

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

MARIA SANCHEZ

C.A. No. 25336

Appellee

v.

TIRE KING

APPEAL FROM JUDGMENT
ENTERED IN THE
AKRON MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 09CV11577

Appellant

DECISION AND JOURNAL ENTRY

Dated: August 25, 2010

MOORE, Judge.

{¶1} Appellant, Tire King, appeals from the decision of the Akron Municipal Court.

This Court affirms.

I.

{¶2} On November 8, 2009, Maria Sanchez took her car to Tire King to have the front tires changed. On November 19, 2009, while her son was driving, the left front tire fell off and damaged the car. On November 30, 2009, Sanchez filed a complaint in the small claims division of the Akron Municipal Court. On November 19, 2010, the case was heard by a magistrate. On February 23, 2010, the magistrate issued his decision, entering judgment in favor of Sanchez in the amount of \$1598. Tire King did not object to the magistrate's decision. On March 10, 2010, the trial court adopted the magistrate's decision. Tire King timely appealed, and has raised one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

“THE VERDICT WAS AGAINST THE MANIFEST WEIGHT AND THE LEGAL SUFFICIENCY OF THE EVIDENCE SUCH THAT IT WAS AN ABUSE OF DISCRETION FOR THE MAGISTRATE TO RULE AGAINST [TIRE KING].”

{¶3} Tire King contends that the magistrate’s decision was against the manifest weight of the evidence and not based upon sufficient evidence.

{¶4} Tire King failed to file any objections to the magistrate’s decision. Pursuant to Civ.R. 53(D)(3)(b)(iv) “[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b).”

“Although in *criminal* cases ‘[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court,’ Crim.R. 52(B), no analogous provision exists in the Rules of *Civil* Procedure. The plain error doctrine originated as a criminal law concept. In applying the doctrine of plain error in a civil case, reviewing courts must proceed with the utmost caution, limiting the doctrine strictly to those extremely rare cases where exceptional circumstances require its application to prevent a manifest miscarriage of justice, and where the error complained of, if left uncorrected, would have a material adverse effect on the character of, and public confidence in, judicial proceedings.” (Emphasis sic.) (Citations omitted.) *Goldfuss v. Davidson* (1997), 79 Ohio St.3d 116, 121.

{¶5} Tire King did not argue plain error on appeal. We conclude that this is not one of “those extremely rare cases where exceptional circumstances” require us to apply the plain-error doctrine. *Id.* Accordingly, Tire King has forfeited the right to assign error to the trial court’s adoption of the magistrate’s decision. See *Kiewel v. Kiewel*, 9th Dist. No. 09CA0075-M, 2010-Ohio-2945, at ¶17 (concluding that, although Civ.R. 53 refers to “waiver” of the right to assign

error on appeal, “we deem the failure to object to a magistrate’s decision in accordance with Civ.R. 53(D)(3) to be appropriately termed forfeiture.”)

{¶6} Tire King’s assignment of error is overruled.

III.

{¶7} Tire King’s assignment of error is overruled. The judgment of the Akron Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Akron Municipal Court, County of Summit, 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.

CARLA MOORE
FOR THE COURT

CARR, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

LAWRENCE J. COOK, Attorney at Law, for Appellant.

MARIA SANCHEZ, Attorney at Law, for Appellee.