

[Cite as *Burton v. Glenville Town Ctr.*, 2003-Ohio-3956.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 82125

DOROTHY BURTON,	:	ACCELERATED
	:	
Plaintiff-Appellant	:	
	:	JOURNAL ENTRY
vs.	:	AND
	:	OPINION
GLENVILLE TOWN CENTER, LTD.,	:	
	:	
Defendant-Appellee	:	

DATE OF ANNOUNCEMENT OF DECISION	:	JULY 24, 2003
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CHARACTER OF PROCEEDING:	:	Civil appeal from
	:	Common Pleas Court
	:	Case No. 473614

JUDGMENT	:	AFFIRMED.
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DATE OF JOURNALIZATION	:	
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APPEARANCES:

For plaintiff-appellant:	Dorothy Burton, Pro Se 1496 E. 107 th Street Cleveland, Ohio 44106
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For defendant-appellee	Cary J. Zabell, Esq. CARY J. ZABELL CO., L.P.A. 23600 Mercantile Road Suite D Beachwood, Ohio 44122
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MICHAEL J. CORRIGAN, P.J.:

{¶1} Plaintiff Dorothy Burton brought this breach of contract action against defendant Glenville Town Center, Ltd., alleging that

Glenville Town Center breached a lease agreement. Glenville Town Center filed a motion for summary judgment in which it argued that Burton's claims were barred by res judicata because they had been raised in a forcible entry and detainer action that Glenville Town Center filed in the Cleveland Municipal Court. The court granted summary judgment without opinion. Burton pro se appeals, arguing that the court erred by permitting Glenville Town Center to file a motion for summary judgment without first obtaining leave of court because the matter had been set for pretrial.

{¶2} The assigned error is overruled. While Civ.R. 56(A) states that a motion for summary judgment may be made only with leave of court if the action has been set for pretrial, the record shows that the court did grant prior leave to file the motion. At the same time that it set the matter for pretrial, the court stated, "Dispositive motion to be filed by 11/01/2002." Glenville Town Center filed its motion for summary judgment on October 11, 2002, well within the dispositive motion deadline. The court's dispositive motion deadline acted as prior leave of court, so the court did not err by accepting the motion for summary judgment.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHAEL J. CORRIGAN
PRESIDING JUDGE

ANNE L. KILBANE, J., and

ANN DYKE, J., CONCUR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R.22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).