

[Cite as *Wasaleski v. Jasinski*, 2015-Ohio-2307.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF LORAIN    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

FRANK WASALESKI

Appellee

v.

LINDA DURBIN JASINSKI

Appellant

C.A. No.     14CA010660

APPEAL FROM JUDGMENT  
ENTERED IN THE  
LORAIN MUNICIPAL COURT  
COUNTY OF LORAIN, OHIO  
CASE No.     2013CVH02489

DECISION AND JOURNAL ENTRY

Dated: June 15, 2015

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CARR, Judge.

{¶1} Appellant Linda Jasinski appeals the judgment of the Lorain Municipal Court.

This Court reverses and remands.

I.

{¶2} Appellee Frank Wasaleski filed a complaint against Ms. Jasinski in small claims court, alleging that he had loaned her \$12,000 to buy a home and that she had only repaid \$7000, leaving a balance due of \$5000. He prayed for judgment against her in the amount of \$3000, plus interest. Ms. Jasinski answered, denying that she owed Mr. Wasaleski any money. The case was subsequently transferred from small claims to the general division of the municipal court.

{¶3} The magistrate purported to hold an evidentiary hearing on the matter. Each party represented himself or herself pro se. The magistrate did not swear in either party. Despite the lack of any sworn testimony, the magistrate issued a decision, rendering judgment in favor of

Mr. Wasaleski in the amount of \$5000, plus three percent interest. Ms. Jasinski, then through counsel, filed timely objections to the magistrate's decision. The municipal court overruled the objections and rendered judgment in favor of Mr. Wasaleski in the amount of \$5000, plus interest. Ms. Jasinski appealed and raises three assignments of error for review. This Court addresses the second assignment of error first, as it is dispositive of the appeal.

## II.

### **ASSIGNMENT OF ERROR II**

THE COURT ERRED AND ABUSED ITS DISCRETION AND VIOLATED [MS. JASINSKI'S] PROCEDURAL DUE PROCESS RIGHTS IN CONDUCTING A CIVIL TRIAL INFORMALLY, WITHOUT ADHERENCE TO THE OHIO RULES OF CIVIL PROCEDURE, WITHOUT ADHERENCE TO THE OHIO RULES OF EVIDENCE, WITHOUT PLACING THE WITNESSES UNDER OATH BEFORE THEY TESTIFIED, AND WITH OTHER IRREGULARITIES.

{¶4} Ms. Jasinski argues that procedural irregularities during the purported hearing on Mr. Wasaleski's complaint require reversal of the municipal court's judgment. This Court agrees.

{¶5} Evid.R. 603 mandates that "[b]efore testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so." The legislature has also provided that "[b]efore testifying, a witness shall be sworn to testify the truth, the whole truth, and nothing but the truth." R.C. 2317.30. A trial court errs by relying on unsworn testimony in rendering its judgment. *See Allstate Ins. Co. v. Rule*, 64 Ohio St.2d 67, 69 (1980), citing Article I, Section 7, Ohio Constitution ("[N]or shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations."). R.C. 1901.21(A) requires municipal courts to adhere to

the same practice and procedure as that adhered to by the common pleas court, including the above requirements that witnesses be sworn to testify truthfully. *See also Crumley v. Murphy*, 68 Ohio App.2d 145 (9th Dist.1980).

{¶6} This case is analogous to a situation addressed by the Fifth District Court of Appeals in *Moore v. Santee*, 5th Dist. Stark No. 1995 CA 00184, 1996 WL 74022, \*1-2 (Feb. 5, 1996). As in that case, although neither witness here was sworn before being allowed to present his or her version of the facts to the court, neither Mr. Wasaleski nor Ms. Jasinski objected to the magistrate's failure to administer the oath to testify truthfully. Nevertheless, this Court may take notice of plain error which affected any party's substantial rights notwithstanding the party's failure to object. Evid.R. 103(D).

{¶7} In this case, both parties represented themselves at the hearing pro se. The magistrate addressed some preliminary matters and then began both questioning the parties and offering intermittent legal advice for the future. The trial court, in ruling on Ms. Jasinski's objections, clearly relied on the unsworn testimony in rendering judgment in favor of Mr. Wasaleski. As "[t]he right to have witnesses be required to declare that they will testify truthfully is a substantial right which is fundamental to our judicial system[.]" the trial court committed plain error in considering and relying on the unsworn statements of the parties. *See Moore* at \*2; *see also Crumley* at 146. Ms. Jasinski's second assignment of error is sustained.

#### **ASSIGNMENT OF ERROR I**

THE COURT ERRED AND ABUSED ITS DISCRETION IN FINDING A LOAN FOR THE PURCHASE OF REAL PROPERTY EXISTED, WHEN NO MEETING OF THE MINDS OCCURRED BETWEEN THE PARTIES, WHEN NO TERMS OF THE LOAN WERE ESTABLISHED OR PRESENTED AT HEARING, AND NO WRITING EVIDENCING A LOAN WAS PRESENTED AT HEARING OR ATTACHED TO [MR. WASALESKI'S] COMPLAINT.

**ASSIGNMENT OF ERROR III**

THE COURT ERRED AND ABUSED ITS DISCRETION IN FAILING TO PROVIDE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW IN RESPONSE TO ARGUMENTS RAISED IN [MS. JASINSKI'S] OBJECTIONS WHEN SUCH A REQUEST WAS MADE PURSUANT TO OHIO CIV.R. 52.

{¶8} Given this Court's resolution of Ms. Jasinski's second assignment of error, we decline to address her remaining assignments of error as they have been rendered moot. *See* App.R. 12(A)(1)(c).

**III.**

{¶9} Ms. Jasinski's second assignment of error is sustained. We decline to address the first and third assignments of error. The judgment of the Lorain Municipal Court is reversed and the cause remanded for further proceedings consistent with this opinion.

Judgment reversed,  
and cause remanded.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Lorain Municipal Court, County of Lorain, 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(C). 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 Appellee.

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DONNA J. CARR  
FOR THE COURT

HENSAL, P. J.  
SCHAFER, J.  
CONCUR.

APPEARANCES:

JAMES V. BARILLA, Attorney at Law, for Appellant.

FRANK WASALESKI, pro se, Appellee.