

[Cite as *Fogelman v. Stoyer*, 2011-Ohio-5887.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Ryan Jay Fogelman,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-281 (M.C. No. 2010 CVG 030750)
Donald Stoyer,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 15, 2011

Ryan J. Fogelman, pro se.

Donald W. Stoyer, pro se.

APPEAL from the Franklin County Municipal Court.

FRENCH, J.

{¶1} Defendant-appellant, Donald Stoyer ("Stoyer"), appeals the judgment of the Franklin County Municipal Court, which granted judgment in favor of plaintiff-appellee, Ryan Jay Fogelman ("Fogelman"), on Fogelman's action for forcible entry and detainer and complaint for damages. For the following reasons, we affirm.

I. BACKGROUND

{¶2} On August 5, 2010, Fogelman filed an action for forcible entry and detainer and complaint for damages against Stoyer. In his complaint, Fogelman alleged that Stoyer had violated the terms of a lease agreement by failing to vacate property at 753 Mithoff Street at the end of the lease term. Fogelman sought \$1,275 in damages for unpaid rent.

{¶3} The court issued notices to the parties that an eviction hearing and trial were set for August 19, 2010, before a magistrate of the municipal court.

{¶4} On August 19, 2010, Stoyer filed an answer and motion to dismiss the complaint. In his memorandum in support, Stoyer argued that another case (case No. 2009-CVR-03976) concerning these parties had been filed in the municipal court, which transferred the matter to the common pleas court because Stoyer's counterclaim exceeded the monetary jurisdiction of the municipal court. That matter was now before the common pleas court as case No. 10-CVH-9917. Stoyer contended that Fogelman's action for forcible entry and detainer should not go forward until the case before the common pleas court was resolved.

{¶5} Many things happened on August 20, 2010, including the following: (1) a magistrate issued a decision that denied Stoyer's motion to dismiss, found that the court had jurisdiction to decide Fogelman's cause of action for eviction, despite the existence of a separate action between the parties in the common pleas court, and found that Fogelman had given Stoyer more than 30 days notice, which was sufficient to terminate

the lease; (2) a judge of the trial court adopted the magistrate's decision and granted judgment in favor of Fogelman "for restitution of the premises, and court costs"; (3) the clerk of courts issued an order for the sheriff to remove Stoyer from the property; (4) Stoyer filed an objection to the magistrate's decision; and (5) a judge of the trial court issued a written entry that overruled Stoyer's objection, found that the action before the common pleas court related to a different rental property, and found that the lease between Fogelman and Stoyer was effectively terminated by notice, regardless of whether it "was for a year or month-to-month."

{¶6} On October 27, 2010, Fogelman filed an amended complaint. In it, he sought to recover \$1,489.50 for mowing expenses, unpaid rent and late fees, and court costs.

{¶7} On November 1, 2010, Stoyer filed a second motion to dismiss and a motion for transcripts. On November 9, 2010, Stoyer filed an answer, a motion to dismiss Fogelman's amended complaint, and a motion for sanctions.

{¶8} On November 23, 2010, Fogelman moved for summary judgment on his claim for monetary damages. Stoyer filed a memorandum contra. In it, Stoyer argued that Fogelman's motion was a plagiarized version of a motion filed in the common pleas matter and that the municipal court lacked subject-matter jurisdiction.

{¶9} On December 14, 2010, the trial court issued a judgment entry in which it took the following actions: (1) denied Stoyer's motion for transcripts and motion for leave; (2) denied Stoyer's motions to dismiss; and (3) denied Fogelman's motion for summary judgment.

{¶10} The court held a trial on December 21, 2010, and both parties appeared. On February 25, 2010, the court issued a judgment entry. The court acknowledged the existence of the separate matter before the common pleas court and stated that it would entertain a motion for a stay of its judgment, pending the outcome of that matter. The court found that Stoyer owed Fogelman the following amounts: (1) \$1,425 for unpaid rent; (2) \$95 for late fees; and (3) \$60 for mowing expenses. Accordingly, the court granted judgment in favor of Fogelman in the amount of \$1,580, plus interest.

II. ASSIGNMENTS OF ERROR

{¶11} Stoyer filed a timely appeal, and he raises the following assignments of error:

[I.] Did the magistrate *abuse his discretion* by not considering the *defense* that it lacked *subject matter jurisdiction* of the landlord's unsigned lease pursuant to **O.R.C. § 1310.15**?

[II.] Did the trial court error by not considering a *defense* that it lacked *subject matter jurisdiction* through a violation of the notice requirements pursuant to **O.R.C. § 1923.04** since this tenant was not given *notice* for non payment of rent within the *notice* received that was only for a month to month reoccurrence?

[III.] Did the municipal court error by allowing the landlord to proceed with Amended Complaint without *leave* pursuant to **O.R.C. § Civil R. 15(A)**?

(Emphasis sic.)

III. DISCUSSION

{¶12} As an initial matter, we note that Stoyer has not filed a transcript of any of the proceedings in the trial court. The duty to provide a transcript for appellate review falls upon the appellant because the appellant bears the burden of showing error by

referring to matters in the record. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. When portions of the transcript necessary for resolution of assigned errors are omitted from the record, we have nothing to pass upon; as to those errors, we have no choice but to presume the validity of the lower court's proceedings and affirm. *Id.*

{¶13} Fogelman, however, has filed a partial transcript of the December 21, 2010 trial. To the extent that transcript sheds light on Stoyer's assignments of error, we will consider it. We turn, then, to the assignments of error.

A. FIRST ASSIGNMENT OF ERROR

{¶14} In his first assignment of error, Stoyer contends that the magistrate abused his discretion by failing to consider his argument that the municipal court lacked subject-matter jurisdiction over this case because the action relied on an unsigned lease. Stoyer's reliance on a jurisdictional argument in this context is misplaced.

{¶15} The issue of subject-matter jurisdiction involves "a court's power to hear and decide a case on the merits and does not relate to the rights of the parties." *Vedder v. Warrensville Hts.*, 8th Dist. No. 81005, 2002-Ohio-5567, ¶14. Here, there is no question that the municipal court had the power to hear a forcible entry and detainer action and a complaint for damages within its jurisdictional limit. See R.C. 1923.01 (granting jurisdiction in forcible entry and detainer actions) and R.C. 1901.17 (establishing a municipal court's monetary jurisdiction). Therefore, to the extent Stoyer is arguing that the municipal court lacked the power to decide this matter, we disagree.

{¶16} Stoyer's real contention is that the court lacked jurisdiction because Fogelman had filed a separate action for unpaid rent. While Fogelman also filed that

action in the municipal court, it was transferred to the common pleas court. At trial, in response to the trial court's questions, Stoyer stated that the common pleas case concerned rent owed for property at 482 East Jenkins. The complaint before the trial court concerned Stoyer's occupation of, and rent and damages owed for, property at 753 Mithoff Avenue.

{¶17} In its judgment and entry, the trial court concluded that it had jurisdiction over the case involving 753 Mithoff Avenue because it was a separate matter. We agree. By his complaint, Fogelman sought to remove Stoyer from that address based on the rental agreement concerning that property and sought damages relating to that property alone. Therefore, we agree that the common pleas action did not preclude the subsequent municipal court action.

{¶18} Stoyer also cites R.C. 1310.15, which is a provision of the Uniform Commercial Code concerning modification, rescission, and waiver of contractual agreements. Stoyer appears to be arguing that Fogelman waived enforcement of the lease, presumably including that portion of the agreement that allowed the parties to give a 30-day notice of termination.

{¶19} The copy of the lease attached to the complaint is signed by Stoyer and dated June 25, 2009. The lease provided for monthly rent in the amount of \$475, beginning on July 1, 2009, and ending on July 31, 2010. Section 4 of the lease states that, if neither party terminates the agreement prior to its expiration, the agreement will automatically renew "on a month-to-month basis and may be terminated thereafter by either party upon the giving of written notice to the other party thirty (30) days prior to

the next periodic rental due date." To the extent Stoyer argues that Fogelman had no right to terminate under the lease, whether as a 13-month lease or a month-to-month lease, we conclude that the express terms of the lease clearly provide otherwise.

{¶20} As for enforcement of the lease, in his complaint, Fogelman alleged that he gave notice of termination to Stoyer in writing on May 11, 2010, and he attached a copy of the notice to his complaint. The magistrate found that Fogelman gave notice of termination more than 30 days before expiration, and the trial court agreed. That finding supports the trial court's legal conclusion that Fogelman complied with the lease's termination provision.

{¶21} Finally, although Stoyer contends that the lease is not enforceable against him because Fogelman did not sign it, he does not explain what other agreement allowed him to occupy property owned by Fogelman after Fogelman notified him of the termination and gave him more than 30 days to vacate. Without evidence of a different agreement between the parties, we have no basis on which to conclude that the trial court erred by assessing damages for Stoyer's occupation and use of the property pursuant to the terms of the lease agreement, whether we construe it as a 13-month lease or a month-to-month lease.

{¶22} For all these reasons, we overrule Stoyer's first assignment of error.

B. SECOND ASSIGNMENT OF ERROR

{¶23} In his second assignment of error, Stoyer contends that the trial court lacked jurisdiction because Fogelman's notice to Stoyer violated R.C. 1923.04. We disagree.

{¶24} R.C. 1923.04 requires a party desiring to commence an action for forcible entry and detainer to give notice three days before filing the action. Every notice must "contain the following language printed or written in a conspicuous manner: 'You are being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance.' " R.C. 1923.04(A).

{¶25} The notice Fogelman attached to his complaint contains the exact language required by the statute, and it is in very large, bold print. In his complaint, Fogelman alleged that he had placed the notice on the door of Stoyer's residence. The notice is dated August 1, 2010; Fogelman filed his complaint on August 10, 2010.

{¶26} The magistrate found that Fogelman had met the requirements of R.C. 1923.04, and no evidence in the record indicates otherwise. Nevertheless, Stoyer contends that Fogelman violated R.C. 1923.04 by not notifying him of his action for Stoyer's non-payment of rent. In fact, Fogelman's notice stated the following: "Although you have been asked to leave the premises, you are still responsible for any unpaid rents and all rents agreed to as specified in your lease." Therefore, regardless of whether R.C. 1923.04 required notice concerning unpaid rent, Fogelman included that information in the notice.

{¶27} For all these reasons, we overrule Stoyer's second assignment of error.

C. THIRD ASSIGNMENT OF ERROR

{¶28} In his third assignment of error, Stoyer contends that the trial court erred by allowing Fogelman to amend his complaint without leave. It is unclear to us whether

this assignment concerns the amended complaint Fogelman filed or evidence Fogelman presented at trial concerning damages not raised in his complaint.

{¶29} Civ.R. 15(A) allows a party to amend a pleading at any time before a responsive pleading is filed. "Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party. Leave of court shall be freely given when justice so requires." Civ.R. 15(A).

{¶30} Civ.R. 15(B) provides that, "[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." Also, if a party objects to evidence at trial on the ground that it was not within the issues raised in the pleadings, "the court may allow the pleadings to be amended and shall do so freely when" amendment will serve the presentation of the merits and the objecting party fails to show prejudice. Civ.R. 15(B).

{¶31} Here, Fogelman filed an amended complaint on October 27, 2010, which was after Stoyer had filed his answer. It does not appear that Fogelman asked for leave to make this amendment. While Stoyer filed an answer to the amended complaint and moved to dismiss it, however, there is no record of Stoyer objecting to the amended complaint on the ground that Fogelman did not seek leave to file it. Because Stoyer did not raise this issue in the trial court, we decline to address the issue here. See *Hudson v. P.I.E. Mut. Ins. Co.*, 10th Dist. No. 10AP-480, 2011-Ohio-908, ¶12 (stating the well-established rule that a litigant's failure to raise an issue before the trial court waives the litigant's right to raise the issue on appeal).

{¶32} In addition, because we do not have a complete transcript of the trial, we cannot determine whether Stoyer objected at trial to evidence of additional damages not within the complaint. Fogelman asked for \$1,275 in damages in his original complaint and \$1,489.50 in his amended complaint. After trial, the court awarded \$1,580. Without a transcript, however, we have no basis on which to dispute this award by the trial court.

{¶33} For all these reasons, we overrule Stoyer's third assignment of error.

IV. CONCLUSION

{¶34} In summary, we overrule Stoyer's first, second, and third assignments of error. We affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

BRYANT, P.J., and SADLER, J., concur.
