

[Cite as *Snyder v. Grant*, 2016-Ohio-5247.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103796

CHARLES DAVID SNYDER

PLAINTIFF-APPELLANT

vs.

KENNETH GRANT, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-12-791778

BEFORE: Jones, A.J., Keough, J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: August 4, 2016

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LARRY A. JONES, SR., A.J.:

{¶1} Plaintiff-appellant, Charles David Snyder, appeals from an order granting judgment in favor of defendants-appellees, Kenneth Grant and Susan Grant Kalal. We find no merit to the appeal and affirm.

I. Facts and Procedural History

{¶2} This appeal is the second to arise out of a case that began with a sale leaseback transaction. In 2007, Snyder desired a large sum of cash for his business. At that time, he owned two residential properties: (1) a primary residence located in Lakewood, Ohio, and (2) a vacation home in Chautauqua County, New York. According to the complaint, Grant and his daughter, Kalal, agreed to purchase Snyder's properties for \$4 million and allow Snyder to lease the properties with the possibility of eventually buying the properties back. To finance the purchase, Grant and Kalal used the properties as collateral to borrow in excess of \$5 million. As part of the settlement for the funds, Grant and Kalal received \$1 million.

{¶3} Following the sale, Snyder and his family continued to live in the two properties for several years. In August or September 2012, Kalal filed an eviction action in Lakewood Municipal Court and attached an unsigned copy of a lease agreement to the complaint. In the eviction complaint, Grant and Kalal alleged that Snyder was in default of the lease for failure to pay rent on the Lakewood house. The municipal court ordered Snyder to post a cash bond of \$10,000, which represented one month's rent, on the first

business day of each month during the pendency of the eviction action. At first, Snyder complied with the court order and timely filed the bonds in the municipal court.

{¶4} In September 2012, Snyder filed a complaint against appellees in Cuyahoga County Common Pleas Court seeking (1) a declaratory judgment stating he is the equitable owner of the properties, (2) injunctive relief enjoining Grant and Kalal from taking or selling the personal property in the homes, and (3) compensatory damages in an amount exceeding \$100,000. Snyder moved to transfer the eviction action from municipal court to common pleas court. The municipal court granted the motion and transferred the eviction action to common pleas court.

{¶5} Pursuant to the transfer order, Snyder posted bond in municipal court through December 2012. The transfer order directed Snyder to continue making monthly payments of \$10,000 to the clerk of the common pleas court “unless otherwise directed” by the common pleas court. Snyder tried to make a bond payment in January 2013, but, according to him, the court’s bailiff instructed him to “hold on to his check.” Snyder did not make payments from January 2013 through July 2013.

{¶6} Grant and Kalal moved the court to enforce its prior order requiring Snyder to make immediate bond deposits to the clerk of courts. Snyder opposed the motion and claimed that his signature on the lease had been forged. The trial court agreed with appellees and ordered Snyder to make bond payments.

{¶7} Snyder deposited \$10,000 with the court in August 2013. The following week, the court granted Grant and Kalal’s motion to enforce the court’s prior order and

ordered Snyder to file bond deposits of \$10,000 for each of the seven months in 2013 during which he had not filed bond deposits.

{¶8} Snyder did not post the payments as ordered. In September 2013, Grant and Kalal motioned for default judgment against Snyder and for dismissal of Snyder's claims against them. The court denied the motion but ordered Snyder to pay the bond deposits within 21 days of the order or warned that the court may reconsider its position. Specifically, the court ordered:

In addition, Plaintiff is ordered to file with the Cuyahoga County Clerk of Courts bond deposits in the amount of \$10,000 for each month, beginning with September 2013, that plaintiff has resided in the Lakewood property at issue but failed to pay the court-ordered rent. Plaintiff shall file these bond deposits within twenty-one (21) days of the date of this order, or this court will reconsider dismissing the plaintiff's claims and/or granting a default judgment against plaintiff in defendant's favor.

{¶9} Snyder again failed to make the required deposits. In December 2013, appellees filed a renewed motion for judgment and dismissal. Snyder opposed the motion, again claiming that his signature on the lease agreement had been forged. This time, the trial court granted appellees' motion and entered judgment in their favor. In its journal entry, the trial court stated, in relevant part:

At multiple pretrial conferences, this plaintiff's counsel presented their argument that the lease agreements were invalid. This court, after hearing their arguments, still issued three court orders which plaintiff disobeyed. * *
* Plaintiff's only excuse for disobeying court orders is that he did not agree

with the court's reasoning. That is not a valid excuse. When this court issued its last warning * * *, it warned plaintiff that "Plaintiff shall file these bond deposits within twenty-one (21) days of the date of this order, or this court will reconsider dismissing plaintiff's claims and/or granting a default judgment against plaintiff in defendant's favor." Plaintiff failed to file such bonds. Therefore, this court rules that (1) all of plaintiff Snyder's claims in this case are dismissed with prejudice, * * * [and] (2) defendants are granted judgment in their favor on all their claims in this case.

{¶10} The trial court awarded Grant and Kalal \$397,000 for unpaid rent and \$312,647.63 for real estate taxes on the Lakewood property, \$170,000 for unpaid rent and \$82,479.45 for real estate taxes on the Chautauqua property, for a total award of \$966,127.08.

{¶11} Snyder appealed, arguing that the trial court violated his fundamental right to due process by ordering him to make bond payments on a disputed lease agreement and abused its discretion by entering judgment in Grant and Kalal's favor. This court found no merit to either his due process claim or his claim that the trial court abused its discretion in granting default judgment in favor of Grant and Kalal. *Snyder v. Grant*, 8th Dist. Cuyahoga No. 100977, 2014-Ohio-4577 ("*Snyder I*"). This court did find, however, that the record did not contain evidence to support the trial court's award of money damages:

There is no evidence to substantiate the amount of unpaid rent for either the Lakewood or Chautauqua properties. Evidence as to the amount of unpaid real estate taxes is also lacking. According to their renewed motion for judgment, appellees intended to present evidence to support their damage claims at a damages hearing, but the court never held a hearing. Under these circumstances, we find that the trial court abused its discretion by awarding money damages in the absence of evidence to support the damages award. _

* * *

The dismissal of Snyder's claims and the default judgment with respect to Snyder's liability for damages are affirmed. However, we remand the case to the trial court for a hearing on damages.

Id. at ¶ 28 - 30.

{¶12} On remand, the trial court held an evidentiary hearing. Grant testified that he managed the two properties for Kalal. According to his records, Snyder occupied the Lakewood house from October 2007 to January 2014 and the Chautauqua house from October 2007 through June 2012. He further testified that Snyder currently owed \$344,400 in rent and \$324,580.26 in property taxes on the Lakewood property and \$212,500 in rent and \$70,392.28 in property taxes on the Chautauqua property.

{¶13} Snyder testified that he had paid \$910,000 to Grant in rent during the term of the leases. Snyder admitted he never paid real estate taxes on either property because he thought the owners were obligated to pay the taxes. Grant conceded that Snyder had the receipts to prove \$910,000 in rent payments. The trial court determined that the total amount of rent due was \$1,321,900, but Snyder had presented evidence that he paid \$910,000 in rent; therefore, the amount owed was \$411,900. In addition, the court found Snyder owed a total of \$394,972.54 in unpaid real estate taxes, for a total damage award of \$806,872.54.

{¶14} Snyder timely appealed the trial court's decision and raises three assignments of error for our review:

I. The trial court erred by misinterpreting the court of appeals' opinion and violated plaintiff-appellants' rights of due process by imposing penalty damages that grossly exceeded the violation of R.C. 1923.08.

II. Assuming the lease agreements are valid, the trial court miscalculated the damages owed by failing to apply the \$500,000.00 credit that was supposed to be held in trust.

III. The trial [court] abused [its] discretion by refusing to allow a full and fair impeachment of defendant-appellees' credibility.

II. Law and Analysis

{¶15} In the first assignment of error, Snyder argues that the trial court erred in calculating the amount of damages. According to Snyder, (1) he should not have to pay rent on the Chautauqua property after he vacated the property on June 30, 2012, and (2) Grant and Kalal should have had to produce valid lease agreements on both properties confirming that Snyder owed \$10,000 a month in rent on each property plus property taxes before ordering damages.

{¶16} We review a trial court's decision to grant a motion for default judgment under an abuse of discretion. *Chase Bank USA, N.A. v. Courey*, 8th Dist. Cuyahoga No. 92798, 2010-Ohio-246, ¶ 22. Unlike the initial decision to grant a default judgment, however, "the determination of the kind and maximum amount of damages that may be awarded is not committed to the discretion of the trial court, but is subject to the mandates of Civ.R. 55(C) and Civ.R. 54(C)." *Arendt v. Price*, 8th Dist. Cuyahoga No. 101710, 2015-Ohio-528, ¶ 8, citing *Dye v. Smith*, 189 Ohio App.3d 116, 2010-Ohio-3539, 937 N.E.2d 628, ¶ 7 (4th Dist.). Thus, "the question of whether a trial court's grant of default judgment complies with Civ.R. 55(C) and Civ.R. 54(C) is one of law, which we review de novo." *Id.* citing *id.*; see also *Masny v. Vallo*, 8th Dist. Cuyahoga No. 84938,

2005-Ohio-2178, ¶ 15.

{¶17} Civ.R. 55 provides that “[i]n all cases a judgment by default is subject to the limitations of Rule 54(C).” Civ.R. 54(C) states that “[a] judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.” The primary purpose of Civ.R. 54(C)’s limitations on default judgment is to ensure that defendants are clearly notified of the maximum potential liability to which they are exposed, so that they may make an informed, rational choice to either: (1) enable a default judgment by not responding, or (2) invest the time and expense involved in defending an action. *Arendt* at ¶ 10, citing *Natl. City Bank v. Shuman*, 9th Dist. Summit No. 21484, 2003-Ohio-6116. “Recognizing this principle, Ohio courts have repeatedly held that a trial court abuses its discretion if it awards default judgment on matters that were not specifically pled in the complaint.” *Arendt* at *id.*

{¶18} This court already affirmed the trial court’s granting of default judgment in favor of Grant and Kalal. *See Snyder I.* In so far as Snyder requests this court to review the propriety of that judgment, we are unable to do so. Thus, we will not consider Snyder’s continuing argument that the lease agreements for the Lakewood and Chautauqua properties were invalid.

{¶19} Snyder argues that he should not be forced to pay rent on the Chautauqua property after he vacated the property in June 2012, yet there is no evidence he was charged rent on that property after June 2012. Snyder also claims that he should be required to pay only that amount of rent that is related to his violating the rent bonds, and

not the damages related to the default judgment that was granted against him. We disagree.

{¶20} Snyder's liability for unpaid rent and real estate taxes was already established via the default judgment rendered against him; any issue as to liability has already been reviewed by this court and affirmed. Grant testified as to the amount of unpaid rent and real estate taxes owed and Snyder admitted he had never paid real estate taxes. The only dispute in amount owed was the amount of rent Snyder had paid to Grant and Kalal; the trial court agreed with Snyder that he had already paid \$910,000 in rent; therefore, the amount owed was \$411,900.

{¶21} The trial court correctly determined the amount of damages due to Grant and Kalal; Snyder's disagreement with the court as to the appropriate amount of damages is not grounds for reversal. *Arendt* at ¶ 16, citing *Sotnyk v. Guillenno*, 6th Dist. Lucas No. L-13-1198, 2014-Ohio-3514.

{¶22} Thus, the first assignment of error is overruled.

{¶23} In the second assignment of error, Snyder claims that the trial court miscalculated the damage amount by failing to apply a \$500,000 credit to him.

{¶24} Section 20 of the lease for each property states, in part:

20. Default. * * * Notwithstanding anything to the contrary herein, Landlord and Ken Grant are holding over \$500,000 in trust for the benefit of Tenant (the "Trust Amount") and any monetary default of Tenant (or default that can reasonably be cured by the payment of money) shall be cured by

Landlord until such time as the Trust Amount balance falls below \$250,000, at which time Landlord may evict Tenant together with any other action deemed reasonable[.]

{¶25} According to Snyder, the trial court erred when it did not credit him \$500,000, which he argues was the amount Grant and Kalal were supposed to keep in trust in accordance with the above lease provision. But Snyder did not raise this issue during the damages hearing. In fact, there was no mention of money held in escrow by the parties in any trial court briefing or during the damages hearing.¹

{¶26} Because Snyder did not raise this issue with the trial court, we cannot now review his argument. Any claim he had that there was money sitting in a trust that should offset damages needed to be made with the trial court. Because it was not, it has been waived for the purposes of appeal.

{¶27} The second assignment of error is overruled.

{¶28} In the third assignment of error, Snyder argues that the trial court abused its discretion when it did not allow him to cross-examine Grant about pending criminal charges.

{¶29} We review evidentiary rulings for an abuse of discretion. *Telecom Acquisition Corp. I v. Lucic Ents.*, 8th Dist. Cuyahoga No. 102119, 2016-Ohio-1466, ¶ 47, citing *Renfro v. Black*, 52 Ohio St.3d 27, 33, 556 N.E.2d 150 (1990). The scope of

¹Appellees claims in their appellate brief that no money was deposited in the trust because Snyder never came up with the money.

cross-examination is governed by Evid.R. 611(A), which provides:

The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

Thus, trial judges may impose reasonable limits on cross-examination based on a variety of concerns, such as harassment, prejudice, confusion of the issues, the witness's safety, repetitive testimony, or marginally relevant interrogation. *Cleveland v. Garcia*, 8th Dist. Cuyahoga No. 100017, 2014-Ohio-1425, ¶ 7.

{¶30} During cross-examination of Grant, Snyder questioned him about his federal criminal case. Grant admitted he had pleaded guilty and was awaiting sentencing on wire fraud and money laundering charges. Snyder attempted to question Grant further about the details of the criminal charges but Grant's counsel objected and the trial court sustained the objection, finding the questions "irrelevant."

{¶31} Snyder argues that he should have been allowed to question Grant further because Grant was the "key witness" in this case and his criminal guilty pleas "impugned his character for truthfulness." Snyder further argues the criminal case could be "highly probative impeachment evidence" and should have been allowed in under Evid.R. 609.

{¶32} Evid.R. 609(A)(1) provides that "evidence that a witness other than the accused has been convicted of a crime is admissible if the crime was punishable by death or imprisonment in excess of one year pursuant to the law under which the witness was convicted." Under Evid.R. 609, a trial court has broad discretion to limit any

questioning of a witness on cross-examination that asks more than the name of the crime, the time and place of conviction and the punishment imposed, when the conviction is admissible solely to impeach general credibility. *State v. Amburgey*, 33 Ohio St.3d 115, 515 N.E.2d 925 (1987). Moreover, in this case, because Grant was awaiting sentencing, he had not yet been convicted of the crimes to which he pleaded guilty, so one could argue that any questioning with regard to his criminal case was inadmissible under Evid.R. 609. See *State v. Whitfield*, 124 Ohio St.3d 319, 2010-Ohio-2, 922 N.E.2d 182, ¶ 12, citing *State v. Gapen*, 104 Ohio St.3d 358, 2004-Ohio-6548, 819 N.E.2d 1047, ¶ 135. (For the purposes of R.C. 2941.25, a “‘conviction’ consists of a guilty verdict and the imposition of a sentence or penalty.”)

{¶33} Thus, we find no abuse of discretion and the third assignment of error is overruled.

{¶34} Judgment affirmed.

It is ordered that appellees 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 Cuyahoga County Court of Common Pleas 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.

LARRY A. JONES, SR., ADMINISTRATIVE JUDGE

KATHLEEN ANN KEOUGH, J., and
EILEEN T. GALLAGHER, J., CONCUR