[Cite as *Oak Park Mgt. Corp. v. Via*, 2008-Ohio-2493.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF WAYNE	)	

OAK PARK MANAGMENT CORP. Appellant v. ANTHONY VIA Appellee	C. A. No. 07CA0022 APPEAL FROM JUDGMENT ENTERED IN THE WAYNE COUNTY MUNICIPAL COURT COUNTY OF WAYNE, OHIO CASE No. CVG-07-01-0105

DECISION AND JOURNAL ENTRY

Dated: May 27, 2008

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

DICKINSON, Judge.

INTRODUCTION

{¶1} The trial court found in favor of Oak Park Management Corporation on its complaint against Anthony Via in forcible entry and detainer. Oak Park has appealed because the trial court's judgment entry did not include language authorizing it to remove Mr. Via's manufactured home. This Court affirms because any alleged error was harmless.

FACTS

{¶2} After Mr. Via defaulted on his rent, Oak Park filed a complaint in forcible detainer seeking immediate possession of a manufactured home he had placed on one of its manufactured home park lots. A magistrate found Mr. Via "guilty of forcibly and unlawfully detaining the described property" and entered a judgment of restitution. Oak Park objected to the magistrate's proposed decision because the decision did not include language authorizing it to remove the manufactured home from its park. The trial court denied Oak Park's objection and approved the magistrate's proposed decision. Oak Park has appealed, assigning one error.

FORCIBLE ENTRY AND DETAINER

{¶3} Section 1923.02(A)(2) of the Ohio Revised Code provides that a landlord may maintain a forcible entry and detainer action against a manufactured home park resident who is in default in his payment of rent. Section 1923.09(A) provides that, if neither party demands a jury, "a judge of the court shall try the cause." Section 1923.09(A) also provides that, "[i]f the judge finds the complaint to be true, [he] shall render a general judgment . . . in favor of the plaintiff, for restitution of the premises and costs of suit." Section 1923.09(B) provides that, if judgment is entered in favor of a manufactured home park operator, "the judge shall include in the judgment entry authority for the plaintiff to permit, in accordance with section 1923.12 and division (B) of section 1923.13 and division

(B) of section 1923.14 of the Revised Code, the removal from the manufactured home park and potential sale, destruction, or transfer of ownership of the defendant's manufactured home . . . ."

{¶4} Section 1923.12(A) provides that, if a resident has been evicted from a manufactured home park under Section 1923.09 and has abandoned his manufactured home, the operator of the park may provide him with written notice to remove the home within fourteen days. "The park operator shall deliver or cause the delivery of the notice by personal delivery to the owner or by ordinary mail sent to the last known address of the owner." R.C. 1923.12(A). If the owner of the manufactured home does not remove the home within fourteen days, "the park operator may follow the procedures of division (B) of section 1923.13 and division (B) of section 1923.14 of the Revised Code to permit the removal of the home . . . from the manufactured home park, and the potential sale, destruction, or transfer of ownership of the home . . . ." *Id.*

HARMLESS ERROR

{¶5} Oak Park has argued that the trial court erred because it did not include in its judgment entry the language required by Section 1923.09(B). Even if Oak Park is correct that the trial court should have included that language, however, it has not demonstrated that it was prejudiced by that error. Under Rule 61 of the Ohio Rules of Civil Procedure, harmless errors are to be disregarded.

{¶6} Section 1923.12(A) requires that three things be true in order for a park operator to seek removal of a manufactured home: (1) its resident must have been evicted under Section 1923.09; (2) the home must have been unoccupied for three days; (3) the park operator must have provided the resident proper notice. Section 1923.12(A) does not provide that the judgment of eviction must have included the language required by Section 1923.09(B). Even though the judgment entry of eviction in this case does not include language specifically authorizing Oak Park to proceed under Section 1923.12, it is still a judgment entry under Section 1923.09 evicting Mr. Via. The trial court's failure to include the language required by Section 1923.09(B) in its judgment entry was harmless error. Oak Park's assignment of error is overruled.

CONCLUSION

{¶7} Oak Park may utilize Section 1923.12(A) even though the trial court did not specifically authorize relief under that section in its judgment entry. Oak Park's sole assignment of error is overruled, and the judgment of the Wayne County Municipal Court is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Wayne County Municipal Court, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, P. J.
CONCURS SAYING:

{¶8} While I agree with the result reached by the majority, I write separately to express disagreement with the trial court's reasoning and to further explain a finding of harmless error.

{¶9} The trial court determined that Oak Park Management Company ("Oak Park") was entitled to evict its tenant. However, the judgment entry only

authorized Oak Park to "remove and store the [tenant's] mobile home." The trial court reasoned that "in order to take a tenant's property rights to the mobile home away pursuant to R.C. 1923.[09](B), service must comply with the Civil Rules."[1] The trial court determined that the service provisions of R.C. 1923.06 are not sufficient to deprive a person of property rights and that in order to seek a forfeiture of a tenant's mobile home a park operator must instead serve the tenant with notice pursuant to the Ohio Rules of Civil Procedure.

{¶10} The trial court erred in ordering Oak Park to effectuate service in compliance with the Civil Rules in order to seek a forfeiture of the defendant's mobile home. The Civil Rules specify that, "[t]hese rules, to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure *** (3) in forcible entry and detainer[.]" Civ.R. 1(C). The various subsections of R.C. 1923 explicitly provide the procedures a landlord must follow to effectuate service upon a tenant in forcible entry and detainer actions. See R.C. 1923.06 through R.C. 1923.12. R.C. 1923, et seq. expressly sets forth the methods by which a landlord must effectuate service in the context of: (1) the initial three day notice to the tenant (R.C. 1923.04); (2) the formal complaint seeking a judgment of eviction

[1] As the dissent points out, this was a bench trial pursuant to R.C. 1923.09, not a jury trial pursuant to R.C. 1923.11. Yet, both the complaint and the trial court's order reference R.C. 1923.11. Since both statutes contain identical subsections (Subsection (B)), this concurrence substitutes and refers to the correct numerical designation wherever the trial court or Oak Park mistakenly refer to R. C. 1923.11.

(R.C. 1923.06); and (3) any writ of execution the landlord seeks to authorize forfeiture of the tenant's property, including the removal, sale, destruction, or ownership transfer of that property (R.C. 1923.12). Despite the specific notice provisions contained in R.C. 1923, et seq., however, the trial court sua sponte determined that these provisions only apply when a landlord seeks to *evict* a tenant. The trial court essentially raised a due process argument on behalf of the tenant by holding that Oak Park cannot institute *forfeiture* proceedings against an evicted tenant through R.C. 1923, et seq. because those notice provisions do not adequately advise the tenant of the risk that he might lose property. The statutory framework of R.C. 1923, et seq., demonstrates why the trial court erred in making this determination.

{¶11} R.C. 1923.09(B) provides as follows:

> "If a judgment is entered under this section in favor of a plaintiff who is a park operator, the judge *shall* include in the judgment entry *authority for the plaintiff to permit*, in accordance with [R.C.] 1923.12[,] *** 1923.13[B][,] and *** 1923.14[B] ***, the *removal* from the manufactured home park *and potential sale, destruction, or transfer of ownership* of the defendant's manufactured home, mobile home, or recreational vehicle." (Emphasis added.)

R.C. 1923.12, R.C. 1923.13(B), and R.C. 1923.14(B) (collectively "R.C. 1923.09(B) remedies") set forth additional actions that a park operator must take if he wishes to dispose of any abandoned or unoccupied property that the evicted tenant has left on the premises. See R.C. 1923.12 (permitting park owner to remove, sell, destruct, or transfer ownership of evicted tenant's mobile home upon

the completion of certain actions). To avail himself of the R.C. 1923.09(B) remedies, a park operator must first serve a written notice upon the tenant, owner of the property, and any other individual with a right, title, or interest in the property; give those individuals fourteen days to respond; and seek a writ of execution in the trial court that certifies that he has complied with these additional requirements. R.C. 1923.12(A)-(C). A park operator may serve the written notice upon these individuals by either personal delivery or ordinary mail sent to the individuals' last known address. R.C. 1923.12(A).

{¶12} Neither R.C. 1923.09(B), nor the R.C. 1923.09(B) remedies, refer to the Civil Rules. Rather, the provisions of R.C. 1923, et seq., internally provide separate criteria for the service of process. These procedures vary from the general procedures for service set forth in the Civil Rules. See Civ.R. 4 through Civ.R. 6. Consequently, the Civil Rules regarding service of process do not apply to forcible entry and detainer actions. See Civ.R. 1(C) (specifying that the Civil Rules will not apply in instances where they would be "clearly inapplicable"); *Amherst Village Management v. Vestal* (Oct. 27, 2000), 6th Dist. No. WD-99-075, at *4-6 (holding that the specific service provisions of R.C. 1923 apply to forcible entry and detainer actions rather than the Civil Rules). The trial court incorrectly held that Oak Park must comply with the service provisions set forth in the Civil Rules before it can "take a tenant's property rights" pursuant to R.C. 1923.09(B).

{¶13} In spite of the trial court's error, Oak Park has not suffered any prejudice that would require this Court to remand the matter to the trial court for inclusion of the language of R.C. 1923.09(B) in its final order. Oak Park may, in my opinion, independently initiate the R.C.1923.09(B) remedies without first obtaining a corrected journal entry that directly references them. Oak Park argues, and I agree, that the trial court had no authority to limit Oak Park's remedy to removal and storage of the mobile home. First, the record does not demonstrate any challenge to the R.C. 1923.09(B) remedies in the trial court. The defendant-tenant never answered Oak Park's complaint and failed to appear at the magistrate's hearing. Without the defendant-tenant raising a constitutional challenge to the notice procedures set forth in R.C. 1923, et seq., the trial court had no cause to sua sponte raise such a due process argument on the defendant-tenant's behalf.

{¶14} Second, the trial court's action impermissibly alters the statutory scheme for eviction proceedings involving mobile homes.[2] Although R.C. 1923.09(B) provides that the trial court *shall* include in its journal entry *authority* for the park operator to employ the R.C. 1923.09(B) remedies, there is no evidence that the Legislature intended that language to be mandatory for the

[2] The statutory scheme for regular rental property and for mobile homes is essentially the same and provides for simplified and expedited mechanisms to restore premises to the landlord and to authorize disposition of abandoned personal property.

purpose of conferring jurisdiction upon the park operator. "In statutory construction, the word *** 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that [it] receive a construction other than [its] ordinary usage." *Dorrian v. Scioto Conservancy Dist.* (1971), 27 Ohio St.2d 102, paragraph one of the syllabus. From the framework of R.C. 1923, et seq., I would conclude that the Legislature intended for trial courts to include all of the language from R.C. 1923.09(B) for the purpose of: (1) notifying the park operator and tenant/owner that R.C. 1923.09(B) remedies are available to the park operator, and (2) notifying the park operator that he need only look to the provisions of R.C. 1923, et seq., for relief and not to other places such as the Civil Rules. In short, I would conclude that the Legislature's use in R.C. 1923.09(B) of the word "shall" is advisory only and serves to emphasize that 1923.09(B) procedures are independently available to park operators. To conclude otherwise would be to enable a trial court to arbitrarily repeal the R.C. 1923.09(B) remedies. It would be manifestly inconsistent with legislative intent if a trial court could preclude resort to the 1923.09(B) remedies by refusing to give its imprimatur of the statutory language.

{¶15} Although the trial court erred in failing to follow the unambiguous language of R.C. 1923.09(B) and include the R.C. 1923.09(B) remedies in Oak Park's judgment entry, the error was harmless. In my opinion, a park operator may always employ the R.C. 1923.09(B) remedies, notwithstanding the trial

court's error in omitting the remedies in its journal entry. As the majority found the trial court's error to be harmless, I concur in the Court's judgment.

CARR, J.
DISSENTS, SAYING:

{¶16} I respectfully dissent.

{¶17} Oak Park has argued that the trial court has misinterpreted the statutory scheme of R.C. Chapter 1923 by requiring that Oak Park comply with the service and notice requirements of Civ.R. 4.1 through 4.6 before it may exercise its statutory right to remove, sell or destroy Via's manufactured home. I agree.

{¶18} The applicable version of R.C. 1923.06 in effect at the time of the filing of the complaint provided, in relevant part:

> "(A) Any summons in an action, including a claim for possession, pursuant to this chapter shall be issued, be in the form specified, and be served and returned as provided in this section.
>
> "(C) The clerk of the court in which a complaint to evict is filed shall mail any summons by ordinary mail, along with a copy of the complaint, document, or other process to be served, to the defendant at the address set forth in the caption of the summons and to any address set forth in any written instructions furnished to the clerk. The mailing shall be evidenced by a certificate of mailing which the clerk shall complete and file.
>
> "In addition to this ordinary mail service, the clerk also shall cause service of that process to be completed under division (D) or (E) of this section or both, depending upon which of those two methods of service is requested by the plaintiff upon filing the complaint to evict.

> "(D)(1) If requested, the clerk shall deliver sufficient copies of the summons, complaint, document, or other process to be served to, and service shall by made by, one of the following persons:
>
> "***
>
> "(b) The bailiff of the court for service when process issues from a municipal court[.]
>
> "***
>
> "(2) The person serving process shall effect service at the premises that are the subject of the forcible entry and detainer action by one of the following means:
>
> "***
>
> "(c) By posting a copy in a conspicuous place on the subject premises if service cannot be made pursuant to divisions (D)(2)(a) and (b) of this section[.]
>
> "***
>
> "(F) Service of process shall be deemed complete on the date that any of the following has occurred:
>
> "***
>
> "(2) Both ordinary mail service under division (C) and service by posting pursuant to division (D)(2)(c) of this section have been made."

{¶19} In this case, Oak Park complied with the notice and service requirements set forth in R.C. 1923.06 in regard to his complaint requesting both restitution and possession.

{¶20} The matter proceeded before the court without a jury, so that Oak Park's relief would necessarily be sought and granted pursuant to R.C. 1923.09.[3] R.C. 1923.09(B) provides:

> "If a judgment is entered under this section in favor of a plaintiff who is a park operator, the judge shall include in the judgment entry authority for the plaintiff to permit, in accordance with section 1923.12 and division (B) of section 1923.13 and division (B) of section 1923.14 of the Revised Code, the removal from the manufactured home park and potential sale, destruction, or transfer of ownership of the defendant's manufactured home, mobile home, or recreational vehicle."

{¶21} There is no dispute that Oak Park is a park operator.

{¶22} The statute clearly mandates that the trial court include such authority in the judgment entry. In this case, it is not merely that the trial court omitted the mandated authority enunciated in R.C. 1923.09(B). Rather, the trial court expressly refused to include the authority mandated by statute, upon finding that the defendant's property rights could only be taken away if the defendant had been served in accordance with Civ.R. 4.1 through 4.6. R.C. Chapter 1923, however, includes no such requirement. Instead, that chapter sets forth express notice and service requirements. R.C. 1923.06(A). The trial court, in effect, has

[3] Both Oak Park and the trial court referenced relief pursuant to R.C. 1923.11. That section is applicable to verdicts rendered by a jury. R.C. 1923.09 addresses actions tried to a judge. The language in R.C. 1923.09(B) and R.C. 1923.11(B) is identical.

sua sponte determined that the notice and service requirements of R.C. Chapter 1923 are unconstitutional, despite no challenge to the constitutionality of those provisions.

{¶23} R.C. 1923.09(B) provides the authority for Oak Park to further pursue the removal, sale, destruction or transfer of ownership of Via's manufactured home pursuant to R.C. 1923.12, which includes additional notice requirements. However, those remedies are only available where a judgment has been rendered pursuant to R.C. 1923.09 or 1923.11. In this case, notwithstanding Oak Park's success in proving the allegations in its complaint, the trial court has refused to render judgment in compliance with the mandates of R.C. 1923.09(B). Accordingly, I would reverse the judgment of the municipal court and remand the matter for issuance of a judgment entry which complies with those mandates.

APPEARANCES:

CHARLES A. KENNEDY, Attorney at Law, for appellant.

ANTHONY VIA, pro se, appellee.