**[Cite as *Schaney v. Krankovich*, 2021-Ohio-2762.]**

# IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
HARRISON COUNTY

NELLIE SCHANEY,

Plaintiff-Appellee,

v.

KETURAH KRANKOVICH,

Defendant-Appellant.

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**OPINION AND JUDGMENT ENTRY**
**Case No. 20 HA 0003**

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Civil Appeal from the
Court of Common Pleas of Harrison County, Ohio
Case No. CVH 2018-0082

**BEFORE:**
Carol Ann Robb, Gene Donofrio, Cheryl L. Waite, Judges.

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**JUDGMENT:**
Affirmed.

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*Atty. A. Hokes*, Ian Resources, LLC, et al., 105 Jamison Avenue, P.O. Box 247, Cadiz, Ohio 43907 for Plaintiff-Appellee and

*Keturah Krankovich*, *pro se*, 385 Westwood Drive, Steubenville, Ohio 43953 for Defendant-Appellant.

Dated: July 29, 2021

**Robb, J.**

**{¶1}** Defendant-Appellant Keturah Krankovich appeals the decision of Harrison County Common Pleas Court granting summary judgment for Plaintiff-Appellee Nellie Schaney on her breach of contract claim and on Appellant's counterclaims of unjust enrichment and intentional and negligent infliction of emotional distress. Appellant argues those decisions were incorrect for various reasons. For the reasons expressed below, the trial court's decision is affirmed.

Statement of the Facts and Case

**{¶2}** Appellant and Appellee are daughter and mother. Appellant and her ex-husband built a house at 85152 Baker's Ridge Road in Harrison County. After 11 years of marriage, they divorced; Appellant was permitted to buy ex-husband's interest in the residence so that she could remain there. As a result of Appellant being unable to obtain financing, Appellant's parents (Appellee and Mr. Melvin Schaney, now deceased) purchased the marital residence for $273,653.76. This amount represented the amount still owed to the bank. Appellant entered into a land contract with Appellee and Mr. Schaney on February 3, 2016 and the contract was recorded. The terms of the contract were for Appellant to pay $273,653.76 with 2% interest in consecutive monthly installment of $1,500.00 payable on the first day of each month for a term of 5 years. At the conclusion of the 5 years, the remaining balance would be due. Allegedly, this balloon payment was approximately $170,000. Considering Appellant's arguments, these terms may have been agreed upon because Appellant was awaiting the awarding of her portion of the marital property from her divorce, which included a portion of her ex-husband's 401K and she would be able to pay off more than half of the loan.

**{¶3}** Appellant failed to make any payments on the loan and Appellee sued for breach of contract. Appellee filed a complaint for eviction, restitution of premises, and forfeiture of the land installment contract in Harrison County Court. 9/12/18 Complaint. The complaint indicated that on June 11, 2018 Appellee served Appellant with written legal notice to leave the premises. Appellant failed to abide by the notice. Appellee stated the fair market rental value of the property is $2,000 a month. She asked for the land

contract to be cancelled, to be awarded $46,500.00 as damages for the fair rental value and for a second hearing to be set after possession was restored to assess damages and reasonable cost of repair.

**{¶4}** Through counsel, Appellant filed an answer. 9/20/18 Answer. Later, acting pro se, she filed another answer and counterclaimed asserting unjust enrichment and negligent and intentional infliction of emotional distress seeking damages in excess of $25,000.

**{¶5}** The county court, indicating that each party had asserted a monetary claim in excess of its subject matter jurisdictional limitation ($15,000), transferred the matter to the Harrison County Common Pleas Court. 10/4/18 J.E.

**{¶6}** Appellee moved for summary judgment and dismissal of the counterclaims. 7/9/19 Motion for Summary Judgment. She asserted the evidence demonstrated a contract existed and it was breached. As to the counterclaims, she contended legally there was no unjust enrichment and there is no evidence to show intentional or negligent infliction of emotional distress.

**{¶7}** Appellant also moved for summary judgment and filed a motion in opposition to summary judgment. 9/5/19 Motions.

**{¶8}** During the pendency of the proceedings, Appellant was incarcerated; she was transported from jail to attend the summary judgment hearing. 2/19/20 J.E. Order of Transport for Evidentiary Hearing; 3/12/20 J.E. Continuing Jury Trial Due to Incarceration.

**{¶9}** The trial court held oral arguments on the matter. It then granted summary judgment for Appellee. 3/25/20 J.E. The trial court found that the contract was breached, an unjust enrichment claim cannot survive because the contract was written, and there was no evidence of negligent or intentional infliction of emotional distress.

**{¶10}** Thereafter, Appellant filed a motion to stay the order and to stop the eviction. 3/31/20 Motion. The trial court ordered a hearing on the motion. 4/22/20 J.E. At the hearing, Appellant argued the eviction did not occur properly and the trial court never ordered eviction. Appellee asserted Appellant had not been in the home since early February when she was incarcerated (February 13 through March 15). Tr. 20. Appellee argued the summary judgment ruling indicated the contract ended and since Appellant was not residing in the house there was no need to go forward on the eviction.

The insinuation was the attorneys had agreed to that at the previous hearing and thus, the eviction issued was not raised.

**{¶11}** Appellant timely appealed the trial court's ruling. 4/24/20 Motion of Appeal.

**{¶12}** Following the appeal, the trial court ruled on the March 31, 2020 motion. The trial court denied the stay and held that the eviction issue was moot because Appellant was no longer residing in the house. 9/1/20 J.E. It is noted the order was released after Appellant requested and obtained a stay from this court. This court granted a stay and ordered Appellant to pay a bond in the amount of $273,653.76. 8/10/2020 J.E. Appellant posted the appropriate bond.

Compliance with Appellate Rules

**{¶13}** Prior to addressing the arguments, it is noted Appellant has not complied with the Appellate Rules in filing the brief.

**{¶14}** Appellate Rule 16(A) provides:

> The appellant shall include in its brief, under the headings and in the order indicated, all of the following:
>
> (1) A table of contents, with page references.
>
> (2) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where cited.
>
> (3) A statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.
>
> (4) A statement of the issues presented for review, with references to the assignments of error to which each issue relates.
>
> (5) A statement of the case briefly describing the nature of the case, the course of proceedings, and the disposition in the court below.
>
> (6) A statement of facts relevant to the assignments of error presented for review, with appropriate references to the record in accordance with division
>
> (D) of this rule.

> (7) An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.
>
> (8) A conclusion briefly stating the precise relief sought.

App.R. 16(A)(1)-(8).

**{¶15}** Appellant's brief does not even minimally comply with these requirements. There is no table of contents, table of authorities, statement of the assignments of error, or statement of the case. Furthermore, pursuant to subsection (7), the brief does not contain an argument citing to case law or statutes supporting her position. *See also* 7th Dist. Loc.R. 16. The brief also exceeds the page limitation; Appellant's brief is 53 pages in length. Pursuant to Seventh District Local Appellate Rule 19 a brief may not exceed 35 pages unless prior approval is granted from the court. 7th Dist. Loc.R. 19(A); *See also* App.R. 19(A). Appellant did not request leave of the court to file a brief exceeding the page limitation.

**{¶16}** It is acknowledged Appellant is acting pro se. However, we have previously explained pro se litigants are bound by the same rules and procedures as litigants who retain counsel. *Bryan v. Johnston*, 7th Dist. Carroll No. 11 CA 871, 2012-Ohio-2703, ¶ 8. "The rationale for this policy is that if the court treats pro se litigants differently, 'the court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel.'" *Pinnacle Credit Servs., LLC v. Kuzniak*, 7th Dist. Mahoning No. 08 MA 111, 2009-Ohio-1021, ¶ 31, citing *Karnofel v. Kmart Corp*., 11th Dist. Trumbull Nos. 2007-T-0036 and 2007-T-0064, 2007-Ohio-6939, at ¶ 27. An egregious violation of App.R. 16 permits this court to dismiss the appeal, to rely on the presumption of regularity of the trial court proceedings and affirm the judgment, or to use our best efforts to construe any issues being raised. *State v. O'Connor*, 7th Dist. Mahoning No. 13 MA 169, 2015-Ohio-833, ¶ 4. Furthermore, as to the length of the brief, this court has discretion to refuse to consider arguments and assignments of error that

are presented in the pages exceeding the page limitation. *Hanick v. Ferrara*, 2020-Ohio-5019, 161 N.E.3d 1, ¶ 126 (7th Dist.), citing App.R. 19(A) and prior 7th Dist. Loc.R. IV.

**{¶17}** On the basis of the briefing deficiency, this court could presume the regularity of the proceedings and affirm the trial court's decision without addressing her arguments. However, in the interest of justice we will decipher the arguments as best we can without departing from our duty of impartiality.

First Assignment of Error

"The lower court erred when it found the issue of eviction was moot, stating in effect there was an eviction granted in it's original order dated March 2020 when in fact, the order does not contain any such directive and it in fact, completely lacking in any such 'vacate the premises' language whatsoever."

**{¶18}** In this assignment of error Appellant appears to find fault with the trial court's statement at the stay hearing that the eviction issue was moot because she no longer was living in the house.

**{¶19}** Appellee asserts the eviction issue is not a final appealable order. The trial court's statement was a one-line statement in the September 1, 2020 order on the motion to stay the March 25, 2020 order. Appellant did not appeal that order.

**{¶20}** Additionally, Appellee admits the trial court's March 25, 2020 judgment does not address eviction. Appellee explains that pending the proceedings Appellant left the premises for 30 days. It appears she was incarcerated from February 13, 2020 through March 15, 2020. Following her incarceration, she allegedly attempted to regain entry into the house but the locks were changed and the driveway was blocked. Therefore, she did not gain reentry and at the time of the March 25, 2020 judgment entry she was not living in the house and still has not been living in the house. Considering these facts, Appellee contends the trial court did not err in finding that the eviction was moot because she had vacated the property and Appellee was in possession of the property.

**{¶21}** Appellee also argues possibly Appellant is attempting to assert the trial court erred in its determination the land contract was breached. Appellee contends the record reflects there is no showing of any genuine issue of material fact regarding the terms of the contract or that Appellant did not fulfill the terms.

**{¶22}** At the outset, it is noted the order appealed was the March 25, 2020 order. That order, as both parties acknowledge, did not address eviction. The order granted summary judgment to Appellee and found the land contract was breached, there was no unjust enrichment, and there was no genuine issue of material fact as to the emotional distress claims. On March 31, 2020 Appellant filed a motion to stay the order, to gain entry to the residence or alternatively to be able to get into the residence to get her personal possessions. The notice of the appeal of the March 25, 2020 order was filed on April 24, 2020. The trial court held a hearing on the stay motion in June 2020. Appellant then filed a motion to stay with our court. We granted the motion to stay with a bond. After that order was entered, the trial court entered its order on September 1, 2020. It held the motion to stay the eviction was moot, denied the stay request, and granted the motion to retrieve her personal effects.

**{¶23}** Appellant did not amend her notice of appeal to include this September 1, 2020 order, which precludes review of the order. However, once the notice of appeal was filed and this court granted the stay, the question becomes what jurisdiction the trial court had to issue its September 1, 2020 order. If the trial court did not have jurisdiction, then the September 1, 2020 judgment entry is void.

**{¶24}** Regardless, Appellee is correct that this eviction issue is moot. In a forcible entry and detainer action filed by a landlord once the property is restored to the landlord the action is moot. *Showe Mgt. Corp. v. Hazelbaker*, 12th Dist. Fayette No. CA2006-01-004, 2006-Ohio-6356, ¶ 7. The method by which a defendant appealing a judgment of forcible entry and detainer may prevent the cause from becoming moot is use of R.C. 1923.14; "The statute provides a means by which the defendant may maintain, or even recover, possession of the disputed premises during the course of his appeal by filing a timely notice of appeal, seeking a stay of execution, and posting a supersedeas bond." *Front St. Bldg. Co., L.L.C. v. Davis*, 2d Dist. Montgomery No. 27042, 2016-Ohio-7412, ¶ 18; *Colonial American Dev. Co. v. Griffith*, 48 Ohio St.3d 72 (1990). If the defendant fails to avail himself of this remedy, all issues relating to the action are rendered moot by his eviction from the premises. *Cherry v. Morgan*, 2d Dist. Clark Nos. 2012 CA 11 and 2012 CA 21, 2012-Ohio-3594, ¶ 5.

**{¶25}** Here, the facts indicate Appellant has not been in the residence since at a minimum 30 days prior to the March 25, 2020 order. It is undisputed Appellee has had continued possession of the property since that time. Therefore, any issue with the propriety of the means of eviction is moot at this point.

**{¶26}** The other argument under this assignment of error concerns the trial court's grant of summary judgment on the breach of contract claim. An appellate court conducts a de novo review of a trial court's decision to grant summary judgment, using the same standards as the trial court set forth in Civ.R. 56(C). *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). "Before summary judgment can be granted, the trial court must determine that: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most favorably in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party." *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977).

**{¶27}** As Appellee explained in her brief, there is no genuine issue of material fact concerning the breach of contract claim. The cardinal principle in contract interpretation is to give effect to the intent of the parties. *Skivolocki v. E. Ohio Gas Co.*, 38 Ohio St.2d 244, 313 N.E.2d 374 (1974), paragraph one of the syllabus. Such intent is presumed to reside in the language the parties chose to employ in the agreement. *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130, 509 N.E.2d 411 (1987), paragraph one of the syllabus. If the language of the contract is clear and unambiguous, the contract must be enforced as written. *Corl v. Thomas & King*, 10th Dist. Franklin No. 05AP-1128, 2006-Ohio-2956, ¶ 26. Ambiguity exists only when the terms of an agreement cannot be determined within the four corners of the contract or where the language of the agreement is susceptible to two or more reasonable interpretations. *United States Fid. & Guar. Co. v, St. Elizabeth Med. Ctr.*, 129 Ohio App.3d 45, 55, 716 N.E.2d 1201 (2d Dist.1998).

**{¶28}** The parties do not dispute the terms of the contract. However, even if they did, the terms are clear, unambiguous, and can be determined from the four corners of the contract. Appellant was obligated to pay $273,653.76 with 2% interest in consecutive monthly installments of $1,500.00 payable on the first day of each month for a term of 5

years. At the conclusion of the 5 years, the remaining balance would be due. Appellant was also required to pay the taxes. Appellant undisputedly made no monthly payments and did not pay the taxes. Consequently, there is no genuine issue of material fact that Appellant breached the contract.

**{¶29}** The first assignment of error is meritless.

Second Assignment of Error

"The Judge erred when it denied the unjust enrichment claim."

**{¶30}** This assignment of error appears to address the trial court's grant of summary judgment for Appellee on Appellant's unjust enrichment claim.

**{¶31}** As stated above, an appellate court conducts a de novo review of a trial court's decision to grant summary judgment, using the same standards as the trial court set forth in Civ.R. 56(C). *Grafton*, 77 Ohio St.3d at 105.

**{¶32}** Unjust enrichment occurs when one party confers some benefit upon another without receiving just compensation for the reasonable value of the services rendered. *Quadtek, Inc. v. Foister*, 12 Dist. Warren No. CA2004-09-112, 2005-Ohio-4191, ¶ 22. In the absence of proof of bad faith, fraud, or some other illegality, the existence of a written agreement bars a claim of unjust enrichment. *Id. See also Cristino v. Admr.*, 2012-Ohio-4420, 977 N.E.2d 742, ¶ 24 (10th Dist.).

**{¶33}** Here, it is undisputed that a written contract governed the land contract and no payments were made on the contract. The contract is a part of the record. The terms of the contract are clear. It was a five-year loan for $273,653.76 with two percent interest. No down payment was required. Monthly payments of $1,500.00 were due the first of each month. The remaining amount was due and payable at the end of the five-year term.

**{¶34}** Appellant did not set forth evidence of bad faith, fraud, or illegality. In her brief, she does set forth four arguments. One argument was that it was never the intention of her father for her to repay the money and for over a two year period there was no request for repayment. A second argument was that she asked her parents if that amount could be her inheritance. She explained her parents had "sudden new found wealth" from the "Mark West Facility and Well Industry" and they did not need the money from the loan. A third argument was that she made offers to pay while the father was alive, but was told

they did not require payment. Lastly, she also makes vague statements about the balloon payment due at the end of the loan. She cites to no law indicating this balloon payment was illegal. Considering the record and the arguments presented, there was no evidence of bad faith, fraud or illegality raised, and as such, the trial court did not err when it granted summary judgment to Appellee on the unjust enrichment claim.

**{¶35}** This assignment of error has no merit.

Third Assignment of Error

"The court also erred in denying all the daughter's counter claims and her claim of unjust enrichment and her claim for intentional infliction of emotional distress and negligent infliction of emotional distress."

**{¶36}** The arguments concerning the unjust enrichment claim are addressed in the second assignment of error. The argument that the trial court erred when it granted summary judgment to Appellee on the intentional and negligent infliction of emotional distress is addressed in this assignment of error. It is noted the arguments in this assignment of error are made in the appellate brief on pages after the 35-page limit and on that basis alone this court could decline to address them. However, in the interest of justice, they will be addressed.

**{¶37}** A claim for intentional infliction of emotional distress requires proof of the following elements:

> (1) the defendant either intended to cause, or knew or should have known, that his actions would result in serious emotional distress; (2) the defendant's conduct was so extreme and outrageous that it went beyond all possible bounds of decency and can be considered completely intolerable in a civilized community; (3) the defendant's actions proximately caused psychological injury to the plaintiff; and (4) the plaintiff suffered serious mental anguish of a nature no reasonable person could be expected to endure it.

*Ashcroft v. Mt. Sinai Med. Ctr.*, 68 Ohio App.3d 359, 366, 588 N.E.2d 280 (8th Dist.1990).

**{¶38}** Without considering the other factors, at least the second factor cannot be met given the facts. Appellant is claiming the enforcement of the terms of this land contract was so extreme and outrageous that it went beyond all possible bounds of decency and is considered completely intolerable in a civilized community. It has been

explained, in general, the conduct must be something "that would lead an average member of the community to exclaim, 'Outrageous!'" *Perkins v. Lavin*, 98 Ohio App.3d 378, 383 (9th Dist.1994). It is undisputed Appellant breached the terms of the contract and therefore termination of the contract was permitted. Appellee was clearly permitted to obtain possession of the residence. Enforcing the terms of this simple land contract cannot be legally found to be so extreme and outrageous that it went beyond all possible bounds of decency. While the record may reflect Appellant was depressed from her divorce and had a drug addiction problem, her mother's act of evicting her and terminating the land contract when Appellant breached the terms of the contract for over two years is not so extreme and outrageous to rise to the level of intentional infliction of emotional distress. Furthermore, there is no evidence Appellee was aware of Appellant's mental illness or that Appellee's conduct was so egregious it would cause emotional distress. Other than involving family, this situation is a typical eviction resulting from breach of contract. Summary judgement was appropriately granted on this claim.

**{¶39}** As for negligent infliction of emotional distress, the elements are: (1) the plaintiff witnessed and/or experienced a real or impending danger to another; (2) the defendant's conduct negligently caused the dangerous incident; and (3) the defendant's conduct was the proximate cause of plaintiff's serious and reasonably foreseeable emotional distress. *David v. Matter*, 6th Dist. Sandusky No. S-17-006, 2017-Ohio-7351, 96 N.E.3d 1012, ¶ 14, citing *High v. Howard*, 64 Ohio St.3d 82, 86, 592 N.E.2d 818 (1992), *overruled on other grounds in Gallimore v. Children's Hosp. Med. Cent.*, 67 Ohio St.3d 244, 255, 617 N.E.2d 1052 (1993); *Paugh v. Hanks*, 6 Ohio St.3d 72, 451 N.E.2d 759 (1983), paragraphs three and four of the syllabus; *Walker v. Firelands Community. Hosp.*, 170 Ohio App.3d 785, 2007-Ohio-871, 869 N.E.2d 66, ¶ 59 (6th Dist.). This tort is generally asserted by a bystander because she witnessed another person in danger and the defendant was unaware of the presence of the bystander. *David*. We have explained:

> Negligent infliction is limited "to such instances as where one was a bystander to an accident or was in fear of physical consequences to his own person." *High v. Howard* (1992), 64 Ohio St.3d 82, 85–86, 592 N.E.2d 818, overruled on other grounds in *Gallimore v. Children's Hosp. Med. Ctr.* (1993), 67 Ohio St.3d 244, 617 N.E.2d 1052.

*Walkosky v. Valley Memorials*, 146 Ohio App.3d 149, 153, 765 N.E.2d 429, 432 (7th Dist.2001) (Appellants' son died in 1991 and in conjunction with the Daily Monument Company, they designed a distinctive memorial headstone to mark his gravesite. A photograph of that headstone appeared in a sales brochure distributed by defendant-appellee, Valley Memorials. They sued for, among other causes of action, negligent infliction of emotional distress. Given the facts, the appellate court affirmed the decision there was no claim for negligent infliction of emotional distress because no one was placed in fear of actual physical peril.).

**{¶40}** There is no claim or evidence Appellant was placed in fear of actual physical peril. Also, she was not a bystander witnessing another person in danger. Thus, there was not a viable claim for negligent infliction of emotional distress. The grant of summary judgment on this claim was warranted.

**{¶41}** This assignment of error lacks merit.

Conclusion

**{¶42}** All three assignments of error lack merit. The trial court's decision is affirmed.

Donofrio, P J., concurs.

Waite, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Harrison County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**