

[Cite as *Sutton v. Crawford*, 2007-Ohio-4444.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 88888

JAMES L. SUTTON

PLAINTIFF-APPELLANT

VS.

LISA M. CRAWFORD

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cleveland Municipal Court
Case No. 06 CVI 01442

BEFORE: Kilbane, J., Celebrezze, A.J., and Boyle, J.

RELEASED: August 30, 2007

JOURNALIZED:

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MARY EILEEN KILBANE, J.:

{¶ 1} James J. Sutton (“Sutton”) appeals from the judgment entered in the Cleveland Municipal Court, Small Claims Division, in favor of Lisa M. Crawford (“Crawford”). For the following reasons we affirm the decision of the trial court.

{¶ 2} This cause is an accelerated appeal in which Sutton claims the trial court erred when it determined he was a common carrier and in awarding damages in excess of the oral contract. App.R. 11.1, which governs accelerated calendar cases, provides in pertinent part:

“(E) Determination and judgment on appeal. The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court’s decision as to each error to be in brief and conclusionary form. The decision may be made by judgment entry in which case it will not be published in any form.”

{¶ 3} This appeal shall be considered in accordance with the aforementioned rule.

{¶ 4} Sutton is in the business of renting charter buses to transport parties from one destination to another destination for a fee. Sutton was a common carrier contracted by Crawford to transport her and a group of twenty-eight people, for a fee, to New York City for a shopping trip. During the trip, Sutton's bus broke down, stranding the passengers and forcing Crawford to undergo expenses to return all passengers to Cleveland.

{¶ 5} Sutton's first assignment of error is overruled, as he failed to object to the magistrate's characterization of his business as a "common carrier" in his objections to the magistrate's decision as required by Civ.R. 53(D)(3)(b). Accordingly, Sutton has waived any right to assign this error on appeal. Civ.R. 53(D)(3)(b)(iv).

{¶ 6} Sutton's second assignment of error is also overruled. Sutton claims the magistrate erroneously awarded damages in excess of the contract amount. This argument is without merit as Sutton's own evidence reveals that the original contract was for \$2,300¹. Accordingly, the trial court's award of \$1,460 in damages to Crawford was not in excess of the contract price.

{¶ 7} The judgment of the trial court is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

¹Sutton claims the alleged contract was for \$2,350, but the magistrate's report reflects the contract amount at \$2,300.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cleveland Municipal 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.

MARY EILEEN KILBANE, JUDGE

FRANK D. CELEBREZZE, JR., A.J., CONCURS
MARY J. BOYLE, J., CONCURS IN JUDGMENT ONLY