

[Cite as *Trabuco Homes, L.L.C. v. Brewer*, 2021-Ohio-1964.]

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

TRABUCO HOMES, L.L.C., :  
 :  
 Plaintiff-Appellee, :  
 : No. 109595  
 v. :  
 :  
 DARNELL BREWER, :  
 :  
 Defendant-Appellant. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: DISMISSED**  
**RELEASED AND JOURNALIZED: June 10, 2021**

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Civil Appeal from the Cleveland Municipal Court  
Housing Division  
Case No. 2020 CVG 000588

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***Appearances:***

Mark Immormino, *for appellee.*

Darnell Brewer, *pro se.*

LISA B. FORBES, P.J.:

{¶ 1} Appellant, Darnell Brewer (“Brewer”), appeals the trial court’s decision granting forcible entry and detainer to appellee, Trabuco Homes, L.L.C. (“Trabuco Homes”). After reviewing the law and pertinent facts of the case, we dismiss this appeal.

## **I. Facts and Procedural Background**

**{¶ 2}** On April 1, 2019, Brewer moved into the premises pursuant to a written lease agreement in which he agreed to pay monthly rent of \$800. After Brewer defaulted on the agreement for nonpayment of rent since October 2019, Trabuco Homes left a three-day notice to vacate the property on December 10, 2019. On January 10, 2020, Trabuco Homes filed a complaint for forcible entry and detainer.

**{¶ 3}** On February 21, 2020, a hearing was held before a magistrate where it was determined that Brewer last paid rent in September 2019. The magistrate granted forcible entry and detainer to Trabuco Homes.

**{¶ 4}** Brewer filed objections to the magistrate's decision and filed a motion in the trial court for a stay of execution of eviction. On February 25, 2020, the trial court approved the magistrate's decision without addressing Brewer's objections. The trial court granted Brewer's motion for stay giving him a March 12, 2020 move-out date and held Brewer's objections to the magistrate's decision in abeyance.

**{¶ 5}** In a judgment entry dated March 12, 2020, the trial court overruled Brewer's objections to the magistrate's decision. In that same entry, the trial court denied Brewer's second motion for stay of execution of eviction. Brewer filed a motion for stay of execution with this court, which was ultimately denied. Brewer vacated the premises on March 12, 2020. He now appeals the trial court's order granting forcible entry and detainer to Trabuco Homes.

## II. Law and Argument

{¶ 6} On appeal, Brewer raises four assignments of error related to the trial court's decision granting forcible entry and detainer to Trabuco Homes. Brewer's appeal is moot because he vacated the premises that are the subject of this appeal on March 12, 2020.

{¶ 7} Forcible entry and detainer actions only decide the immediate right to possession. *Jones v. Dlugos*, 8th Dist. Cuyahoga No. 107757, 2019-Ohio-3039, ¶ 11, citing *Seventh Urban, Inc. v. Univ. Circle*, 67 Ohio St.2d 19, 25, 423 N.E.2d 1070 (1981), fn. 11. "If immediate possession is no longer an issue due to vacation, then continuation of the forcible entry and detainer action or appeal is unnecessary." *Id.* "Once the landlord has been restored to property, the forcible entry and detainer action becomes moot because, having been restored to the premises, there is no further relief that may be granted." *Long v. MacDonald*, 3d Dist. Crawford No. 3-02-10, 2002-Ohio-4693 (holding that the tenant's appeal is moot regardless of whether the tenant vacates the premises voluntarily). "The *only* method by which a defendant appealing a judgment of forcible entry and detainer may prevent the cause from becoming moot is stated in R.C. 1923.14." *Miller v. Johnson*, 8th Dist. Cuyahoga No. 109453, 2021-Ohio-441, ¶ 7 (defendant did not properly seek a stay of execution in the court of appeals when a pending counterclaim in the court below remained unresolved). R.C. 1923.14(A) addresses the filing of a motion for a stay of execution in the court of appeals.

{¶ 8} Because possession of the leased premises has been restored to Trabuco Homes, Brewer’s appeal is dismissed as moot. Brewer did not properly request a stay of execution from this court. Brewer did file a motion for stay that this court denied. His motion was filed before the trial court had ruled on Brewer’s objections to the magistrate’s decision, a fact Brewer himself called to this court’s attention in his motion. As a result, this court lacked jurisdiction to grant the requested relief at the time it was requested. *See Supportive Solutions, L.L.C. v. Electronic Classroom of Tomorrow*, 137 Ohio St.3d 23, 2013-Ohio-2410, 997 N.E.2d 490, ¶ 10.

{¶ 9} Having found Brewer’s appeal to be moot, we are not required to review each of his assignments of error. Nevertheless, upon review we find each to be meritless. We begin by noting “[u]nder Ohio law, pro se litigants are held to the same standard as all other litigants.” *Bikkani v. Lee*, 8th Dist. Cuyahoga No. 89312, 2008-Ohio-3130, ¶ 29, citing *Kilroy v. B.H. Lakeshore Co.*, 111 Ohio App.3d 357, 363, 676 N.E.2d 171 (8th Dist.1996).

{¶ 10} No transcript was filed with this appeal. “The duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record.” *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980), citing *State v. Skaggs*, 53 Ohio St.2d 162, 372 N.E.2d 1355 (1978). In the absence of a transcript, reviewing courts must presume regularity of the trial

court proceedings. *Lakewood v. Collins*, 8th Dist. Cuyahoga No. 102953, 2015-Ohio-4389, ¶ 9.

{¶ 11} Brewer contends in his first assignment of error that the trial court erred in granting forcible entry and detainer because Trabuco Homes failed to attach a copy of the written lease to its complaint in violation of Civ.R. 10(D). “The proper procedure in attacking the failure of a plaintiff to attach a copy of a written instrument or to state a valid reason for his failure to attach same is to serve a motion for a definite statement, pursuant to Civ. R. 12(E).” *Point Rental Co. v. Posani*, 52 Ohio App.2d 183, 186, 368 N.E.2d 1267 (10th Dist.1976). “A defendant who fails to file a Civ.R. 12(E) motion before filing his answer has been held to have waived his right to assert Civ.R. 10(D) as a basis for dismissing the plaintiff’s complaint.” *Castle Hill Holdings, L.L.C. v. Al Hut, Inc.*, 8th Dist. Cuyahoga No. 86442, 2006-Ohio-1353, ¶ 29. Brewer did not make a Civ.R. 12(E) motion to the trial court prior to filing his answer. In fact, Brewer never filed a Civ.R. 12(E) motion in the trial court. Therefore, he waived this argument. It was not error for the trial court to proceed with the case.

{¶ 12} Brewer’s second assignment of error argues that the trial court erred in allowing the case to go forward against two improper defendants, Davina Brewer (“Davina”) and Azarriona Williams (“Williams”). According to Brewer, they have no “standing.” Brewer’s interpretation of standing is incorrect. Standing addresses a plaintiff’s ability to bring a claim. *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St.3d 520, 2014-Ohio-2382, 13 N.E.3d 1101, ¶ 7. Standing has no application to

whether a defendant has been properly included in a lawsuit. Brewer is correct that if Davina and Williams were improper defendants, the claims against them may have been resolved by filing, among other things, a Civ.R. 12(B)(6) motion for dismissal on the grounds that the complaint failed to state a claim upon which relief could be granted. However, the record does not indicate that such a motion was ever filed. Additionally, Davina and Williams are not identified as appellants in the notice of appeal filed by Brewer, nor does it appear from the record that either of them filed a separate appeal. *See generally* App.R. 3. This assignment of error does not make any arguments that address in any way Brewer's rights or interests in light of the trial court's decision granting forcible entry and detainer to Trabuco Homes. Therefore, the argument in this assignment of error is meritless.

{¶ 13} Brewer's third assignment of error argues that the housing court judge erred by participating in ex parte communication and providing him legal advice. This contention is misguided. No evidence of the alleged communication can be found in the record of proceedings below. Brewer attached a printout of the alleged communication to his appellate brief. But our review is limited to items contained in the record. *State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978). We cannot review documents attached to an appellant's brief that were not before the trial court. App.R. 16; *Belardo v. Belardo*, 187 Ohio App.3d 9, 2010-Ohio-1758, 930 N.E.2d 862, ¶ 26 (8th Dist.). Accordingly, Brewer's third assignment of error is overruled.

{¶ 14} In Brewer’s fourth and final assignment of error, he argues the trial court erred in forcing parties into settlement negotiations prior to trial. The local rules specifically authorize Housing Court judges to hold settlement conferences, which the parties are required to attend. Loc.R. 3.094 of the Cleveland Municipal Court, Housing Division. Therefore, it was not improper for the trial court to require the parties to attend a settlement conference. Brewer’s fourth assignment of error is without merit.

{¶ 15} In light of above, Brewer’s appeal is dismissed as moot.

It is ordered that appellee recover from appellant costs herein taxed.

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

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LISA B. FORBES, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and  
EMANUELLA D. GROVES, J., CONCUR