

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
SCIOTO COUNTY

|                      |   |                           |
|----------------------|---|---------------------------|
| Brandon Dunn,        | : | Case No. 25CA4161         |
| Plaintiff-Appellant, | : | <u>DECISION AND</u>       |
| v.                   | : | <u>JUDGMENT ENTRY</u>     |
| Jeffrey Keaton,      | : |                           |
| Defendant-Appellee.  | : | <b>RELEASED 10/8/2026</b> |

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APPEARANCES:

Brandon Dunn, Pro se Appellant.<sup>1</sup>

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Hess, J.

{¶1} Brandon Dunn, tenant, appeals from a judgment of the Portsmouth Municipal Court, Small Claims Division in favor of Jeffrey Keaton, landlord, arising from a dispute over a security deposit associated with a rental agreement. Dunn raises three assignments of error. First, Dunn contends that Keaton engaged in the unauthorized practice of law in small claims court because he filed a counterclaim on behalf of his limited liability corporation, conducted cross-examination, and made arguments. Second, Dunn contends that Keaton was permitted to introduce evidence but did not follow the rules of evidence that required him to provide three copies of all exhibits. Third, Dunn contends that the trial court erred in denying his request for a return of the security deposit based on a lack of an itemized list of deductions.

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<sup>1</sup> Appellee Jeffrey Keaton did not make an appearance or file a brief.

{¶2} For reasons that follow, we overrule Dunn’s assignments of error and affirm the judgment of the trial court.

#### I. FACTS AND PROCEDURAL HISTORY

{¶3} On September 2, 2025, tenant Brandon Dunn filed a small claims court action in the Portsmouth Municipal Court, Small Claims Division against landlord Jeffrey Keaton and JL&C Keaton, Inc for \$2,849.83. Dunn alleged that he entered into a rental agreement for a property in Portsmouth, Ohio with a tenancy from June 12, 2024 through August 12, 2025. Dunn alleged he gave proper notice and vacated the property on August 12, 2025, but Keaton failed to promptly return his security deposit or reimburse him for the cost of a window replacement. On September 12, 2025, Keaton filed a counterclaim against Dunn for \$4,350 for itemized property damage to the rental property. The trial court heard the matter and rendered a decision in October 2025.

{¶4} The trial court found that Dunn brought his claim for a return of his security deposit prematurely. The court found that Dunn commenced his action before the statutory 30-day response period for the landlord expired. That statute, R.C. 5321.16, gives the landlord 30 days after the termination of the rental agreement and delivery of possession to send the tenant a written itemization of damages deducted from the security deposit. The court found that, as a result, Dunn’s complaint was untimely. Nevertheless, the court found that Keaton’s counterclaim was filed on the 30th day after the termination of the rental agreement and delivery of possession and it provided Dunn an itemization of the alleged property damages, thus satisfying the notice requirement to Dunn.

{¶15} The trial court denied Dunn's request for his security deposit and damages and found in favor of defendant Keaton:

It is therefore the **ORDER** of this Court that the Plaintiff's claim for a judgment in the amount of the security deposit plus damages is Denied. . .

Having heard the testimony of the parties and determining their credibility herein, the Court awards a Judgment to the Defendant in the amount of \$800 for replacing the carpet on the steps and for patching and painting the walls in the amount of \$1,250. Therefore, Judgment is granted to the Defendant against the Plaintiff in the total amount of \$2,050, plus statutory interest until paid in full. The Court is unable to discern the accuracy of the other alleged damages without the testimony of the home inspector or contractor and the Court therefore denies the other requested relief by the Defendant.

{¶16} Dunn filed a motion for reconsideration, a motion for a stay, and an appeal.

The trial court denied the motion for reconsideration.<sup>2</sup>

## II. ASSIGNMENTS OF ERROR

{¶17} Dunn presents three assignments of error:

- I. The trial court erred in allowing Jeffrey Keaton to file the counterclaim as well as conduct the cross-examination during the trial. Furthermore, the trial court did not uphold its duty to confirm the ownership of the home when the question was raised during the trial.
- II. The trial court erred in allowing Jeffrey Keaton to introduce evidence that did not follow the rules of evidence.
- III. The trial court erred in denying the request for the security deposit to be reimbursed based on the lack of an itemized list of deductions from the security deposit.

## III. LAW AND ANALYSIS

### A. Unauthorized Practice of Law

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<sup>2</sup> Dunn filed a second motion for reconsideration that was not ruled upon. Where a trial court fails to rule on a pending motion, an appellate court presumes the trial court denied the motion. *Robol v. Columbus*, 2025-Ohio-973, ¶ 69 (10th Dist.).

{¶8} Dunn contends that he sued Keaton individually and Keaton's limited liability company, JL&C Keaton, in small claims court. Dunn contends that Keaton was required to retain counsel for the limited liability company and cites *Disciplinary Counsel v. Kafele*, 2006-Ohio-904 as his legal authority. Dunn contends that Keaton made a claim on behalf of his limited liability company, conducted cross-examination, and made arguments all of which Dunn argues constituted the illegal or unauthorized practice of law.

{¶9} First, we note that Dunn does not cite the place in the record where he contends that Keaton conducted cross-examination or made arguments on behalf of the limited liability company. "[A]n appellate court may disregard an assignment of error when the appellant fails to identify the relevant portions of the record upon which an assignment of error is based." *Jones v. Jones*, 2021-Ohio-1498, ¶ 37 (4th Dist.); App.R. 12(A)(2); App.R. 16(A)(7). Thus, we disregard the contention that Keaton conducted cross-examination or made arguments on behalf of the limited liability company.

{¶10} Second, Dunn sued Keaton in his individual capacity in addition to suing Keaton's company. Under R.C. 1925.01(D) (governing small claims courts), an individual like Keaton is not required to be represented by an attorney. Additionally, R.C. 1925.17 permits an officer or employee of a company to present a claim or defense on behalf of the company. *Cleveland Bar Assn. v. Pearlman*, 2005-Ohio-4107, ¶ 24 – 28 (shareholder in a family-owned limited liability company can file a claim and request a judgment on behalf of the company in small claims court). The *Kafele* case Dunn cites does not apply to this case because the non-attorney in *Kafele* was representing a limited liability company in *common pleas court*, not small claims court. Under R.C.1925.17, Keaton is

permitted to make a claim or present a defense on behalf of JL&C Keaton in small claims court.

{¶11} Finally, R.C. 4705.07, which governs the unauthorized practice of law, provides that the Supreme Court of Ohio has exclusive jurisdiction to “make a determination that any person has committed the unauthorized practice of law . . . .” R.C. 4705.07(B)(2); Gov.Bar R. VII, § 2(A). As an appellate court, we lack jurisdiction to consider an unauthorized practice of law claim.

{¶12} Dunn also contends that the trial court failed to uphold its duty to confirm the home’s ownership. Again, Dunn failed to cite the place in the record where this purported error occurred and we disregard it. App.R. 12(A)(2). Moreover, the home’s ownership was not a disputed fact; Dunn fails to argue otherwise.

{¶13} We overrule Dunn’s first assignment of error.

#### B. Evidentiary Irregularities in Small Claims Court

{¶14} Dunn contends that the trial court erred when it allowed Keaton to present evidence without providing the correct number of copies of the exhibits. Dunn argues that he objected to the evidence on the grounds that Keaton had not brought enough copies to the hearing, but his objection “was glossed over by the trial court.” Again, Dunn failed to cite to the place in the record where this alleged error occurred and we may disregard it. App.R. 12(A)(2). Moreover, an appellate court should not disturb a trial court’s decision on the admissibility of evidence unless the trial court has clearly abused its discretion and the appellant has been materially prejudiced by it. *State v. Barnes*, 94 Ohio St.3d 21, 23 (2002).

{¶15} The Rules of Evidence do not apply in the small claims division of a county or municipal court. Evid.R. 101(D)(8); Portsmouth M.C. Loc.R. 23 (“The Ohio Rules of Evidence . . . will not apply to a hearing in Small Claims Court.”). Loc.R. 23, which governs proceedings in the small claims division has no requirement that a party must bring three copies of exhibits. Nevertheless, Dunn has attached a document to his appellate brief which he identifies as the “Small Claims Filing Fee Form” that contains the statement, “If you wish to introduce exhibits at the hearing, you must provide a copy for the Court and a copy for the defendant.” The form is not part of the record below. An appellate court cannot consider documents attached to an appellate brief which were not properly certified as part of the trial court's original record. *Daly v. Certo*, 2025-Ohio-293, ¶ 25 (2nd Dist.).

{¶16} Even if we were to consider the form Dunn submitted with his brief, it is not an evidentiary rule. It appears to be an administrative requirement that the trial court decided to waive in this instance. We find no abuse of discretion by the trial court’s waiver of the copy requirement, particularly where Dunn fails to make a claim that he suffered any material prejudice.

{¶17} We overrule Dunn’s second assignment of error.

### C. The Security Deposit

{¶18} Dunn contends that the trial court committed error in applying the law governing security deposits when it determined that the itemized counterclaim served as the timely itemization required in R.C. 5321.16(B).

{¶19} We find that Dunn waived his right to receive the itemized notice within the 30-day period under R.C. 5321.16(B) when he brought an action against the landlord

before that period expired. R.C. 5321.16(B) gives the landlord 30 days to deliver the itemized deductions from the security deposit to the tenant. Here, instead of waiting to receive the written notice, Dunn filed an action against Keaton on September 2, 2025, only 21 days after he terminated the rental agreement and delivered possession. By initiating legal proceedings, rather than waiting for Keaton's written notice, Dunn waived his right to receive written notice within the statutory 30-day period.

. “ ‘As a general rule, the doctrine of waiver is applicable to all personal rights and privileges, whether secured by contract, conferred by statute, or guaranteed by the Constitution \* \* \*.’ ” As such, it is well-settled that a person may waive rights and privileges secured by statute, including the statutory right to a hearing conferred by R.C. 2711.03.

(Citations omitted). *Liese v. Kent State Univ.*, 2004-Ohio-5322, ¶ 44 (11th Dist.) (although party had a statutory right to an oral hearing on arbitration claim, party waived that right when he filed a summary judgment motion instead). By filing an action against the landlord prior to the expiration of the 30 days, Dunn placed the dispute under the court's jurisdiction where procedural rules apply. The small claims division gave Keaton up to seven days prior to the hearing to submit his counterclaim (i.e, his itemized list of damages). The record shows that Keaton filed his counterclaim well within that deadline and requested the bailiff deliver it to Dunn at an additional expense. Because Dunn waived the 30-day statutory time requirement in R.C. 5321.16(B) by initiating legal proceedings before that period expired, we find that the trial court did not err when it found Keaton's timely counterclaim, which contained an itemization of the damages, satisfied the requirement in R.C. 5321.16(B).<sup>3</sup>

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<sup>3</sup> Dunn terminated the agreement and vacated on August 12, 2025. Keaton's counterclaim was filed on September 12, 2025. The trial court found that the counterclaim “occurred on the 30th day.” However, the 30th day was September 11, 2025. Nevertheless, because we find Dunn waived the 30-day notice period, this error is harmless.

**{¶20}** We overrule Dunn’s third assignment of error.

#### IV. CONCLUSION

**{¶21}** We overrule all assignments of error and affirm the trial court’s judgment.

JUDGMENT AFFIRMED.

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County, Portsmouth Municipal Court, Small Claims Division to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Wilkin, J.: Concurs in Judgment and Opinion.

Judge Peter B. Abele concurred in this Judgment and Opinion prior to his death on September 25, 2026.<sup>4</sup>

For the Court

BY: \_\_\_\_\_  
Michael D. Hess, Judge

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**

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<sup>4</sup> The Ohio Constitution requires the concurrence of at least two judges when rendering a decision of a court of appeals. Therefore, this announcement of decision is in compliance with constitutional requirements. See *State v. Pembaur*, 69 Ohio St.2d 110 (1982).