[Cite as *Golden Hills Properties, Ltd. v. Roth*, 2004-Ohio-2822.]

STATE OF OHIO COUNTY OF SUMMIT	))ss:)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
GOLDEN HILLS PROPERTIES, LTD. Appellee v. DANIEL ROTH, et al. Appellants		C. A. No. 21815 APPEAL FROM JUDGMENT ENTERED IN THE CUYAHOGA FALLS MUNICIPAL COURT COUNTY OF SUMMIT, OHIO CASE No. 02 CVF 3257

DECISION AND JOURNAL ENTRY

Dated: June 2, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

WHITMORE, Judge.

{¶1} Defendants-Appellants Daniel and Cynthia Roth have appealed from a decision of the Cuyahoga Falls Municipal Court that awarded judgment to Plaintiff-Appellee Golden Hills Properties, Ltd. We affirm.

I

{¶2} Appellee filed suit against Appellants on October 15, 2002, for breach of contract. In its complaint, Appellee claimed that Appellants had entered

into a lease agreement with Appellee wherein Appellants would pay $1,000 per month in rental fees for certain real property located at 733 Locust Drive in Tallmadge, Ohio. Appellee claimed that Appellants "failed to pay rent due for the months of March through August 2002." Appellee requested judgment against Appellants in the amount of $6,000 plus 10% interest per annum from the date of the judgment.

{¶3} On December 11, 2002, Appellants filed a pro se "Motion For Hearing." In their motion, Appellants requested a hearing before the trial court so that they could "provide documentation and affidavits needed to prove [that the] allegations brought against [Appellants] are fallacious."

{¶4} Appellee filed a motion for default judgment on January 3, 2003, in which it argued that Appellants had failed to answer its complaint and that, as a result, default judgment should be entered in its favor. A hearing on Appellee's motion was held before a magistrate on January 14, 2003.[1] The magistrate issued its opinion the next day and stated that given the pro se nature of Appellants' "Motion For Hearing," said motion constituted an answer and, as a result, Appellee's motion for default judgment should be denied. The trial court adopted the magistrate's decision on February 5, 2003.

[1] It is not clear from the record when the matter was referred to the magistrate.

{¶5} A hearing on Appellee's complaint for $6,000 in unpaid rent was held before the magistrate on April 21, 2003. The magistrate issued its decision the next day and awarded judgment in favor of Appellee in the amount of $2,000 plus 10% interest per annum from the date of judgment. Appellants objected to the magistrate's decision on May 6, 2003. On May 16, 2003, the trial court found that Appellee had not been properly served with a copy of Appellants' objections. As a result, the trial court gave Appellants five days to prove that, contrary to the trial court's determination, service had been perfected upon Appellee on or before May 6, 2003. Otherwise, Appellants' objections would be dismissed "as a nullity." Appellants failed to show that they properly served their objections on Appellee; however the trial court did not dismiss their objections. Instead, on October 20, 2003, the trial court adopted the magistrate's decision.

{¶6} Appellants have timely appealed, asserting one assignment of error.

II

Assignment of Error

"THE COURT ERRED IN AWARDING [APPELLEE] $2,000.00 JUDGMENT LACKING APPELLANT[S'] RIGHT TO REMEDY THRU PROPER TESTIMONY AND EVIDENCE. [SIC]"

{¶7} In their sole assignment of error, Appellants have argued that the trial court's decision was based upon inadequate testimony and evidence presented at trial. Specifically, Appellants have argued that a verbal agreement existed

between the parties, which the trial court failed to consider when it made its decision.

{¶8} As an initial matter, this Court notes that Appellee failed to file an appellate brief in the instant appeal. Therefore, "[p]ursuant to App.R. 18(C), this Court may accept the Appellants' statement of the facts and issues as presented in Appellant[s'] brief as correct and reverse the judgment of the trial court if [Appellants'] brief reasonably appears to sustain such action." *Bank of New York v. Smith*, 9th Dist. No. 21534, 2003-Ohio-4633, at ¶2.

{¶9} Civ.R. 53(E)(3)(b) governs objections to a magistrate's decision and states that "[a]ny objection to a finding of fact shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that fact or an affidavit of that evidence if a transcript is not available." The rule further states that "[a] party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule." Civ.R. 53(E)(3)(b). Our careful review of the record reveals that Appellants did not submit a transcript of the magistrate's April 21, 2003 hearing to the trial court. Without a transcript of the hearing, the trial court was required to accept all of the magistrate's findings of fact as true and only review the magistrate's conclusions of law based upon the accepted findings of fact. *Conley v. Conley*, 9th Dist. No. 21759, 2004-Ohio-1591, at ¶7, citing *Brown v. Brown* (April 4, 2001), 9th Dist. No. 20177. It follows that this Court must do the same.

Galewood v. Terry Lumber & Supply Co. (Mar. 6, 2002), 9th Dist. No. 20770, at 3, citing *Melendez v. Mankis* (Dec. 15, 1999), 9th Dist. No. 98CA007091.

{¶10} After reviewing Appellants' brief, we find that Appellants' have challenged the trial court's legal conclusion that a verbal contract did not exist between the parties. However, due to the fact that Appellants failed to provide the trial court with a transcript of the hearing with their objections to the magistrate's decision, this Court does not know what evidence, if any, Appellants produced to support their allegation. Accordingly, this Court concludes that the trial court did not err in adopting and affirming the magistrate's findings. *Boggs v. Boggs* (1997), 118 Ohio App.3d 293, 301. "Furthermore, without an adequate record, a court of appeals must presume [the] regularity of the [trial] court's judgment based on the [magistrate's] report and recommendations." (Alterations sic.; citations omitted.) *Ferrone v. Kovack*, 9th Dist. No. 3279-M, 2002-Ohio-3625, at ¶8. As such, Appellants' sole assignment of error lacks merit.

III

{¶11} Appellants' sole assignment of error is overruled. The judgment of the trial court is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Cuyahoga Falls Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

Exceptions.

BETH WHITMORE
FOR THE COURT

BATCHELDER, J.
CONCURS

CARR, P. J.
CONCURS IN JUDGMENT ONLY

APPEARANCES:

DANIEL and CYNTHIA ROTH, 39 Gay Road, Munroe Falls, Ohio 44262, Appellant.

GOLDEN HILLS PROPERTIES, P. O. Box 910, Uniontown, Ohio 44685, Appellee.