

IN THE SUPREME COURT OF OHIO

MARY HENSEL)
v.)
Plaintiff-Appellee)
RONALD CHILDRESS,)
Defendant-Appellant)
On Appeal from the Hamilton
County Court of Appeals, First
Appellate District
SUP. CT. NO. 2019-1547
APPEAL NO. C 18 00100

MEMORANDUM OF PLAINTIFF-APPELLEE MARY HENSEL CONTRA DEFENDANT-APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION

Matthew R. Chasar (0075191)
Joseph M. Sprafka (0085195)
Reardon & Chasar, LPA
455 Delta Avenue Suite 108
Cincinnati, Ohio 45226
Tel. (513) 827-6136
Fax (513) 297-7900
mrchasar@reardonchasar.com
jmsprafka@reardonchasar.com

Counsel for Plaintiff-Appellee
Mary Hensel

William D. Bell, Sr. (0027596)
Suite 110 Victory Parkway Exec. Bldg.
2368 Victory Parkway
Cincinnati, Ohio 45206
Tel. (513) 241-2355
Fax (513) 241-3091
williamdbellsratty@fuse.net

Counsel for Defendant-Appellant
Ronald Childress

TABLE OF CONTENTS

Page

TABLE OF CONTENTS	i
I. This Case Is Not of Public or Great General Interest and Does Not Involve Any Constitutional Question	1
A. No Public or Great General Interest	1
B. No Constitutional Question	3
III. Statement of Facts	3
III. Arguments In Opposition To Appellant's Propositions of Law	5
A. Appellant's Proposition of Law No. 1: No attorney fees should have been awarded on a residential lease agreement.	5
B. Appellant's Proposition of Law No. 2: The trial court awarded fees as damages rather than costs as is required	6
III. Conclusion	7
CERTIFICATE OF SERVICE	8

I. This Case Is Not of Public or Great General Interest and Does Not Involve Any Constitutional Question

A. No Public or Great General Interest

This case is an ordinary, run-of-the-mill landlord-tenant dispute for damages a tenant caused, which the trial court properly awarded and the First Appellate District Court of Appeals affirmed. It does not present this Court with any matter of public or great general interest.

Appellant confusingly asserts that this case “is of public or general interest and involves a substantial constitutional question on the notice provision for the filing of a notice of appeal to a decision entered by the Court of Appeals[.]” Appellant’s Mem. at pg. 1. Appellant then presumably takes a different approach, stating that “[t]he issue is the applicability of Ohio Revised Code Section 5321.13(C) which prohibits the award of attorney fees” and that “[t]he entry of record from the trial court on the matter does not cite the statutes stated by the Appellant Court [sic].” *Id.*

The mere fact that this is a landlord-tenant dispute involving a statute is not enough to elevate the matter to one of public or great general interest. If landlord-tenant statutory issues were all that were necessary, then this Court would be compelled to accept all jurisdictional appeals involving evictions. Such a result would be a waste of this Court’s valuable resources and would be antithetical to the Court’s rules regarding jurisdictional appeals.

Appellant further asserts that this case involves errors made by the trial court and the Court of Appeals in interpreting the application of R.C. 5321.13(C) and 5321.05(C)(1). *Id.* However, Appellant cannot use errors he claims were made by the trial court as a basis for his claim that this Court should accept jurisdiction.

Contrary to Appellant's contentions, the Court of Appeals properly interpreted R.C. 5321.13(C) and 5321.05(C)(1). It noted that R.C. 5321.13(C) states that "no agreement to pay the landlord's or tenant's attorney fees shall be recognized in any rental agreement for residential premises or in any other agreement between a landlord and tenant." 1st Dist. J.E. pg. 5, ¶16. It then correctly noted that "Hensel argues that she should receive attorney fees not because of the lease provision, but because she is permitted to recover them under R.C. 5321.05(C)(1)." *Id.* at pg. 6, ¶19. "R.C. 5321.05(C)(1) expressly allows the landlord to recover 'reasonable attorney fees' when the tenant violates any of his obligations under R.C. 5321.05(A)(1)-(8)." *Id.* at ¶20. The Court of Appeals correctly noted that "the trial court determined that Childress violated R.C. 5321.05(A) by failing to keep the property safe and sanitary, dispose of all rubbish, and maintain the appliances in good working order and condition, and by negligently damaging the property. Under these circumstances, Hensel may recover attorney fees pursuant to R.C. 5321.05(C)(1)." *Id.* at pgs. 6-7, ¶20.

Appellant also claims that the Court of Appeals "did not require the trial court to classify the attorney fees awarded as costs." Appellant's Mem. at pg. 1. But the Court of Appeals specifically found that Appellant "raised this issue for the first time at oral argument, and so the issue is waived. 'An issue raised during oral argument for the first time and not assigned as error in an appellate brief is waived.'" 1st Dist. J.E. pg. 7, ¶21, quoting *Adreyko v. Cincinnati*, 153 Ohio App.3d 108, 2003-Ohio-2759, 791 N.E.2d 1025, ¶20 (1st Dist.); App.R. 12(A)(1)(b) and 21(l). Appellant cannot claim that the Court of Appeals erred by addressing an issue he waived.

Appellant simply disagrees, without any supporting facts or law, with the Court of Appeals' well-reasoned decision and regurgitates some of the same arguments previously advanced, which were considered and rejected. Mere disagreement does not elevate this case to one of public or great general interest.

B. No Substantial Constitutional Question

With regard to Appellant's claim that this case presents a substantial constitutional question, no portion of his Memorandum addresses this issue. Appellant offers no explanation (much less a thorough one) as to why or how this case presents a substantial constitutional question involving sections of the Ohio Constitution, as required by S.Ct.Prac.R. 7.02(C)(2).

Simply put, the proceedings below did not deprive Appellant of any rights afforded under the Ohio Constitution. Instead, it was Appellant's leaving the "house [] not only filthy; [but where] it sustained damage beyond what could reasonably be considered ordinary wear and tear" that led the Court of Appeals to affirm the trial court's decision. 1st Dist. J.E., pg. 11, ¶39. Appellant has articulated no substantial constitutional question to justify jurisdiction. Being unhappy with the unanimous decision rejecting his unfounded appeal is not enough.

II. Statement of Facts

Appellant leased a home from Appellee, who was Appellant's landlord. While her tenant, Appellant destroyed Appellee's home. Appellee filed a lawsuit and asserted claims for breach of written lease and violation of R.C. 5321.05. She moved for summary judgment. The trial court granted her motion as to liability, finding Appellant breached the lease and violated R.C. 5321.05. See T.d. 20 at ¶¶2, 4.

The trial court conducted a damages trial. After hearing testimony from Appellee's five witnesses and Appellant, and receiving exhibits that included photographs of the home before Appellant occupied it, photographs of the home's condition when Appellant left, repair estimates and bills, and attorney fees invoices, the trial court awarded Appellee damages of \$17,858.61 and attorney fees.

Because of a clerical error (the trial court did not recognize that Exhibit F was a compilation of attorney-fee invoices, rather than a single invoice) the trial court, after conducting a separate hearing on the reasonableness of attorney's fees, and hearing expert testimony upon this issue, awarded Appellee reasonable attorney's fees of \$16,500, a reduction from the amount she was seeking. T.d. 24. Appellant did not object to the amount of the award of attorney fees or provide a transcript of this hearing to the Court of Appeals.

Appellant moved the trial court under Civil Rule 60(B) for relief from judgment, arguing that the award of attorney fees violated R.C. 5321.13(C). As the attorney fees were awarded under R.C. 5321.05(C), the trial court overruled his motion.

Appellant then appealed to the Court of Appeals claiming three assignments of error: (1) that admitting certain photographs was reversible error; (2) that the trial court's awarding attorney fees violated R.C. 5321.13; and (3) that some unspecified portion of the damages the home sustained were ordinary wear and tear. The Court of Appeals affirmed the trial court, ruling it "did not abuse its discretion in admitting the before and after photos of the property, or when it awarded attorney fees pursuant to R.C. 5321.05(C)(1). Also, the court properly considered ordinary wear and tear in determining damages, and its determination of damages was not against the manifest

weight of the evidence. All of Childress's assignments of error are overruled." 1st Dist. J.E. pg. 12, ¶40.

III. Arguments in Opposition to Appellant's Propositions of Law

A. Appellant's Proposition of Law No. 1: No attorney fees should have been awarded on a residential lease agreement.

The Court of Appeals addressed Appellant's first argument directly and accurately:

R.C. 5321.13(C) states that 'no agreement to pay the landlord's or tenant's attorney fees shall be recognized in any rental agreement for residential premises or in any other agreement between a landlord and tenant.'

In *KGM Capital, L.L.C. v. Jackson*, 1st Dist. Hamilton No. C-130438, 2014-Ohio-2427, ¶ 22, the lease contained a provision awarding attorney fees to the landlord. The provision stated that the tenant would reimburse the landlord for

all reasonable expenses incurred due to [her] violation of any term or provision of th[e] lease, including but not limited to \$25.00 for each Notice to Pay, Notice to Quit, or other notice mailed or delivered by [KGM] to [Jackson] due to [Jackson's] non-payment of rent/all court costs and attorney fees and all other costs of and or litigation.

Id. The trial court awarded attorney fees based on this provision in the lease. *Id.* This court reversed, holding that the lease provision violated R.C. 5321.05(C). *Id.* at ¶ 24.

The lease agreement between Hensel and Childress contained the following provision,

in any case, Owner/ Agent may enter and take possession of the premises and ask the court of appropriate jurisdiction to require you to be held responsible for the paying of such attorney fees and court costs for the enforcement of certain provisions of this lease as *may be provided for by state law*.

(Emphasis added.) Unlike the lease provision in *KGM*, this provision does not provide an independent right to attorney fees, rather it allows for attorney fees only as may be provided for by state law.

Hensel argues that she should receive attorney fees not because of the lease provision, but because she is permitted to recover them under R.C. 5321.05(C)(1).

R.C. 5321.05(C)(1) expressly allows the landlord to recover 'reasonable attorney fees' when the tenant violates any of his obligations under R.C. 5321.05(A)(1)-(8). In its grant of summary judgment as to liability, the trial court determined that Childress violated R.C. 5321.05(A) by failing to keep the property safe and sanitary, dispose of all rubbish, and maintain the appliances in good working order and condition, and by negligently damaging the property. Under these circumstances, Hensel may recover attorney fees pursuant to R.C. 5321.05(C)(1).

1st Dist. J.E., pgs. 5-7, ¶¶16-20.

Appellant falsely claims the Court of Appeals did not apply *KGM Capital*. Appellant's Mem. pg. 3. But what is true is that applying *KGM Capital* in the manner Appellant urges, to nullify and render R.C. 5321.05 meaningless, is contrary to law. Another Court has noted, "R.C. 5321.13(C) holds that no agreement for attorney fees in a rental agreement or any other agreement will be recognized. However R.C. 5321.05(C)(1) provides for the possibility of attorney fees." *Knipp v. Sadler*, 3rd Dist. No. 6-09-04, 2009-Ohio-4444, ¶27 fn. 3. The Court of Appeals affirmed upon this distinction and did not abuse its discretion. It properly concluded that Appellant's argument concerning attorney fees was not well placed, and Appellant has presented no cogent reason why this Court should invoke jurisdiction to reconsider that decision.

B. Appellant's Proposition of Law No. 2: The trial court awarded fees as damages rather than costs as is required.

Appellant did not assign as error in the Court of Appeals that the attorney's fees awarded should be taxed as costs rather than damages. Instead he falsely claims that his "objection in his Rule 60(B) Motion addressed the award of any attorney fees either as damages or costs." Appellant's Mem. pg. 3. Again this is untrue. As the Court of

Appeals determined, Appellant did not raise this issue until oral argument, and by doing so, waived it. 1st Dist. J.E., pg.7, ¶21.

Appellant asserts the trial court and Court of Appeals failed to follow *Christie v. GMC Mgmt. Co.*, 88 Ohio St.3d 376 (2000). But in *Christie*, this Court “confine[d] our analysis and holding to the specific provision involved in this case, R.C. 5321.16(C).” *Id.* R.C. 5321.16(C) relates to security deposits and has no applicability in this action. There is nothing to follow. Even if Appellant had properly raised this issue, the issue has no bearing on the Court’s decision to accept this appeal.

IV. Conclusion

The Court of Appeals’ decision was the result of a straightforward application of R.C. 5321.05(C). This case does not involve a matter of great public or general interest, and no substantial constitutional question exists. Appellant has not met his burden under S. Ct. Prac. R. 7.02(C) for providing a “thorough explanation” for why this Court has jurisdiction. For these reasons, this Court should decline jurisdiction.

Date: December 11, 2019

Respectfully submitted,



Matthew R. Chasar (0075191)
Joseph M. Sprafka III (0085175)
REARDON & CHASAR, LPA
455 Delta Avenue, Suite 108
Cincinnati, Ohio 45226
Phone: (513) 827-6136
Fax: (513) 297-7900
mrchasar@reardonchasar.com
jmsprafka@reardonchasar.com
Attorneys for Plaintiff/Appellee Mary Hensel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 11, 2019, the foregoing was served via electronic mail upon William D Bell, Sr., Esq., Suite 110, Victory Parkway Executive Building, 2368 Victory Parkway, Cincinnati, Ohio 45206, at williamdbellsratty@fuse.net.


Matthew R. Chasar