

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

Dwight Ramsdell

Court of Appeals No. L-12-1113

Appellee

Trial Court No. CVG-10-23103

v.

Richard Ramsdell

DECISION AND JUDGMENT

Appellant

Decided: February 8, 2013

* * * * *

James H. Anderson, for appellee.

Robert S. Salem, for appellant.

* * * * *

YARBROUGH, J.

{¶ 1} This case is before our court on appeal from the judgment of the Toledo Municipal Court, awarding damages in the amount of \$5,588.02 in favor of appellee, Dwight Ramsdell. For the following reasons, we affirm in part, and reverse in part.

I. Facts

{¶ 2} Appellee is the owner of a rental property located at 1015 Western Avenue, Toledo, Ohio, which was previously owned by his grandparents. Appellant, Richard Ramsdell, is appellee's brother. In February 2008, appellant moved into appellee's rental house. Prior to moving into the house, the brothers orally agreed that appellant would be permitted to live in the house rent-free, but would be required to pay for utilities, taxes, and the water bill. Additionally, appellant was expected to make repairs to the property. No written rental agreement or lease was executed between the parties.

{¶ 3} In an effort to restore the property to the condition it was in when his grandparents owned it, appellant began removing walls, repairing faulty electrical wiring, and renovating portions of the bathroom. When appellee became aware of appellant's remodeling efforts, he instructed appellant to repair the property and return it to the condition it was in when appellant moved into the house.

{¶ 4} After appellee made several attempts to contact appellant to no avail, he traveled to the house, only to find that some of appellant's belongings were moved out and the repairs had not been completed. Thereafter, appellee promptly changed the locks on the house, and removed appellant's remaining property from the house, placing some of it in the garage and the rest of it outside.

{¶ 5} In addition to changing the locks on the house and removing appellant's property, appellee filed suit claiming damages in the amount of \$11,176.04—an amount that reflected the effort and expense required to return the property to habitability.

Appellant counterclaimed, alleging damages for wrongful eviction based on the alleged existence of a landlord-tenant relationship.

{¶ 6} At the conclusion of a bench trial, the trial court concluded:

There was no testimony presented that there was a rental agreement between the parties. No documentation presented that the Defendant, Richard Ramsdell, paid monthly rent to the Plaintiff at any time. However, the Court finds that the parties, as brothers, entered into an agreement to restore the property at 1015 Western. As stated before, it was a “loosely constructed” verbal agreement and the Court did not have sufficient testimony to establish the totality of the agreement. Nevertheless, the Court is convinced that the Defendant proceeded without the Plaintiff’s input and approval. The extent of the damage caused by Defendant is also uncertain and cannot be fully ascertained.

{¶ 7} In addition, the court stated that appellant’s counterclaim for wrongful eviction was not well-taken because a landlord-tenant relationship did not exist. Finally, the trial court determined that a 50 percent reduction in the damages prayed for in appellee’s complaint was warranted since appellee’s “failure to establish a written agreement regarding each party’s responsibility may have contributed to the excessive damage caused by the Defendant.”

{¶ 8} Appellant has timely appealed.

II. Assignments of Error

{¶ 9} In appellant's brief, he assigns the following errors for our review:

1. The trial court judge abused his discretion and ruled against the manifest weight of the evidence by wholly neglecting the law and established precedent of what constitutes a landlord-tenant relationship in Ohio.

2. The trial court judge abused his discretion and ruled against the manifest weight of the evidence by arbitrarily granting damages to the plaintiff where damages were not supported by evidence presented at trial or in written closing arguments.

III. Analysis

A. Landlord-Tenant Relationship

{¶ 10} In appellant's first assignment of error, he argues that the trial court erred in dismissing his counterclaim for wrongful eviction based on an erroneous determination that a landlord-tenant relationship did not exist between appellant and appellee.

Appellee, in his appellate brief, offers little in the way of an opposing argument. Rather, he essentially states the standards for abuse of discretion and manifest weight challenges, quotes the trial court's judgment entry, and summarily concludes that the trial court did not abuse its discretion and did not make a decision that was against the manifest weight of the evidence.

{¶ 11} We review legal conclusions made by the trial court under a de novo standard of review. *State v. Corbin*, 194 Ohio App.3d 720, 2011-Ohio-3491, 957 N.E.2d 849, ¶ 22 (6th Dist.). In so doing, we “give no deference to the decisions of the trial court and instead independently determine whether the applicable legal standards are met.” *Id.*

{¶ 12} In order to establish the existence of a landlord-tenant relationship, appellant must demonstrate that he occupied all or part of appellee’s house to the exclusion of others under a written or oral rental agreement. *Tucker v. Kanzios*, 9th Dist. No. 08CA009429, 2009-Ohio-2788, ¶ 18. Pursuant to R.C. 5321.01(D), a rental agreement is “any agreement or lease, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties.”

{¶ 13} Here, the trial court determined that no landlord-tenant relationship existed. In support of that determination, the court noted that there was no testimony presented at trial that a rental agreement existed between the parties. In addition, the court noted that appellant never agreed to pay rent to appellee. However, the court goes on to state that the parties did enter into a “loosely constructed” agreement to restore the property.

{¶ 14} First, it should be noted that a court need not determine that a tenant was required to pay rent in order to conclude that a rental agreement existed between the parties.¹ *Tucker* at ¶ 21, citing *Georgetown Park Apts. v. Woernly*, 112 Ohio App.3d 428,

¹ Although payment of rent is not required by the statute in order to satisfy the definition of a rental agreement, the payment of utilities and the repairs appellant was expected to

679 N.E.2d 16 (8th Dist.1996). Second, in its judgment entry, the court recognized appellee's admission during trial that an oral agreement was entered into in 2008. The agreement permitted appellant to move into the house in exchange for his payment of utilities, taxes, and the water bill. In addition, appellant was expected to make repairs to the house.

{¶ 15} We conclude that the agreement referenced by the trial court fits into the statutory definition of a rental agreement (i.e., it “establishes the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises”). Not only was appellant the exclusive resident in the house during the period at issue, but he also was expected to pay utility costs and make repairs as a condition for his residence at the house. Accordingly, appellant's first assignment of error is well-taken.

B. Damages Awarded to Appellee

{¶ 16} In his second assignment of error, appellant argues that the trial court abused its discretion by granting damages to appellee when appellee failed to establish the amount of his damages with reasonable certainty.

make to the property would satisfy the literal definition of rent. *See Black's Law Dictionary* 1323 (8th Ed.2004) (defining rent as “compensation or return made periodically by a tenant or occupant for the possession and use of lands or corporeal hereditaments; money, chattels, *or services* issuing * * * out of lands and tenements as payment for use.” (Emphasis added.))

{¶ 17} An appellate court may not reverse the trial court’s decision determining damages absent an abuse of discretion. *Kaufman v. Byers*, 159 Ohio App.3d 238, 2004-Ohio-6346, 823 N.E.2d 520, ¶ 37 (11th Dist.). An abuse of discretion implies “that the court’s attitude [was] unreasonable, arbitrary, or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). In addition, an appellate court presumes the trier of fact’s findings of fact are correct, which means evidence susceptible to more than one interpretation must be construed in a manner consistent with the trial court’s judgment. *Gerijo, Inc. v. Fairfield*, 70 Ohio St.3d 223, 226, 638 N.E.2d 533 (1994).

{¶ 18} As a general rule, speculative damages are not recoverable. *E. Liverpool v. Buckeye Water Dist.*, 7th Dist. No. 08 CO 19, 2010-Ohio-3170, ¶ 72, citing *Gahanna v. Eastgate Properties, Inc.*, 36 Ohio St.3d 65, 68, 521 N.E.2d 814 (1988). Therefore, as explained in *Acme Co. v. Saunders & Sons Topsoil*, 7th Dist. No. 10 MA 93, 2011-Ohio-6423, ¶ 57:

An award of damages must be shown with a reasonable degree of certainty and in some manner other than mere speculation, conjecture, or surmise. Damages are not speculative when they can be “computed to a fair degree of probability.” However, if the appellant “establishes a right to damages, that right will not be denied because the damages cannot be calculated with mathematical certainty.” (Citations omitted.) *See also*

Townsend v. Dollar Gen. Corp., 6th Dist. No. E-09-067, 2010-Ohio-6523,
¶ 35-37.

{¶ 19} Here, the trial court awarded damages to appellee in the amount of \$5,588.02, which is half the amount prayed for in the complaint. The court reduced the damage award as a result of appellee’s failure to establish a written agreement, which the court reasoned was a contributing factor to the losses sustained by appellee. We conclude that the trial court did not abuse its discretion in awarding damages to appellee.

{¶ 20} While appellant argues that “appellee failed to provide any evidence of damages,” our review of the record reveals the opposite. First, appellee produced pictures that clearly showed the damage to which he referred to in his testimony. Second, appellee testified at trial that, although he did the work himself and had lost his receipts, the amount prayed for in the complaint represented the fair market value of the work he had performed, taking into account both the cost of materials and his labor. Finally, he produced two different estimates from area contractors, thereby showing the reasonableness of the costs allegedly incurred by appellee in restoring the property to its pre-rental condition.

{¶ 21} Taking into consideration the evidence presented by appellee on the issue of damages, we cannot say that the trial court abused its discretion by awarding damages to appellee. Accordingly, appellant’s second assignment of error is not well-taken.

IV. Conclusion

{¶ 22} In light of the foregoing, we reverse the trial court's determination that a landlord-tenant relationship did not exist, and remand the matter to the trial court for resolution of appellant's wrongful eviction counterclaim. In all other respects, the judgment of the Toledo Municipal Court is affirmed. Pursuant to App.R. 24, costs of this appeal are to be assessed equally between the parties.

Judgment reversed, in part,
and affirmed, in part.

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

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
