

[Cite as *Wallace v. Winn*, 2015-Ohio-1537.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101341

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**DAVID F. WALLACE**

PLAINTIFF-APPELLEE

vs.

**JILL WINN**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Parma Municipal Court  
Case No. 13CVG 03831

**BEFORE:** Kilbane, J., Keough, P.J., and Stewart, J.

**RELEASED AND JOURNALIZED:** April 23, 2015

**APPELLANT**

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MARY EILEEN KILBANE, J.:

{¶1} Defendant-appellant, Jill Winn (“Winn”), pro se, appeals from the judgment of the Parma Municipal Court awarding plaintiff-appellee, David Wallace (“Wallace”) \$2,576.51 in damages for Winn’s nonpayment of rent and utilities. For the reasons set forth below, we affirm.

{¶2} In November 2013, Wallace filed a complaint against Winn in Parma Municipal Court, asserting the following two causes of action: (1) forcible entry and detainer and (2) unpaid rent and utilities. Wallace alleges that he entered into an agreement with Winn to lease his condo unit located in Parma Heights, Ohio. The lease was effective starting November 1, 2011, and had a month-to-month tenancy term. Under their agreement, Winn was to pay \$300 per month in rent, plus the gas and electric bills. Winn took possession of the condo on November 1, 2011. Wallace alleges that Winn failed to pay the rent and utility bills as agreed upon. He sought \$3,386 in unpaid rent and utility bills through October 2013.

{¶3} Winn filed a pro se answer, denying the allegations in Wallace’s complaint. The matter proceeded to a hearing before a magistrate on December 16, 2013. At the hearing, the testimony revealed that a three-day eviction notice was affixed to Winn’s door on October 21, 2013. Winn testified that she never entered into a lease agreement, she only signed a lease application. She further testified that she moved out on the day of the hearing and had the keys with her to return to Wallace. The magistrate then found that Wallace was entitled to restitution of the premises and ordered a writ of restitution

for Winn to vacate the premises on or before December 16, 2013.

{¶4} The unpaid rent and utilities cause of action proceeded to a bench trial in March 2014, at which the court heard testimony from Wallace and Winn. Wallace testified that Winn leased the apartment from him for over two years. He further testified that there was an oral lease agreement between himself and Winn. The terms of the oral lease were set forth in Winn's rental application, which was signed by Winn. The application states the lease payment terms of \$300 per month for rent, plus utilities. Winn made incomplete rent payments from December 2012 through December 2013. The unpaid rent totaled \$1,202. Winn also did not pay the utilities from December 2011 through December 2013. The unpaid utilities totaled \$1,374.54. Winn testified that she signed the rental application, but she never signed a lease. Winn moved into the condo on November 1, 2011. She testified that the application did not enumerate what "was to be provided for \$300.00 plus utilities."

{¶5} At the conclusion of trial, the court found in Wallace's favor, awarding him \$2,576.51 in damages.

{¶6} Winn now appeals, raising the following nine assignments of error for review.

#### Assignment of Error One

The trial court erred in that its Judge did not preside at the pretrial.

#### Assignment of Error Two

The trial court err[ed] in assigning any bills/debts in the case to [Winn] prior to [November 1, 2011] due to lack of evidence [that Winn] resided

there prior to [November 11, 2011].

#### Assignment of Error Three

The trial court err[ed] in use of the application (signed only ever one on [October 31, 2011]) as a lease.

#### Assignments of Error Four and Five

The trial court err[ed] in violating 30 days notice to raise rent and/or to an unconscionable late fee and/or rate hike via [R.C. 5321.14] if amount prayed for in complaint is upheld, \$3,386 or any significant part of it including an interest rate of 3%.

#### Assignment of Error Six

Trial court err[ed in denying Winn's estoppel argument, which lead] to too high a judgment amount.

#### Assignment of Error Seven

The trial court err[ed] in oversight of motion to strike the use of application as a lease executed in [Winn's] motion for a retrial submitted as [Winn's] Exhibit K.

#### Assignment of Error Eight

The trial court err[ed] in empathy for [Wallace] due to too ill to be held responsible [R.C. 5321.04(A)(1), (2), and (4)].

#### Assignment of Error Nine

The trial court err[ed] in misadjournment.

#### Pretrial

{¶7} In the first assignment of error, Winn argues the trial court violated Civ.R. 16 when the trial judge did not preside over the February 20, 2014 pretrial. She claims that: “[i]f the trial court judge presided or some other appointed magistrate, [she] might have

learned that a more normal course would have been to proceed to a summary judgment and not a trial.” Civ.R. 16, however, provides that the court may schedule one or more conferences before trial to facilitate the resolution of the case. It does not require the trial judge to preside over the pretrial.

{¶8} Accordingly, the first assignment of error is overruled.

#### Utility Bills Prior to November 1, 2011

{¶9} In the second assignment of error, Winn argues that the court erred when it ordered her to pay utilities prior to her move-in date in violation of the rules of evidence. We note that “[i]n Ohio, pro se litigants are presumed to have knowledge of the law and of correct legal procedure, and are held to the same standard as all other litigants.” *Loretta v. Allstate Ins. Co.*, 8th Dist. Cuyahoga No. 97921, 2012-Ohio-3375, ¶ 8, citing *Barry v. Barry*, 169 Ohio App.3d 129, 133, 2006-Ohio-5008, 862 N.E.2d 143 (8th Dist.). Notwithstanding, it appears that Winn is arguing that the total judgment amount of \$2,576.51 is against the manifest weight of the evidence.

{¶10} In a civil case, “[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.” *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus. Here, a review of the record reveals that the utility bills Wallace submitted into evidence were only for the time period Winn rented the condo. The unpaid bills were dated from December 2011 until her move out date in December 2013, and totaled \$1,374.54.

Therefore, there was competent, credible evidence to support the trial court's judgment.

{¶11} Accordingly, the second assignment of error is overruled.

#### Lease Application

{¶12} In the third assignment of error, Winn argues it was error for the trial court to admit the lease application into evidence. A review of the record, however, reveals that Winn did not object to the admission of the rental application into evidence.

{¶13} Evid.R. 103(A)(1) requires that a party timely object when allegedly inadmissible evidence is introduced at trial. The failure to object to the admission of certain evidence or testimony constitutes waiver unless there is plain error in the admission. *State v. Mallette*, 8th Dist. Cuyahoga No. 87984, 2007-Ohio-715, ¶ 12, *discretionary appeal not allowed*, 115 Ohio St.3d 1439, 2007-Ohio-5567, 875 N.E.2d 101.

{¶14} Here, the trial court's admission of the rental application does not constitute plain error. The testimony revealed that Wallace and Winn entered into an oral lease agreement with the essential terms (the address, month-to-month tenancy term, and the monthly rental amount of \$300, with Winn responsible for the payment of gas and electric bills) to the agreement memorialized on the application. Winn testified that she signed this application, with these terms, on October 31, 2011.

{¶15} Therefore, the third assignment of error is overruled.

#### Rental Rate Hike

{¶16} In the fourth and fifth assignments of error, Winn essentially argues that by

being required to pay utilities, Wallace effectively hiked the rate of her rent in violation of R.C. 5321.14.

{¶17} R.C. 5321.14, which addresses unconscionable rental agreements, provides that:

(A) If the court as a matter of law finds a rental agreement, or any clause thereof, to have been unconscionable at the time it was made, it may refuse to enforce the rental agreement or it may enforce the remainder of the rental agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(B) When it is claimed or appears to the court that the rental agreement, or any clause thereof, may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

{¶18} However, Winn never asserted at the trial court that the rental agreement between her and Wallace was unconscionable. Moreover, the record is clear that the monthly rental amount remained at \$300 throughout the duration of the rental period.

{¶19} Thus, the fourth and fifth assignments of error are overruled.

#### Judgment Amount

{¶20} In the sixth assignment of error, Winn argues the court erred in rejecting her estoppel argument with regard to the unpaid utility bills prior to October 2012. Winn emailed Wallace in September 2012, asking him to agree to not sue her if she paid him \$700 and moved out by October 10, 2012. She moved out on that date, but then moved backed into the condo on October 16, 2012. However, Wallace's testimony reveals he sought payment of utility bills commencing December 2012, which is after the time frame



Winn alleges.

{¶21} Accordingly, Winn's argument lacks merit and the sixth assignment of error is overruled.

#### Motion to Strike

{¶22} In the seventh assignment of error, Winn argues that the court erred in failing to address her motion to strike, which was attached to her motion for a retrial. However, the record reveals that on April 29, 2014, the trial court denied Winn's motion for retrial. By denying her motion for retrial, the court also denied the motion to strike.

{¶23} Therefore, the seventh assignment of error is overruled.

#### Empathy for Wallace

{¶24} In the eighth assignment of error, Winn argues the court erroneously entered judgment against her out of empathy for Wallace because he has cancer. In support of her argument, she cites to R.C. 5321.14. As stated above, this section addresses unconscionable rental agreements. There is nothing in the record to support this assertion. Rather, the trial court relied on the entire testimony by Wallace and Winn in conjunction with the exhibits submitted by the parties.

{¶25} Thus, the eighth assignment of error is overruled.

#### Misadjournment

{¶26} In the ninth assignment of error, Winn argues the court erred by not adjourning the trial to request more information. However, Winn never filed a written motion for a continuance, nor did she orally request a continuance or adjournment. As

stated above, “pro se litigants are presumed to have knowledge of the law and of correct legal procedure and are held to the same standard as all other litigants.” *Loretta*, 8th Dist. Cuyahoga No. 97921, 2012-Ohio-3375, ¶ 8.

{¶27} Therefore, the ninth assignment of error is overruled.

{¶28} Accordingly, judgment is affirmed.

It is ordered that appellee recover of appellant 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 Parma 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.

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MARY EILEEN KILBANE, JUDGE

KATHLEEN ANN KEOUGH, P.J., and  
MELODY J. STEWART, J., CONCUR