

[Cite as *Youngstown v. Washington*, 2018-Ohio-1283.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

CITY OF YOUNGSTOWN,)	
)	
PLAINTIFF-APPELLEE,)	CASE NO. 17 MA 0073
V.)	
)	OPINION
WAYMAN E. WASHINGTON,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Court of Common Pleas of Mahoning County, Ohio Case No. 15 CV 2213

JUDGMENT: Affirmed.

APPEARANCES:
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JUDGES:
Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Carol Ann Robb

Dated: March 26, 2018

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DONOFRIO, J.

{¶1} Defendant-appellant, Wayman Washington, appeals the Mahoning County Court of Common Pleas' judgment in his favor for nominal damages on his due process violation claim following a bench trial.

{¶2} Appellant is the owner of real property located at 27-29 W. Boston Avenue in Youngstown, Ohio. On March 26, 2002, plaintiff-appellee, the City of Youngstown, issued a raze or repair order for the property, which at the time was not yet owned by appellant. The order specified that if the property was not repaired within 30 days, then the property would be razed at the owner's expense. But the property was not razed or repaired in 2002. Appellant purchased the property on October 29, 2004.

{¶3} Beginning in 2008, the city began issuing supplemental raze or repair orders for appellant's property. The last orders were issued on May 25, 2010 and June 10, 2010. The May 25, 2010 order was mailed to appellant at 728 Mill Street in Youngstown, Ohio. While the order was sent via certified mail, according to appellant, it was returned undeliverable. On June 10, 2010, the city placed a notice on the property itself and sent via mail another notice. According to appellant, this notice was also returned undeliverable. As the building on the property was never repaired, the city subsequently demolished the building in 2012.

{¶4} On March 28, 2014, the city filed this action in the Youngstown Municipal Court against appellant seeking \$9,719.80 for the costs of the demolition. By the time this action was initiated, appellant was incarcerated in the Richland Correctional Institute. Appellant answered the city's complaint and filed a counterclaim seeking \$50,000.00 in damages on the basis that his due process rights were violated as he was not properly notified of the demolition proceedings against his property. This action was transferred to the Mahoning County Court of Common Pleas on the basis that appellant's counterclaim exceeded the jurisdictional limit of the Youngstown Municipal Court.

{¶5} Throughout the discovery phase, appellant filed five separate sets of discovery requests, four amended answers, and three amended counterclaims.

Eventually, both parties filed for summary judgment on their claims. The trial court denied both motions for summary judgment. After the trial court denied both motions for summary judgment, appellant filed a motion to continue the bench trial for 120 days. The trial court denied that motion and ruled that the matter was still scheduled for a bench trial on December 5, 2016 in front of a magistrate.

{¶16} At the conclusion of the trial, the magistrate decided that the city did violate appellant's due process rights by failing to properly notify him of the demolition proceedings. But appellant failed to present evidence about any damages he sustained at trial due to his incarceration at the Richland Correctional Institute. The magistrate ultimately recommended nominal damages of one dollar in favor of appellant. After the bench trial, appellant filed a motion for extension of time to file objections to the magistrate's decision. The trial court granted appellant's extension and gave him 30 days to file any objections. Appellant filed objections to the magistrate's decision on December 29, 2016 and the city responded approximately two weeks later. On February 2, 2017, the trial court overruled appellant's objections and adopted the magistrate's decision to award appellant one dollar in damages.

{¶17} Appellant then filed a motion for a new trial on March 6, 2017. The trial court denied this motion on March 27, 2017. Appellant timely filed this appeal on April 21, 2017. Appellant now raises four assignments of error.

{¶18} Appellant's first assignment of error states:

THE TRIAL JUDGE ABUSED ITS DISCRETION WHEN IT DENIED WASHINGTON AN OPPORTUNITY TO FILE AN OBJECTION AFTER THE CASE WAS REFERRED TO THE MAGISTRATE JUDGE PURSUANT TO CIV.R. 53.

{¶19} Appellant argues that even though a magistrate was assigned to handle this action, the trial court judge ultimately ruled on his motion for summary judgment and motion for a continuance without a decision from the magistrate. Appellant argues that the trial court judge erred by ruling on these motions without a

magistrate's decision.

{¶10} A trial court must conduct an independent review of the facts and conclusions contained in a magistrate's report and enter its own judgment, essentially conducting a de novo review of the magistrate's report. *Howard v. Wilson*, 186 Ohio App.3d 521, 2010-Ohio-1125, 928 N.E.2d 1180 (2d Dist.), ¶ 7. When reviewing the trial court's decision to adopt a magistrate's decision, the standard of review is abuse of discretion. *Id.* at ¶ 8. Abuse of discretion implies that the court acted in an unreasonable, arbitrary, or unconscionable manner. *State ex rel. Sartini v. Yost*, 96 Ohio St. 3d 37, 2002-Ohio-3317, 770 N.E.2d 584.

{¶11} Appellant argues that when a case is assigned to a magistrate, a magistrate's decision is required before a trial court can rule on a matter. In support of this argument, appellant predominantly relies on this Court's decision in *Dixon v. O'Brien*, 7th Dist. No. 09 MA 123, 2011-Ohio-3399. In *Dixon*, the parties consented to the magistrate presiding over all matters, including a jury trial. *Id.* at ¶ 4. The parties stipulated that they would waive any and all objections to any magistrate orders or decisions and accept such as binding. *Id.* At trial, the jury found in favor of O'Brien and the judgment was signed by the magistrate and the trial court judge. *Id.* at ¶ 5. Following the outcome of the trial, Dixon filed a motion for a judgment notwithstanding the verdict/new trial and a motion to set aside the magistrate's order, both of which were denied by the trial court and Dixon appealed. *Id.* at ¶ 6 – 7.

{¶12} This Court held that the stipulation by the parties to accept the magistrate's decision as binding and waive all objections to the magistrate's decision was unenforceable. *Id.* at ¶ 19. Such stipulations are unenforceable because they violate Civ.R. 53 and the Ohio Constitution. *Id.* at ¶ 25. In the case at bar, appellant argues that the magistrate should have ruled first before the judge. Therefore, *Dixon* does not apply and can be distinguished.

{¶13} Pursuant to Civ.R. 53(D), a court may refer a case to a magistrate for the purposes of ruling on motions. As the city argues, the use of the word "may" indicates that a trial court is not required to refer cases to a magistrate and, even if a

case is referred to a magistrate, the trial court judge can still rule on motions without a magistrate's decision.

{¶14} The Eighth District has held that when a matter is assigned to a magistrate, it is not error for a trial court judge to rule on a motion that was to be decided without an evidentiary hearing. See *Walter v. Liu*, 193 Ohio App.3d 185, 2011-Ohio-933, 951 N.E.2d 457 (8th Dist.), ¶ 19 – 22. Applying *Walter*, Civ.R. 53 does not require a trial court judge to wait until a magistrate's decision is issued before ruling on a matter, even when the matter is referred to the magistrate.

{¶15} Furthermore, it makes logical sense that a magistrate's decision is not a prerequisite for a trial court judge to rule on a motion. Magistrate decisions are considered interlocutory recommendations that are not final appealable orders unless the trial court judge adopts, rejects, or modifies the magistrate's decisions. *State v. Wheeler*, 2d Dist. No. 26702, 2016-Ohio-2964, ¶ 17.

{¶16} Accordingly, appellant's first assignment of error lacks merit and is overruled.

{¶17} Appellant's second assignment of error states:

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED WASHINGTON'S REQUEST TO CONTINUE HIS BENCH TRIAL.

{¶18} Appellant uses the same legal arguments as set forth in his first assignment of error. Specifically, appellant argues that after his motion for summary judgment was denied, he filed a "Motion with Leave to Continue the Final Pre-Trial Date for 120 Days" for purposes of obtaining more evidence to either remove any genuine issues of material fact or for purposes of submitting an affidavit for trial as evidence of the damages he suffered.

{¶19} A trial court's ruling on a motion to continue is reviewed for an abuse of discretion. *State v. Wood*, 7th Dist. No. 11 CO 9, 2011-Ohio-6405, ¶ 27.

{¶20} Appellant filed his motion to continue the final pretrial and trial on

November 3, 2016. Pursuant to Local Rule 6(A) of the Mahoning County Court of Common Pleas, “[c]ounsel shall file no motion or brief unless accompanied by a copy for distribution to the appropriate court.” Appellant argues that he did submit a copy of the motion but specified that it was for the magistrate as the magistrate was assigned to preside over the case. (Brief of Appellant, 9). Appellant’s “Motion with Leave to Continue the Final Pre-Trial Date for 120 Days” was denied by the trial court judge, not the magistrate, on the basis that it violated Local Rule 6(A).

{¶21} There is no evidence that appellant filed the copy mandated by Local Rule 6(A). With no evidence to support appellant’s argument, it cannot be said that the trial court’s decision to deny appellant’s motion to continue was an abuse of discretion.

{¶22} Moreover, appellant was granted multiple leaves or continuances for purposes of either amending his pleadings or submitting subsequent discovery requests. Appellant had ample time to develop his case. By the time this matter came to trial, appellant had submitted four amended answers, three amended counterclaims, and five sets of discovery requests.

{¶23} Accordingly, appellant’s second assignment of error lacks merit and is overruled.

{¶24} Appellant’s third assignment of error states:

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT
ADOPTED THE MAGISTRATE JUDGE’S DECISION TO AWARD
WASHINGTON \$1.00 IN DAMAGES.

{¶25} Appellant argues that the magistrate’s decision to award one dollar in damages following the trial was error because he specifically pled damages in the amount of \$50,000.00 in his complaint which was not challenged by the city.

{¶26} The trial court’s determination of damages is reviewed for an abuse of discretion. *Sanders v. Clark*, 11th Dist. No. 2016-T-0041, 2016-Ohio-7267, ¶ 14; see also *Railroad Sav. & Loan Co. v. Berman*, 10th Dist. No. 89AP-626, 1990 WL 31768.

{¶27} Addressing appellant's argument that he specifically pled \$50,000.00 in damages in his counterclaim, pleadings in a case are not considered evidence. *McNenny v. City of North Canton*, 5th Dist. No. 1998CA00182, 1998 WL 754628. As such, the trial court did not abuse its discretion by not considering the damages appellant pled in his counterclaim.

{¶28} Addressing the damages overall, in a decision dated December 7, 2016, the magistrate issued its findings of fact and conclusions of law following the trial. The magistrate found that the city demolished appellant's home without providing appellant proper notice. Because appellant failed to appear at the trial due to his incarceration, he did not present any evidence as to the amount of damages he suffered. As a result of appellant's failure to appear, the magistrate recommended that nominal damages in the amount of one dollar be awarded to appellant. Appellant objected to the magistrate's decision on December 29, 2016. In a judgment entry dated February 2, 2017, the trial conducted its own independent analysis of the evidence and adopted the magistrate's decision.

{¶29} The Ohio Supreme Court has held that nominal damages are appropriate when a party prevails at trial but fails to put forth any evidence of actual damages. See *DeCastro v. Wellston City School Dist. Bd. of Edn.*, 94 Ohio St.3d 197, 200, 761 N.E.2d 612 (2002). Ultimately, the trial court's decision to award appellant nominal damages of one dollar was not an abuse of discretion.

{¶30} Accordingly, appellant's third assignment of error lacks merit and is overruled.

{¶31} Appellant's fourth assignment of error states:

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED WASHINGTON'S MOTION FOR SUMMARY JUDGMENT CONCERNING DAMAGES.

{¶32} Appellant argues that because there was no genuine issue of material fact concerning the damages he alleged in his motion for summary judgment, the trial

court's decision to deny appellant's motion for summary judgment concerning damages was error.

{¶33} An appellate court reviews a trial court's summary judgment decision de novo, applying the same standard used by the trial court. *Ohio Govt. Risk Mgt. Plan v. Harrison*, 115 Ohio St.3d 241, 2007-Ohio-4948, 874 N.E.2d 1155, ¶ 5. A motion for summary judgment is properly granted if the court, upon viewing the evidence in a light most favorable to the nonmoving party, determines that: (1) there are no genuine issues as to any material facts; (2) the movant is entitled to judgment as a matter of law, and (3) the evidence is such that reasonable minds can come to but one conclusion and that conclusion is adverse to the opposing party. Civ.R. 56(C); *Byrd v. Smith*, 110 Ohio St. 3d 24, 2006-Ohio-3455, 850 N.E.2d 47, ¶ 10.

{¶34} Summary judgment is appropriate when there is no genuine issue as to any material fact. A "material fact" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc.*, 104 Ohio App.3d, 598, 603, 662 N.E.2d 1088 (8th Dist. 1995), citing *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 247-248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

{¶35} The city argues that because there was a bench trial in this action, the trial court's denial of summary judgment is unreviewable. In *Ortiz v. Jordan*, 562 U.S. 180, 131 S.Ct. 884, 178 L.Ed.2d 703 (2011), the U.S. Supreme Court held that a party cannot appeal a trial court's decision denying summary judgment after a full trial on the merits. *Id.* at 888 – 889. This decision was adopted by the Eighth and Twelfth Districts. See *Calvary S.P.V.I., L.L.C. v. Krantz*, 8th Dist. No. 97422, 2012-Ohio-2202, ¶ 9; see also *A N Bros. Corp. v. Total Quality Logistics, L.L.C.*, 12th Dist. No. CA2015-02-021, 2016-Ohio-549, ¶ 19.

{¶36} The Ohio Supreme Court has held that a party may appeal a trial court's denial of a motion for summary judgment after a subsequent adverse judgment. *Balson v. Dodds*, 62 Ohio St.2d 287, 289, 405 N.E.2d 293 (1980). Other districts have held that the denial of summary judgment is still reviewable after a subsequent adverse final judgment. See *McFarland v. Niekamp, Weisenhall*,

Mutersbaugh & Mastrantonio, LLP, 9th Dist. No. 28462, 2017-Ohio-8394, ¶ 36; see also *Martin v. Jones*, 4th Dist. No. 14CA992, 2015-Ohio-3168, ¶ 32. These cases involve questions of law. This Court follows the *Martin* and *Continental Ins. Co.* holdings while adding that the denial of a motion for summary judgment based on a pure question of law which has an impact on the outcome of the case is reviewable on appeal. *Bobb Forest Products, Inc. v. Morbark Industries, Inc.*, 151 Ohio App.3d 63, 2002-Ohio-5370, 783 N.E.2d 560, ¶ 39-40 7th Dist. (2002).

{¶37} The trial court's denial of both motions for summary judgment was based on whether the city properly notified appellant of the demolition proceedings. Because a genuine issue of material fact existed concerning notification, liability was still at issue and the trial court denied summary judgment without addressing damages.

{¶38} Because the trial court denied appellant's motion due to the presence of genuine issues of material fact and not law, and a subsequent trial was held, the denial of summary judgment is unreviewable.

{¶39} Accordingly, appellant's fourth assignment of error lacks merit and is overruled.

{¶40} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., Concur

Robb, P., J., Concur