court not to find that Stokey had converted Bryan's personal property. Such error is not apparent on the face of the magistrate's decision. In fact, the magistrate specifically held that the evidence was sufficient to support a finding that Bryan abandoned his property. "Abandoned property * * * is property over which the owner has relinquished all right, title, claim and possession with the intention of not reclaiming it or resuming its ownership, possession or enjoyment." *Covey v. Natural Foods, Inc.*, 6th Dist. No. L-03-1111, 2004-Ohio-1336, ¶ 39, quoting *Doughman v. Long*, 42 Ohio App.3d 17, 21, 536 N.E.2d 394 (12th Dist.1987). Abandoned property could not have been converted. *Id.*

{¶ 12} Upon review of the record, we cannot point to a clearly apparent defect on the face of the magistrate's February 17, 2012 decision or the trial judge's July 16, 2012 entry adopting the magistrate's decision. This case does not represent an extremely rare

circumstance requiring application of the plain error doctrine in order to prevent harm that seriously affects the basic fairness, integrity, or public reputation of the judicial process. *See Goldfuss, supra*, at syllabus. We conclude that the trial court did not commit plain error.

{¶ 13} For the foregoing reasons, appellant's assignments of error are overruled.

{¶ 14} The judgment of the Erie County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE