

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

JOSEPH A. KARCHER

Appellee

v.

JERRY CHADIMA

Appellant

C.A. No. 21485

APPEAL FROM JUDGMENT
ENTERED IN THE
CUYAHOGA FALLS MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 03 CVG 0350

DECISION AND JOURNAL ENTRY

Dated: March 3, 2004

This cause was heard upon the record in the trial court. Each error assigned
has been reviewed and the following disposition is made:

CARR, Judge.

{¶1} Appellant, Jerry Chadima, appeals the decision of the Cuyahoga Falls Municipal Court, which granted a writ of restitution against him. This Court affirms.

I.

{¶2} On October 14, 1998, Mr. Chadima and appellee, Joseph A. Karcher, entered into a land installment contract for the purchase of real property in Hudson, Ohio. In July of 2002, the parties discussed a modification to the land installment contract wherein Mr. Chadima would stop making payments on the contract in return for Mr. Karcher receiving an interest in a new business venture of Mr. Chadima's.

{¶3} Sometime thereafter Mr. Chadima stopped making payments on the land contract and in late December of 2002, Mr. Karcher sent a ten-day demand letter to begin forfeiture procedure against Mr. Chadima.

{¶4} On February 3, 2003, Mr. Karcher filed an eviction action against Mr. Chadima. A magistrate's hearing on the matter was held on February 27, 2003. On March 10, 2003, the magistrate issued a decision ruling in favor of Mr. Karcher and ordering restitution of the property. The trial court judge confirmed the magistrate's decision. No objections were filed by either party to the magistrate's decision.

{¶5} Mr. Chadima timely appealed the trial court's decision, setting forth two assignments of error for review.

II.

FIRST ASSIGNMENT OF ERROR

“THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT JERRY CHADIMA IN DETERMINING THAT THE PAYMENT TERMS OF THE LAND INSTALLMENT CONTRACT BETWEEN DEFENDANT-APPELLANT AND PLAINTIFF-APPELLEE JOSEPH A. KARCHER WERE NOT MODIFIED.”

SECOND ASSIGNMENT OF ERROR

“THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT JERRY CHADIMA IN DETERMINING THAT THE ORIGINAL LAND INSTALLMENT CONTRACT WAS ENFORCEABLE.”

{¶6} In these two assignments of error, Mr. Chadima alleges the trial court erred in enforcing the original land installment contract and in finding the terms had not been modified. This Court disagrees.

{¶7} Civ.R. 53(E)(3)(a) provides that, within fourteen days of the filing of a magistrate’s decision, a party may file written objections to the magistrate’s decision. Civ.R. 53(E)(4)(c) further explains:

“The court may adopt a magistrate’s decision and enter judgment without waiting for timely objections by the parties, but the filing of timely written objections shall operate as an automatic stay of execution of that judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.”

{¶8} On March 10, 2003, the magistrate issued a decision in favor of Mr. Karcher that was confirmed by the trial court. No objections were filed in the case. In *Green v. Clair* (Feb. 14, 2001), 9th Dist. No. 20271, this Court stated the following:

“Civ.R. 53(E)(3)(b) provides that ‘a party shall not assign as error on appeal the court’s adoption of any finding of fact or conclusion of law unless the party has objected’ to the magistrate’s finding or conclusion in accordance with Civ.R. 53. If a party fails to object to a magistrate’s finding or conclusion, the party waives the right to challenge the finding or conclusion on appeal.” (Citations omitted.)

{¶9} As Mr. Chadima did not file objections to the magistrate’s findings at the trial court, he has waived his right to raise these assignments of error on appeal.

{¶10} Mr. Chadima’s assignments of error are overruled.

III.

{¶11} Accordingly, the judgment of the Cuyahoga Falls Municipal Court is affirmed.

Judgment affirmed.

DONNA J. CARR
FOR THE COURT

SLABY, P. J.
BATCHELDER, J.
CONCUR

APPEARANCES:

DAVID WOODBURN, CHRISTOPHER C. ESKER, and JASON B. DESIDERIO, Attorneys at Law, 50 South Main Street, P.O. Box 1500, Akron, Ohio 44309-1500, for appellant.

CHAD MURDOCK, Attorney at Law, P. O. Box 334, Rootstown, Ohio 44272, for appellee.