

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

ONEIDA PROPERTIES, INC.

C. A. No. 24626

Appellant

v.

MARK PICKETT

Appellee

APPEAL FROM JUDGMENT
ENTERED IN THE
AKRON MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 08CV013220

DECISION AND JOURNAL ENTRY

Dated: September 30, 2009

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Oneida Properties Inc. instituted a forcible entry and detainer action against Mark Pickett. The trial court entered judgment in favor of Mr. Pickett, and Oneida has attempted to appeal. Oneida failed to timely file its notice of appeal, however, and this Court, therefore, dismisses its attempted appeal.

BACKGROUND

{¶2} In late September 2008, Mr. Pickett entered into a one-year lease with Oneida for an apartment on Jeanette Court in Akron. The lease required Mr. Pickett to make monthly rental payments of \$375. According to Oneida, the parties modified the lease regarding the first monthly payment. Oneida has claimed that it agreed to accept \$75 for the first seven days of October 2008, with \$300 due on the third day of the month as rent for the remainder of October.

{¶3} Mr. Pickett took possession of the apartment and paid \$75, but failed to pay the additional \$300 due on the third day of the month. Shortly after the due date, Oneida terminated the lease and served Mr. Pickett with a notice to vacate the premises for nonpayment of rent. Nineteen days later, Oneida filed a complaint in Akron Municipal Court alleging claims for forcible entry and detainer and breach of contract, seeking restitution of the apartment, past due rent, and utilities.

{¶4} On December 5, 2008, following a hearing, a magistrate recommended that a writ of restitution not be allowed. The trial court approved the magistrate's decision and entered judgment against Oneida on the forcible entry and detainer claim. Oneida moved for findings of fact and conclusions of law, but the trial court denied that motion, concluding that the magistrate's decision had included appropriate findings of fact and conclusions of law.

{¶5} On January 7, 2009, Oneida moved the trial court for leave to file an untimely objection to the magistrate's decision, asserting that the clerk of court had failed to timely serve it with a copy of the decision as required. On January 26, 2009, the trial court granted the motion, but overruled the objection, holding that Oneida could not lawfully evict Mr. Pickett in October 2008 because, according to it, "acceptance of rent in an amount less than the rental obligation results in a renewal of the tenancy for the month in which partial payment [is] accepted."

{¶6} On February 12, 2009, Oneida filed a notice of appeal in which it asserted that it was appealing from the trial court's January 26, 2009, judgment entry. Oneida has argued that the trial court's decision is not supported by Ohio law and violates the terms and conditions of the lease and Sections 1923.02(A)(9) and 5321.03 of the Ohio Revised Code. Oneida has also argued that a tenant whose lease has been terminated for nonpayment of rent has no legal right to

remain in possession of the leased premises and that the landlord has a statutory right to pursue a forcible entry and detainer action in that situation. This Court dismisses the attempted appeal because it was untimely filed.

JURISDICTION

{¶7} “A judgment entry giving or denying a landlord possession of premises is final (and immediately appealable), regardless of whether other claims between the parties remain to be determined by the trial court.” *Crossings Dev. Ltd. P’ship v. H.O.T. Inc.*, 96 Ohio App. 3d 475, 482 (1994). Rule 54(B) of the Ohio Rules of Civil Procedure is not applicable to forcible entry and detainer actions. *Id.* (citing *Cuyahoga Metro. Hous. Auth. v. Jackson*, 67 Ohio St. 2d 129, 132 (1981)). Therefore, the pending breach of contract claim does not affect Oneida’s ability to immediately appeal the trial court’s judgment.

{¶8} Under Rule 4(A) of the Ohio Rules of Appellate Procedure, a party has thirty days to appeal a final judgment. In a civil case, however, when certain post-judgment motions are filed, the time for filing a notice of appeal does not begin to run until the order disposing of the post-judgment motion is entered. App. R. 4(B)(2). Two post-judgment motions that usually toll the time for appeal are a motion for findings of fact and conclusions of law under Rule 52 of the Ohio Rules of Civil Procedure and a motion to vacate or modify a judgment by objection to a magistrate’s decision under Rule 53 of the Ohio Rules of Civil Procedure. *Id.*

{¶9} Although “[g]enerally, the Civil Rules govern procedure in Ohio courts, and prevail over conflicting statutes,” Rule 1(C)(3) of the Ohio Rules of Civil Procedure contains an exception for forcible entry and detainer actions. *State ex rel. GMS Mgmt. Co. Inc. v. Callahan*, 45 Ohio St. 3d 51, 54 (1989). Under Rule 1(C), forcible entry and detainer actions are exempt from any civil rule that would be “by [its] nature . . . clearly inapplicable.” Civ. R. 1(C)(3).

Because the forcible entry and detainer action was designed as a summary proceeding, “the drafters of the Rules of Civil Procedure were careful to avoid encrusting this special remedy with time consuming procedure tending to destroy its efficacy.” *Callahan*, 45 Ohio St. 3d at 55 (quoting *Cuyahoga Metro. Hous. Auth. v. Jackson*, 67 Ohio St. 2d 129, 131 (1981)). Accordingly, the Ohio Supreme Court has held that Civil Rule 52 is inapplicable to forcible entry and detainer proceedings. *Id.* Thus, a party may not delay the execution of judgment in a forcible entry and detainer case by requesting findings of fact and conclusions of law under Civil Rule 52. *Id.*

{¶10} Under Civil Rule 53, “the timely filing of objections to the magistrate’s decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.” Civ. R. 53(D)(3)(e)(i). Based on Rule 1(C) of the Rules of Civil Procedure, however, the Ohio Supreme Court has held that the automatic stay provision of Civil Rule 53 does not apply to forcible entry and detainer actions. *Colonial Am. Dev. Co. v. Griffith*, 48 Ohio St. 3d 72, syllabus (1990).

{¶11} In *Griffith*, the Supreme Court again focused on its concern that the automatic stay provision would unnecessarily delay what was intended to be a summary proceeding. *Colonial Am. Dev. Co. v. Griffith*, 48 Ohio St. 3d 72, 73 (1990). The Court pointed out that, in *Callahan*, it had recently endorsed the same principle regarding motions for findings of fact and conclusions of law. *Id.* (citing *State ex rel. GMS Mgmt. Co. v. Callahan*, 45 Ohio St. 3d 51, paragraph one of the syllabus (1989)).

{¶12} Although the Supreme Court subsequently held other parts of Civil Rule 53 applicable to forcible entry and detainer actions, the Court emphasized that the automatic stay of execution of judgment based on the filing of objections was not at issue in that case. *Miele v.*

Ribovich, 90 Ohio St. 3d 439, 444 n.5 (2000). In *Miele*, the Court specified that the holding was “not intended to affect [its] previous holdings in *Colonial Am. Dev. Co. v. Griffith* . . . and *State ex rel. GMS Mgt. Co. Inc. v. Callahan*” *Id.* Despite more recent revisions to Civil Rule 53, the automatic stay provision remains substantively identical to that considered by the Supreme Court in *Griffith*. See Civ. R. 53(D)(3)(e)(i). Therefore, based on *Griffith*, the automatic stay provision of Rule 53 is inapplicable to forcible entry and detainer actions. *Colonial Am. Dev. Co. v. Griffith*, 48 Ohio St. 3d 72, 73 (1990).

{¶13} In this case, the magistrate’s decision was filed on December 5, 2008, and the trial court approved the decision and entered judgment on it that same day. Oneida did not file its notice of appeal, however, until February 12, 2009. In the interim, Oneida moved the trial court for findings of fact and conclusions of law and filed an untimely written objection to the magistrate’s decision. Neither post-judgment motion stayed Oneida’s time for filing its notice of appeal. *Colonial Am. Dev. Co. v. Griffith*, 48 Ohio St. 3d 72, 73 (1990); *State ex rel. GMS Mgmt. Co. v. Callahan*, 45 Ohio St. 3d 51, paragraph one of the syllabus (1989). This Court dismisses this attempted appeal because the notice of appeal was not timely filed. App. R. 4(A).

CONCLUSION

{¶14} This Court does not have jurisdiction to hear this attempted appeal because the notice of appeal was not timely filed. The appeal is dismissed.

Appeal dismissed.

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

CARR, J.
BELFANCE, J.
CONCUR

APPEARANCES:

DANIEL M. WALPOLE, attorney at law, for appellant.

MARK PICKETT, pro se, appellee.