[Cite as *Wilson v. Whitmore*, 2010-Ohio-5489.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94720

MALINDA WILSON

PLAINTIFF-APPELLANT

vs.

VICTORIA WHITMORE

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Euclid Municipal Court
Case No. 09-CVI-03354

BEFORE: Celebrezze, J., Blackmon, P.J., and Dyke, J.

RELEASED AND JOURNALIZED: November 10, 2010

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Plaintiff-appellant, Malinda Wilson, appeals the trial court's judgment in favor of defendant-appellee, Victoria Whitmore. Based on our review of the record and relevant case law, we affirm.

{¶ 2} At all relevant times, appellant was a month-to-month tenant of a residential premises ("the premises") owned by appellee. On July 23, 2009, appellant provided appellee with a 30-day notice, which included a forwarding address and informed appellee that appellant would be vacating the premises. After vacating the premises, appellant was not refunded her $850 security deposit, nor was she sent an itemized list of deductions explaining why her security deposit would not be returned.

{¶ 3} On October 6, 2009, appellant, acting pro se, filed a complaint in the Euclid Municipal Court, Small Claims Division, seeking $1,700, which represented double the amount of the security deposit paid, pursuant to R.C. 5321.16. A trial was held on December 3, 2009 before a magistrate.

{¶ 4} At trial, appellant testified that the premises was left clean and in the same condition it was in before she moved in. Appellant's daughter testified that she lived in the premises with appellant for most of the rental period and that she helped appellant restore the premises to the condition it was in before they lived there. Both appellant and her daughter admitted that damage done to the premises's kitchen floor was caused by them when they were moving their refrigerator. According to appellant, she obtained an estimate of $250 for the repair of the kitchen floor, meaning she would still be entitled to $1,450 in damages. Both appellant and her daughter claimed the premises was left in the same condition as when they inhabited it and that any damage caused by them, beyond what was done to the kitchen floor, constituted normal wear and tear.

{¶ 5} Appellee testified to various repairs she had to make to the premises after appellant vacated the premises. According to appellee, none of this damage was present when appellant moved in. Appellee testified that she had to replace the kitchen floor, clean the premises, remove garbage left by appellant, paint the basement floor due to paint spilled by appellant,

replace a cracked light switch, repair a broken oven, have the carpet cleaned, replace broken glass in the back door, and purchase new pneumatic door openers for the screen doors. Appellee also testified that she had to purchase new sets of keys for the premises because appellant left the wrong keys behind when she vacated. Appellee provided receipts for these repairs totaling $943.81. This did not include the $1,150 appellee claimed to have spent on labor to have the repairs completed.[1]

{¶ 6} Based on this evidence, the magistrate recommended judgment be entered in favor of appellee, finding that appellee "testified and presented credible evidence that justified the withholding of [appellant]'s $850 security deposit." Appellant filed objections to the magistrate's report, which were denied by the trial judge. Judgment was entered in favor of appellee on January 22, 2010. This appeal followed.

{¶ 7} Appellant, pro se, presents four assignments of error for our review.

{¶ 8} I. "There should not have been a case if Whitmore had made just returns of the security deposit."

{¶ 9} II. "Judgement should have been awarded to Wilson by default and according to statues [sic] and laws. Fraudulent and surprise evidence by Whitmore had Wilson off guard and unprepared."

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[1]Both parties presented photographs of the premises.

{¶ 10} III. "Magistrate Syracuse ignored the laws and statues [sic] and violated constitutional rights. Abuse of discretion. Judicial misconduct."

{¶ 11} IV. "Judge LeBarron violated Wilson's constitutional rights by denying Wilson's objection for another hearing to demonstrate arguable merit. Abuse of discretion. Negative act. Abuse of process."

Law and Analysis

{¶ 12} Despite appellant's listed assignments of error, the only legally cognizable argument that could be discerned from her briefs is that the trial court abused its discretion in adopting the magistrate's recommendation because the magistrate's decision was based on insufficient evidence and was against the manifest weight of the evidence.[2] Appellant also seems to make an argument that the trial court committed reversible error in admitting evidence presented by appellee at trial.

Admission of Evidence

{¶ 13} Appellant appears to argue that the trial court erred in considering evidence presented by appellee. She specifically argues that the pictures presented by appellee were tampered with and that they were

[2]Appellant cites to various legal principles that are inapplicable to this case. For example, she relies on R.C. 2323.52(A)(3), Ohio's vexatious litigator statute, but provides no factual basis or argument to support finding appellee to be a vexatious litigator. Appellant also cites to inapplicable federal statutes, state statutes that allow a taxpayer to file suit on behalf of a municipal corporation, the Civil Rights Act of 1871, and inapplicable provisions of the United States Constitution.

admitted into evidence despite appellant's surprise. The admission or exclusion of evidence is within the discretion of the trial court and will ordinarily be reviewed for an abuse of discretion. *State v. Heinish* (1990), 50 Ohio St.3d 231, 553 N.E.2d 1026; *State v. Sibert* (1994), 98 Ohio App.3d 412, 648 N.E.2d 861. In this case, however, appellant failed to object to the admission of the photographs; therefore, we must apply a plain error standard of review. *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 1997-Ohio-401, 679 N.E.2d 1099. "In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process and thereby challenges the legitimacy of the underlying judicial process itself." *Allen v. P.E. Technologies, Inc.*, Cuyahoga App. No. 93979, 2010-Ohio-3878, ¶23, quoting *Schwartz v. Alltel Corp.*, Cuyahoga App. No. 86810, 2006-Ohio-3353, ¶45.

{¶ 14} Appellant did not argue at trial that she was surprised by the photographs or that they were falsified or tampered with. In fact, appellant presented absolutely no evidence, below or in this appeal, to support the contention that the photographs were anything other than what appellee purported them to be. Appellee testified that the photographs accurately depicted the premises approximately one week after appellant vacated. As

such, the photographs were properly authenticated, and we cannot find that the trial court committed plain error in admitting them.

Trial Court's Adoption of the Magistrate's Recommendation

{¶ 15} Appellant argues that the trial court erred in adopting the magistrate's recommendation because it was based on insufficient evidence and was against the manifest weight of the evidence. We review a trial court's decision with regard to adopting a magistrate's recommendation for an abuse of discretion. *Demming v. Smith*, Cuyahoga App. No. 94106, 2010-Ohio-4134, ¶28. To constitute an abuse of discretion, the ruling must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶ 16} The Ohio Supreme Court established the standard for determining whether a civil judgment is against the manifest weight of the evidence. In *C.E. Morris Co. v. Foley Const. Co.* (1978), 54 Ohio St.2d 279, 280, 376 N.E.2d 578, the Court stated that "[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." When reviewing the sufficiency of the evidence in civil cases, the question is whether, after viewing the evidence in a light most favorable to the prevailing party, the judgment is supported by competent, credible evidence. *Ruffo v. Shaddix* (June 10, 1999), Cuyahoga App. No.

74344, at 2. Put more simply, the standard is "whether the verdict [is] one which could be reasonably reached from the evidence." Id., citing *Hartford Cas. Ins. Co. v. Easley* (1993), 90 Ohio App.3d 525, 630 N.E.2d 6. When engaging in this analysis, an appellate court must remember that the weight and credibility of the evidence are better determined by the trier of fact. Id.

{¶ 17} According to appellant and her daughter, the premises was left in the same condition it was in when they inhabited it. Despite this testimony, appellee claims the premises was left in a state of disrepair, causing her to expend $943.81 for supplies and $1,150 for labor in order to make the necessary repairs. The trial court obviously found appellee to be the more credible witness. This decision was supported by competent, credible evidence, namely the pictures and receipts provided by appellee. We do not find that the trial court's decision was based on insufficient evidence, nor was it against the manifest weight of the evidence. See *Westerfeld v. Gaulke*, Wayne App. No. 09CA0043, 2010-Ohio-2806, ¶14 (despite conflicting evidence, there was competent, credible evidence to support the trial court's finding that the tenant did not cause more than normal wear and tear, the trial court's decision is not against the manifest weight of the evidence).

{¶ 18} Because appellee did not wrongfully withhold appellant's $850 security deposit, appellee cannot be held liable to appellant. *Dwork v. Offenberg* (1979), 66 Ohio App.2d 14, 15-16, 419 N.E.2d 14 ("'the amount

wrongfully withheld is the amount found owing from the landlord to the tenant over and above any deductions that the landlord may lawfully make'"), quoting *Green v. Northwood Terrace Apts.* (Mar. 20, 1979), Franklin App. No. 78AP-580. Based on this analysis, we do not find that the trial court abused its discretion in adopting the magistrate's recommendation and entering judgment in favor of appellee.

Appellant's Other Claims

{¶ 19} Appellant also attempts to assert various claims against appellee for the first time in this appeal. She specifically argues that appellee should be held liable for slander, libel, and intentional infliction of emotional distress. Because these arguments were not raised at the trial court level, they need not be addressed in this appeal.

Conclusion

{¶ 20} The trial court did not err in allowing appellee to admit photographs of the premises to show what condition it was in when appellant vacated. Because appellee presented competent, credible evidence to support the magistrate's conclusion that appellant's security deposit was not wrongfully withheld, the trial court did not abuse its discretion in adopting the magistrate's recommendation. We will not address the remainder of appellant's arguments because they are either not legally cognizable or were not raised at the lower level.

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 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 D. CELEBREZZE, JR., JUDGE

PATRICIA ANN BLACKMON, P.J., CONCURS;
ANN DYKE, J., CONCURS IN JUDGMENT ONLY