[Cite as *Prymas v. Byczek*, 2010-Ohio-1754.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93470

WILLIAM PRYMAS

PLAINTIFF-APPELLANT

vs.

RICHARD BYCZEK

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Parma Municipal Court
Case No. 09 CVG 00622

BEFORE: Kilbane, P.J., Blackmon, J., and Cooney, J.

RELEASED: April 22, 2010

JOURNALIZED:

APPELLANT

William Prymas, pro se
8155 Wyatt Road
Broadview Heights, Ohio 44147

APPELLEE

Richard Byczek, pro se
3301 Suffolk Lane
Brunswick, Ohio 44212

ALSO LISTED:

Thomas C. Holmes
Glenn D. Waggoner
Pepple & Waggoner, Ltd.
Crown Centre Building
5005 Rockside Road - Suite 260
Cleveland, Ohio 44131-6808

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R.

22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellant, William Prymas ("Prymas"), appeals the Parma Municipal Court's denial of his action seeking to evict appellee, Richard Byczek ("Byczek"). Prymas argues that Byczek breached a written lease agreement involving a gas station. After a review of the law and pertinent facts, we affirm.

{¶ 2} The following facts give rise to the instant appeal.

{¶ 3} Prymas maintained that sometime during December 2005, he and Byczek executed a typed lease agreement at Prymas's gas station, located at 7213 West Pleasant Valley Road, Parma, Ohio. Pursuant to the lease agreement, Byczek was to rent the Pleasant Valley gas station for $1,500 per month. The lease was to commence on January 1, 2006 and end on June 30, 2006, but continue as a month-to-month tenancy. (Tr. 2.)

{¶ 4} However, Byczek's and Prymas's versions of how the parties entered into the lease agreement differed. Byczek maintains that he met his longtime friend, Prymas's son, Bill Prymas, Jr., at a Bob Evans restaurant in Mayfield, Ohio, where he executed a handwritten lease agreement on loose-leaf paper, and that Prymas was not present. Neither the typed nor the handwritten lease agreements were admitted into evidence.

{¶ 5} Byczek acknowledged that he only made the first two monthly rent payments on the Pleasant Valley gas station, but maintained that Prymas purchased inventory and fixtures from Byczek for a Marathon gas station located on Wilson Mills Road, and that Prymas was unable to make payments. Therefore, Byczek claimed that the parties agreed to a set-off arrangement whereby Byczek would cease making rental payments on the Pleasant Valley gas station in lieu of Prymas paying for the inventory and fixtures for the Marathon gas station.

{¶ 6} Prymas claimed that Byczek failed to maintain the property as specifically required under their typed lease agreement, ultimately resulting in Prymas being cited by the city of Parma. (Tr. 2, 3.)

{¶ 7} On February 11, 2009, Prymas filed a forcible entry and detainer action against Byczek, alleging that Byczek failed to make the required monthly rental payments and failed to maintain the property in compliance with their typed lease agreement. Prymas sought to evict Byczek from the premises.

{¶ 8} On April 13, 2009, a hearing was held before a magistrate. At the conclusion of the hearing, the magistrate denied Prymas's action for eviction based on the testimony that there was a set-off agreement regarding the inventory and fixtures for the Marathon gas station. On April 16, 2009, the trial court adopted the magistrate's decision.

{¶ 9} Prymas appealed, asserting two assignments of error for our review.

ASSIGNMENT OF ERROR NUMBER ONE

{¶ 10} "THE PARMA MUNICIPAL COURT (HEREINAFTER REFERRED TO AS THE 'TRIAL COURT') ERRED TO THE PREJUDICE OF PLAINTIFF-APPELLANT WILLIAM PRYMAS (HEREINAFTER REFERRED TO AS 'APPELLANT') BY DENYING APPELLANT'S EVICTION OF DEFENDANT-APPELLEE RICHARD BYCZEK (HEREINAFTER REFERRED TO AS 'APPELLEE') FROM APPELLANT'S PROPERTY."

{¶ 11} Prymas argues that the trial court erred when it permitted testimony regarding the Marathon gas station transaction. We disagree.

{¶ 12} During the hearing, Prymas testified to the terms of the lease agreement and maintained that Byczek breached the agreement for failure to make the required $1,500 per month in rental payments. Byczek's counsel cross-examined Prymas, asking numerous questions regarding the Marathon gas station transaction. Prymas's counsel objected; however, the objection was overruled.

{¶ 13} Subsequently, Prymas testified that there had been an agreement whereby Prymas was to purchase the inventory and fixtures at the Marathon gas station located on Wilson Mills Road. Prymas took possession of the Marathon gas station in 2006 and has been doing business there ever since. (Tr. 6.) Prymas argues that this testimony was irrelevant and Byczek's counsel should not have been permitted to question him regarding this separate transaction between the parties.

{¶ 14} It is well established that the admission of relevant evidence lies with the sound discretion of the trial court. *State v. Gray*, 8th Dist. No. 92303, 2010-Ohio-240, at ¶54, citing *State v. Kinley* (1995), 72 Ohio St.3d 491, 497, 651 N.E.2d 419. The trial court's decision regarding the admission of evidence will not be disturbed absent an abuse of discretion. *Gray* at ¶54, citing *Peters v. Ohio State Lottery Comm*. (1992), 63 Ohio St.3d 296, 299, 587 N.E.2d 290. In order for a reviewing court to find an abuse of discretion, there must be "more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶ 15} Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evid.R. 401. Clearly, the testimony regarding the Marathon gas

station transaction is relevant as Byczek testified that the parties had agreed to a set-off arrangement whereby Byczek would not make rental payments on the Pleasant Valley gas station in lieu of receiving a down payment from Prymas on the inventory and fixtures for the Marathon gas station.

{¶ 16} We conclude that the trial court did not abuse its discretion in allowing the testimony regarding the Marathon gas station transaction as it was clearly relevant. This set-off arrangement explained why Byczek was no longer paying the rent that was at issue. Therefore, this assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER TWO

{¶ 17} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY ALLOWING APPELLEE TO INTRODUCE EVIDENCE REGARDING A PRIOR UNRELATED BUSINESS TRANSACTION AND RELYING ON SUCH EVIDENCE AS THE BASIS FOR DENYING APPELLANT'S EVICTION OF APPELLEE FROM APPELLANT'S PROPERTY."

{¶ 18} Prymas argues that the trial court erred when it based its denial of the eviction action on the testimony regarding the Marathon gas station transaction. We disagree.

{¶ 19} We concluded in Prymas's first assignment of error that the testimony regarding the Marathon gas station transaction was clearly

relevant because Byczek maintains that there was a set-off agreement. Further, it is well settled that an appellate court reviews "judgments, not reasons." *Mizer v. Smith*, 5th Dist. No. 09-CA-00026, 2009-Ohio-6820, at ¶20, citing *Agricultural Ins. Co. v. Constantine* (1944), 144 Ohio St. 275, 284, 58 N.E.2d 658; *State v. Beatty* (Dec.14, 2000), 8th Dist. No. 75926. Therefore, even if the trial court provided an erroneous reason for its judgment, we must affirm that judgment if another rationale supports the judgment.

{¶ 20} As Prymas maintains that the evidence presented at the hearing should have resulted in his eviction action being granted, he essentially argues that the judgment was against the manifest weight of the evidence. We will not reverse a trial court's judgment as being against the manifest weight of the evidence when there is some competent, credible evidence to support its judgment. *Marketing Assoc., Inc. v. Gottlieb*, 8th Dist. No. 92292, 2010-Ohio-59, ¶47, citing *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 280, 376 N.E.2d 578. An appellate court should not substitute its judgment for that of the trial court where competent, credible evidence exists to support the judgment. *Kasick v. Kobelak*, 184 Ohio App.3d 433, 439, 2009-Ohio-5239, 921 N.E.2d 297, citing *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 79-80, 461 N.E.2d 1273.

{¶ 21} We note that while Prymas referred to a typed lease agreement throughout his testimony at the hearing, Prymas failed to request that the

lease agreement be admitted into the evidence; therefore, it is not part of the record on appeal. Prymas attached a copy of the typed lease agreement to his appellate brief, however, this court cannot consider evidence submitted for the first time on appeal. *Isbell v. Kaiser Found. Health Plan* (1993), 85 Ohio App.3d 313, 619 N.E.2d 1055, citing *Middletown v. Allen* (1989), 63 Ohio App.3d 443, 579 N.E.2d 254. Therefore, we cannot refer to that document in our analysis. Byczek also testified that he signed a handwritten lease agreement on loose-leaf paper, and not the typed lease agreement presented at the hearing. Byczek did not submit the handwritten lease agreement into evidence.

{¶ 22} At the hearing, Prymas's entire claim was premised upon the terms outlined in the typed lease agreement, which was never entered into evidence. Prymas argued that Byczek failed to pay rent and failed to maintain the property pursuant to the lease agreement. Byczek testified regarding the parties' set-off agreement, and although Prymas testified that he was cited by the city of Parma for Byczek's failure to maintain the property, Prymas submitted no documents to support this contention. Further, Byczek disputed his signature on the typed lease agreement.

{¶ 23} Consequently, we find that in light of the lack of evidence and the conflicting testimony, the trial court's judgment denying the eviction was not against the manifest weight of the evidence.

{¶ 24} This assignment of error is overruled.

Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Parma Municipal 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.

MARY EILEEN KILBANE, PRESIDING JUDGE

PATRICIA A. BLACKMON, J., and
COLLEEN CONWAY COONEY, J., CONCUR