

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

NICOLET EDWARDS, :
 :
 Plaintiff-Appellee, :
 : No. 111978
 v. :
 :
 CHORRETHEERS JENKINS, ET AL., :
 :
 Defendants-Appellants. :
 :

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: August 24, 2023

Civil Appeal from the Lyndhurst Municipal Court
Case No. 22CVG01723

Appearances:

Nicolet Edwards, *pro se*.

Chorrethers Jenkins, *pro se*.

FRANK DANIEL CELEBREZZE, III, J.:

{¶ 1} Appellants Chorrethers Jenkins (“Jenkins”) and Trinity Properties CLE LLC (collectively “tenants”), appeal the Lyndhurst Municipal Court’s ruling in favor of Nicolet Edwards (“landlord”) in a forcible entry and detainer action. After a thorough review of the facts and law, we reverse and remand.

I. Factual and Procedural History

{¶ 2} On August 12, 2022, landlord filed a forcible entry and detainer action against tenants based on nonpayment of rent, late fees, and utility bills. The complaint indicated that a three-day notice was served on tenants on August 8, 2022. Attached to the complaint was the three-day notice, the outstanding utility bills, and a copy of the written lease agreement that was a rent-to-own agreement (“the lease”).

{¶ 3} A magistrate heard the matter on September 2, 2022. The landlord and Jenkins both appeared.

{¶ 4} On September 7, 2022, judgment in favor of landlord was journalized and adopted by the judge. Tenants were ordered to vacate the premises “no later than 11:59 p.m. on or before 9/21/2022.” That same day, a writ of restitution was issued, and service was perfected two days later.

{¶ 5} On September 15, 2022, tenants filed a request for findings of fact and conclusions of law that the court denied on September 19, 2022. Additionally, the docket reflects that on this date, tenants’ counsel filed a notice of appearance and requested a copy of the audio recording of the hearing before the magistrate. A day later, the docket notes, “request for copy of recording given to bailiff. Defendant’s counsel will be contacted when request is complete.”

{¶ 6} On September 21, 2022, tenants filed objections to the magistrate’s decision. In the objections, tenants argued (1) that landlord erroneously stated during the hearing that the lease terminated in May 2022 and that she was entitled

to evict the tenant after that date; and (2) that the rent was deposited into escrow and not paid to the landlord in a timely fashion only because landlord refused to accept payment of the rent. Attached to the objections was a letter from landlord dated July 2022 informing tenants that beginning on September 1, 2022, she would no longer tolerate late rent payments and another copy of the lease.

{¶ 7} On September 22, 2022, tenants filed a motion for stay of execution. The motion detailed that the objections to the magistrate’s decision had not been reviewed or ruled upon and that the stay should be granted to preserve the status quo while the court considered the outstanding objections. The motion noted that tenants were already depositing rent into escrow with the clerk of courts due to a prior dispute between landlord and tenants, and asked the court to grant the stay without bond.

{¶ 8} Later that same day, the trial court overruled tenants’ objections and denied the motion for stay of execution. One day later, on September 23, 2022, tenants initiated the instant appeal.

{¶ 9} On September 28, 2022, the trial court docketed: “Request for copy of audio recording fulfilled. Defendant’s attorney attempted to be contacted by telephone. Mailbox is full. Audio recording ready for pickup at court.”

{¶ 10} Tenants assign a single error for our review.

The trial court abused its discretion in determining [sic] in failing to make an independent review of the magistrate’s decision. “In reviewing a magistrate’s decision, a trial court does not sit in the same manner as an appellate court; rather, it must conduct an independent

review of the facts and conclusions made by the magistrate.” *Haupt v. Haupt*, 11th Dist. Geauga No. 2015-G-0049, 2017-Ohio-2719[.]

II. Law and Analysis

{¶ 11} On appeal, tenants point us to Civ.R. 53(D)(4)(d), which provides that “[i]f one or more objections to a magistrate’s decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law.” The standard of review on appeal from a decision of a trial court adopting a magistrate’s decision is whether the trial court abused its discretion. *Butcher v. Butcher*, 8th Dist. Cuyahoga No. 95758, 2011-Ohio-2550, ¶ 7.

{¶ 12} The nature of a forcible entry and detainer action complicates the application of this rule. “A forcible entry and detainer action is intended to serve as an expedited mechanism by which an aggrieved landlord may recover possession of real property.” *Miele v. Ribovich*, 90 Ohio St.3d 439, 441, 739 N.E.2d 333 (2000), citing *Cuyahoga Metro. Hous. Auth. v. Jackson*, 67 Ohio St.2d 129, 131, 423 N.E.2d 177 (1981). Because forcible entry and detainer proceedings are considered a special remedy, Civ.R. 1(C) specifically exempts forcible entry and detainer actions “to the extent that they would by their nature be clearly inapplicable” from the purview of the rules. “[G]iven its summary nature, the drafters of the Rules of Civil Procedure were careful to avoid encrusting [forcible entry and detainer actions] with time

consuming procedure tending to destroy its efficacy.” *Miele* at 441, quoting *Jackson* at 131.

{¶ 13} Another factor we must balance are the limitations of our review. An appellate court is precluded from considering the transcript of the hearing submitted with the appellate record when it was not submitted with the trial record. *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730, 654 N.E.2d 1254 (1995). Tenants filed a transcript of the hearing with this appeal. We are cognizant that “[w]hen a party objecting a magistrate’s report has failed to provide the trial court with the evidence and documents by which the court could make a finding independent of the report, appellate review of the court’s findings ‘will be limited to whether the trial court’s adoption of [the findings] constituted an abuse of discretion.” *Dancy v. Dancy*, 8th Dist. Cuyahoga No. 82580, 2004-Ohio-470, ¶ 10, quoting *Proctor v. Proctor*, 48 Ohio App.3d 55, 63, 548 N.E.2d 287 (3d Dist.1988). Here, however, we cannot find that tenants *failed* to provide the trial court with the audio recording or transcript because the recording was not available until after the objections were ruled on and the instant appeal was filed. It would be senseless for us to punish tenants for not filing the audio recording or transcript in the trial court where it is clear by the timing of events in this case that tenants were unable to exercise this option before it became necessary to initiate this appeal. While the record before us contains a transcript, we are unable to review it because the record does not indicate that the trial court reviewed it.

{¶ 14} The Ohio Supreme Court, in *Miele*, addressed a former version of Civ.R. 53 and determined that “*in the absence of written objections* or an erroneous or patently defective magistrate’s decision,” a judge need not independently analyze the magistrate’s decision in forcible entry and detainer cases. (Emphasis added.) *Miele* at 443. The *Miele* Court noted that its decision was based on the nature of forcible entry and detainer proceedings: “Trial courts’ dockets are filled with a high volume of forcible entry and detainer actions. Requiring magistrates to prepare findings of fact in each case and courts to make an independent analysis based on these factual findings would hinder the timely resolution of these matters.” *Id.* at 444.

{¶ 15} We recognize that the *Miele* decision specifically limits its holding to cases where written objections are absent, and the Supreme Court’s guidance ends there. Neither the Supreme Court nor this court have directly addressed how the processes and procedures involved in raising objections alters the holding in *Miele*.¹ However, this court has applied and enforced portions of the objection procedures outlined in Civ.R. 53(D)(3) in the context of forcible entry and detainer actions. *See, e.g., Di Fiore v. Booker*, 8th Dist. Cuyahoga No. 108946, 2020-Ohio-3188, ¶ 12.

{¶ 16} Civ.R. 53(D)(3)(b)(iii) provides that any “objection to a factual finding, whether or not specifically designated as a finding of fact under

¹ This has also been recognized by the Second District. “In light of the delay attendant to the objection procedures of Civ.R. 53, a determination of the applicability of those provisions would be beneficial for the many parties and courts involved in forcible entry and detainer actions.” *Gold Key Realty v. Collins*, 2d Dist. Greene No. 2013 CA 57, 2014-Ohio-4705, ¶ 19.

Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available.” Pursuant to Civ.R. 53(D)(3)(b)(iii), “the objecting party shall file the transcript or affidavit with the court within thirty days after filing objections[.]” This court has previously found error in a trial court’s decision to overrule objections to a magistrate’s decision where the 30 days to file the transcript had not elapsed before the trial court overruled the objections. “Where a trial court adopts a magistrate’s decision over an objection to a factual finding — and before the objecting party files a timely requested transcript or other materials necessary to complete the independent review — an abuse of discretion takes place.” *In re K.V.*, 8th Dist. Cuyahoga No. 108441, 2019-Ohio-5126, ¶ 15, citing *In re H.R.K.*, 8th Dist. Cuyahoga No. 97780, 2012-Ohio-4054, ¶ 12; *In re J.W.*, 8th Dist. Cuyahoga No. 98607, 2013-Ohio-268, ¶ 10; *In re I.R.Q.*, 8th Dist. Cuyahoga No. 105924, 2018-Ohio-292, ¶ 25; *In re K.D.W.*, 8th Dist. Cuyahoga No. 104273, 2017-Ohio-1280, ¶ 11. *See also Bawab v. Bawab*, 8th Dist. Cuyahoga No. 96217, 2011-Ohio-5256, ¶ 28; *Savioli v. Savioli*, 99 Ohio App.3d 69, 71, 649 N.E.2d 1295 (8th Dist.1994). The Second District has applied this rule directly in the context of a forcible entry and detainer action. *Bowshier v. Bowshier*, 2d Dist. Clark No. 2012 CA 40, 2013-Ohio-297, ¶ 37. We therefore must determine how this procedure applies in the context of forcible entry and detainer actions.

{¶ 17} The instant matter presents a precarious situation; it is inconceivable that the trial court could have meaningfully reviewed tenants’ objections based on

the record before us. All of tenants' objections pertain to factual findings and specifically deal with nuanced testimony that would have been elicited at the hearing before the magistrate. The only documents in the record were those attached to the complaint — a copy of the lease and overdue bills. These documents are not helpful in determining the merits of the objections. We recognize that strictly applying Civ.R. 53(D)(3)(b)(iii) could have deleterious effects and could certainly delay actions in forcible entry and detainer that are intended to be summary proceedings. We therefore decline to affirmatively hold that Civ.R. 53(D)(3)(b)(iii) is applicable in forcible entry and detainer cases. Conversely, holding in the alternative would suggest to trial courts that no independent review of the magistrate's decision is necessary when objections are filed, even where the record is completely bereft of evidence, and even where the objecting party has initiated the process of obtaining the evidence necessary to inform the court's review of the objections. Here, the record does not lend itself to an independent review without the provision of the audio recording. *Miele's* holding specifically excludes circumstances where objections have been filed, leading us to conclude that at least *some* independent review of the magistrate's determination is warranted, though the procedure may not be as rigid as the civil rules require. Further, Civ.R. 53(D)(4)(d) specifically holds that an independent review is required when objections are filed, though it does not specify any specific time frames or procedures that are required for such independent review.

{¶ 18} In this case, the docket specifically and unequivocally reflects that tenants ordered the audio recording. The recording was available thirteen days later. The trial court had notice that the audio recording was ordered and knew from the face of the objections and the record that the audio recording was necessary to rule on the objections. The record itself did not contain any evidence from which the trial court could have undertaken a meaningful independent review of the objections, so the recording that tenants had initiated the process of providing was the only means of performing the independent review of the record. We therefore find that based on the facts in the record before us, it was error for the trial court to overrule tenants' objections where the record was totally devoid of any evidence to aid the trial court's independent review, and because the trial court was aware that an audio recording had been requested.

{¶ 19} This case forces us to counterbalance the need for efficiency in forcible entry and detainer cases with the objecting party's due process rights. Even though this case is being remanded, our holding should not be construed as holding as a matter of law that every forcible entry and detainer case requires a 30-day waiting period for a party to file additional evidence pursuant to Civ.R. 53(D)(3)(b)(iii) when objections were filed. Instead, we are holding, pursuant to *Miele* and Civ.R. 53(D)(4)(d), that *some* independent review of the evidence is required when objections to the magistrate's decision are filed. How this independent review of the record is achieved is left to the discretion of the trial court because each case will have different circumstances, issues, and time constraints that the trial court is

competent to approach as necessary. It is unfortunate that in this particular case, the record lacked any evidence from which the trial court could have meaningfully reviewed the objections in the absence of the audio recording and therefore, we are forced to remand this matter.

{¶ 20} Indeed, many local courts have already implemented specific policies and procedures to assist with streamlining the forcible entry and detainer process; particularly reviewing objections. As the Tenth District has observed, “[s]ince the normal objection procedure would encumber the speedy nature of a forcible entry and detainer action, it is not error for the trial court to adopt procedures helpful in enhancing that goal.” *Olympic Realty v. Zaleski*, 10th Dist. Franklin No. 11AP-971, 2013-Ohio-1245, ¶ 16. A brief review of several municipal courts indicate that many have implemented specific procedures for handling the objection process that preserve the efficacy of forcible entry and detainer actions. The Cleveland Housing Court requires a transcript to review magistrate objections but has a process for requesting the transcript online where the purchaser may obtain the transcript as quickly as the same day, or within three or ten days.² The Akron Municipal Court specifically requires the official court reporter to prepare the “verbatim, audio tape copy of the court proceedings within 48 hours of said request.”³ The Clermont County Municipal Court’s local rules notes that objections to a magistrate’s decision

²<https://www.clevelandhousingcourt.org/requests> (accessed August 4, 2023).

³<https://www.akronmunicipalcourt.org/forms-rules/rules/> (accessed August 4, 2023).

do not stay the case, but defendants seeking a stay are required to file a motion and request a hearing on the matter.⁴ Upon receiving objections, the Garfield Heights Municipal Court immediately sets the matter for an evidentiary hearing before the trial court.⁵ Additionally, several courts — including Lyndhurst Municipal Court — require payment for filing objections to the magistrate’s decision which serves as a method of preserving the efficiency of forcible entry and detainer cases. Indeed, even the fact that several courts choose to review audio recordings instead of having a transcript prepared is a method of preserving the efficiency of the process. The Supreme Court allows courts to promulgate “local rule[s] of practice that promotes the use of any device or procedure to facilitate the expeditious disposition of cases.” Sup.R. 5(A)(1). Therefore, how courts choose to handle the objection process is left to the discretion of each court based on its specific needs, budget, caseload, and other considerations that we are unable to discern from the appellate level. Nonetheless, we cannot allow trial courts to summarily overrule objections to the magistrate’s decision, which may be valid, in the name of efficiency. Some method of review is warranted where the record demands it, even in the context of forcible entry and detainer cases.

⁴<https://municipal.clermontcountyohio.gov/wpcontent/uploads/sites/37/2023/05/2023-final-approved-rules.pdf> (accessed August 4, 2023).

⁵<https://www.ghmc.org/sites/default/files/Evictions.pdf> (accessed August 4, 2023).

{¶ 21} As a final note, we briefly review the safeguards and considerations that typically prevent forcible entry and detainer cases from coming this far along. A survey of caselaw indicates that many forcible entry and detainer cases become moot because the evicted tenant is unable to or fails to secure a stay of execution and thus, evade review. *See, e.g., Amujiogu v. Oko*, 8th Dist. Cuyahoga No. 110922, 2022-Ohio-1323, ¶ 10; *Sheehe v. Demsey*, 8th Dist. Cuyahoga No. 99965, 2014-Ohio-305, ¶ 6; *Cleveland Fin. Assocs., L.L.C. v. Cleveland Banquets, L.L.C.*, 8th Dist. Cuyahoga No. 95009, 2011-Ohio-931, ¶ 13. Many tenants leave voluntarily in lieu of availing themselves to objections and an appeal, rendering the appeal moot. *Jones v. Dlugos*, 8th Dist. Cuyahoga No. 107757, 2019-Ohio-3039, ¶ 11; *United States Secy. of HUD v. Chancellor*, 8th Dist. Cuyahoga No. 73970, 1999 Ohio App. LEXIS 605, 3 (Feb. 25, 1999). Here, tenants were not evicted on the set date. Then, a stay of execution was obtained at the appellate level and conditioned on tenants' posting bond in the rent escrow case in the trial court. In the instant matter, many procedural protections occurred that allowed this matter to reach this court. Additionally, we recognize that in many cases, objections may be based on evidence that is discernable from the record in the absence of the audio recording or transcript of the hearing before the magistrate, such as issues relating to service or interpretation of the terms of the lease. Not every forcible entry and detainer case requires the trial court to examine additional evidence in undertaking an independent review of the record after objections are filed. To the extent that is

necessary, trial courts have discretion to make this determination on a case-by-case basis.

{¶ 22} Tenants' sole assignment of error is sustained.

III. Conclusion

{¶ 23} Based on the record before us, the trial court could not have meaningfully reviewed tenants' objections without the audio recording that tenants had requested.

{¶ 24} Judgment reversed and remanded for the trial court to expeditiously review the transcript or audio recording and rule on the tenants' objections.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court 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.

FRANK DANIEL CELEBREZZE, III, JUDGE

ANITA LASTER MAYS, A.J., CONCURS;
MICHELLE J. SHEEHAN, J., CONCURS IN JUDGMENT ONLY