[Cite as *Vaughn v. Oliver*, 2021-Ohio-3595.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

LARONICA VAUGHN, ADMINISTRATRIX OF THE ESTATE OF DELORES G. SUBER, et al.

Plaintiffs-Appellants,

v.

JULIUS OLIVER, et al.

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0080

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 18 CV 2095

BEFORE:
Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. William M. Flevares, Flevares Law Firm, LLC, 1064 Niles Cortland Road, N.E., Warren, Ohio 44484, for Plaintiffs-Appellants

Atty. Robert J. Rohrbaugh II, Robert J. Rohrbaugh, II, LLC, 4800 Market St. Suite A, Boardman, Ohio 44512, for Defendants-Appellees.

Dated: September 29, 2021

WAITE, J.

{¶1} Appellants, Super Subers' Ltd ("SSL"); Super Subers' Realty, Ltd.("SSR"); and Laronica Vaughn in her capacity as administratrix of the Estate of Delores G. Suber ("Vaughn"); (collectively, Appellants), appeal the judgment of the Mahoning County Court of Common Pleas in favor of Appellee, Julius Oliver dba Kingly Handwash and Wax ("Kingly"). Appellants brought breach of contract and conversion claims against Appellee regarding property located on South Avenue in Youngstown, Ohio ("the Property"). On appeal, Appellants challenge only the judgment on their breach of contract claim. Appellants assert the trial court erred as a matter of law in determining no contract existed between the parties and also argue manifest weight. For the following reasons, Appellants' assignments of error have no merit. The judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} SSR was established as an Ohio limited liability company on July 9, 1997. Mose Suber ("Mose") and Delores Suber ("Delores") were its only members. On August 19, 1997, Mose and Delores transferred ownership in the Property located at 5815 South Avenue in Youngstown to SSR. SSR remained owner of the Property until a foreclosure in June of 2016.

{¶3} The exact date is not clear from the record, but at some point in 2011 Appellee took possession of the Property to operate his business based on a handshake agreement with Mose. Appellee has maintained throughout the proceedings that he has

always had an oral lease-to-purchase agreement with Mose and that his monthly payments on the lease were to be credited towards the purchase of the Property. Appellee concedes the arrangement was never memorialized in a written purchase agreement. The record contains only one written lease agreement pertaining to the Property. It is entitled "Commercial Lease" and is dated May 1, 2013. The lease term ran from May 1, 2013 through April 30, 2014, with a monthly rental payment of $1,400. The lease was signed by Mose, Oliver, and Corey Kemp, Oliver's business partner at Kingly. The agreement contained no option to purchase the Property, nor were there any renewal provisions. This lease expired on April 30, 2014. However, Appellee remained in possession of the Property until sometime in February of 2017.

{¶4} Mose passed away on November 23, 2015, leaving Delores as the only surviving member of the LLC. She remained the sole member of SSR until she passed away on January 21, 2016. The last $1,400 payment made by Appellee was on January 8, 2016.

{¶5} Due to delinquent real estate tax liens, a decree of foreclosure on the Property was issued by the Mahoning County Court of Common Pleas on June 22, 2016.

{¶6} On August 2, 2016, the Mahoning County Probate Court appointed Vaughn as administratrix of Delores' estate. At trial, Vaughn testified that she visited Appellee at the Property around this time to determine if Appellee intended to purchase the Property, because she was aware of other interested buyers. Appellee told Vaughn that he had a lease-to-purchase agreement for the Property that was still in effect. Vaughn disagreed, and the exchange between them escalated to the point that the police were called and Vaughn was told to leave.

{¶7} Following the decree of foreclosure, the Property was subsequently purchased by Mike Tanoukhi and 4 Wheels Car Care Center, LLC in February of 2017 at a sheriff's sale. A sheriff's deed transferring title to the property was recorded on February 21, 2017. Appellee remained on the Property until Tanhoukhi took possession in February of 2017.

{¶8} Appellants filed a complaint against Appellee on August 8, 2019 raising three causes of action. The first cause entailed a claim for breach of contract for nonpayment of rent. In paragraph 10, under their breach of contract claim, Appellants alleged:

> After the death of Delores G. Suber, Plaintiffs and Defendant Julius Oliver entered into an oral month-to-month commercial tenancy for 5815 South Avenue, Youngstown, Ohio 44512 in which Defendant Julius Oliver was obligated to pay One-Thousand-Four-Hundred and 00/100 Dollars ($1,400.00) per month in rent.

(8/8/18 Complaint, paragraph 10.)

{¶9} Although paragraph 10 does not include an exact date the oral month-to-month lease was alleged to have commenced, the complaint sought rent from February of 2016 through February of 2017 at $1,400 per month, totaling $18,200. The second claim was for conversion of personal property against Appellee, asserting that Appellee took personal items from the Property that belonged to Appellants. The third claim was for conversion against Tanoukhi and 4 Wheels, asserting they retained the same personal property after taking title and possession pursuant to foreclosure and sheriff's sale.

Following mediation between the parties held on September 9, 2019, Tanoukhi and 4 Wheels were dismissed from the action.

{¶10} The remaining matters were heard before a magistrate on February 12, 2020. Vaughn and her brother, Darvis Suber, testified on behalf of Appellants. Contrary to the assertion raised in paragraph 10 of the complaint which claimed Vaughn entered into an oral contract with Appellee as administratrix of Delores' estate, Vaughn testified that, acting under Delores' power of attorney, she actually entered into an oral month-to-month lease with Appellee on Delores' behalf on January 1, 2016, twenty-one days prior to Delores' death. During cross-examination Vaughn attempted to reconcile this factual conflict:

> Q Are you familiar with the lawsuit that you filed in this action?
>
> A I'm familiar, yes.
>
> Q And your lawsuit at paragraph 10, you say after the death of Delores G. Suber, plaintiffs and defendant Julius Oliver entered into an oral month-to-month commercial tenancy for 5815 South Avenue, Youngstown, Ohio, 44512, in which defendant Julius Oliver was obligated to pay $1,400 per month in rent. Are you familiar with that?
>
> A Yes.
>
> Q That's the allegation that you made in your lawsuit, correct?
>
> A Yes.

* * *

Q Okay. Now, this morning you told us that this oral month-to-month agreement you made was when your mother was still alive back in January, correct?

A Both are true statements.

Q Both are true statements?

A Absolutely.

(2/12/20, Tr., pp. 34-35.)

{¶11} During his testimony Darvis Suber testified that he picked up rent money from Appellee at various times over the course of several years and that Appellee remained at the property until February of 2017.

{¶12} At the conclusion of Appellants' case, counsel for Appellants sought to amend the complaint to reflect Vaughn's trial testimony:

[PLAINTIFFS' COUNSEL]: Thank you, Your Honor. Civil Rule 15 allows parties to amend their complaints so that they conform to the evidence. The evidence offered by the plaintiff indicates that she entered into an oral lease agreement with the defendant by virtue of the attorney, in fact, that she -- the power of attorney that she had from her mother to act as attorney, in fact, while her mother was still alive. So I ask the court grant the motion to amend the pleadings to account for this testimony. Thank you.

THE COURT: You want to be heard?

[DEFENSE COUNSEL]: Yeah, Your Honor. Contra to that position I think two things. Number one, if this were in fact a true fact, it's a fact that they would have known about it at the time they filed their complaint because it's within the head of Laronica Vaughn who's the administrator, and that's not how they pled it. And I think that goes to the credibility, and I think that issue was cross examined for the credibility. So I don't think the court can accept that as a proven fact because it is in question whether or not the statement made in the complaint and filed is what really happened and whether or not the statement that Laronica Vaughn made on direct that was cross examined, and in fact back and forth, back and forth was the testimony, and she ended up admitting that it doesn't really matter, that we had an oral promise. So I don't think the court can amend on controverted evidence, and I'm asking the court not to do that.

THE COURT: So noted. I will grant that motion. And let me just put it to you this way -- at one point this was actually appealed too. It was a criminal matter, but more on the lines of this. A trial on a driving under suspension wasn't a true driving under a suspension but a no operator's license. That's what the evidence revealed during the testimony, and that is to be -- to conform with the evidence the state did ask to amend their complaint to show that it was a no operator's license as opposed to driving under suspension. On appeal that was sustained and granted. So based upon

> the evidence, I will grant that motion based upon the evidence that was provided.

(2/12/20 Tr., pp. 69-71.)

{¶13} Thus, over defense objection and despite the fact that Vaughn's testimony was the only evidence presented on the issue, the trial court granted the Civ.R. 15(B) motion to amend the pleadings to conform with the evidence. Hence, the complaint was amended to allege that Vaughn entered into the oral month-to-month contract with Appellee on January 1, 2016, acting as power of attorney for Delores.

{¶14} Appellee testified on behalf of the defense. He maintained that he never entered into any oral month-to-month agreement with Appellants at any time, and that his oral lease-to-purchase agreement had been in effect since 2011. He testified that Mose agreed Appellee would pay $1,400 per month to be deducted from the purchase price for the Property, which they agreed was $150,000. (2/12/20, Tr., pp. 80-81.) Appellee testified no written purchase agreement existed because, "[Mose] was in some type of litigation where he had to clear some debts, and basically at the time if the property would have been deeded into my name, I would have inherited $800,000 in debt, even if I purchased the property for a dollar." (2/12/20 Tr., p. 81.) He said he had been in possession of the Property for his car detailing business since 2011 and that Vaughn "tried to" evict him at some time in 2016. (2/12/20 Tr., pp. 82.) He maintained that, as part of his intent to purchase, Appellee had invested "$40,000 into the building" including replacing the electrical system. (2/12/20 Tr., p. 82.) He testified that he never had any interactions with Vaughn until after Mose and Delores died, when Vaughn tried to "strike

a deal" with him to purchase the Property. (2/12/20 Tr., p. 88.) He said Vaughn claimed to know nothing about the lease-to-purchase arrangement.

{¶15} On cross-examination Appellee said he had been paying $1,400 monthly since 2011 because it was his intent to purchase the Property pursuant to his agreement with Mose.

{¶16} The magistrate issued a decision on April 29, 2020, ruling in favor of Appellee on both the breach of contract and conversion claims. The magistrate concluded that Vaughn lacked the contractual capacity to enter into a lease with Appellee:

> In this case the Court finds that Laronica Vaughn did not possess the capacity to enter into a contract for 5816 South Ave., Youngstown Ohio until such time as she became the Administrator of the Estate of Delores [sic] Suber. Yet in her complaint and in her testimony she claims to have entered into the oral contract with Julius Oliver prior to her appointment as administrator. * * * Plaintiff can not [sic] sustain its burden of proof by the preponderance of the evidence that a valid contractual obligation existed between Plaintiff and Defendant.

(4/29/20 Magistrate's Decision.)

{¶17} Appellants filed objections to the magistrate's decision regarding the breach of contract claim on May 13, 2020. On June 12, 2020, Appellants filed a supplement to their objections citing relevant portions of the record. On June 26, 2020, the trial court issued a judgment entry adopting the decision of the magistrate verbatim.

{¶18} Appellants filed this timely appeal.

ASSIGNMENT OF ERROR NO. 1

> The Trial Court Erred as a Matter of Law When It Ruled That Defendant Julius Oliver was not liable for rent to Plaintiff Super Subers' Realty, Ltd.

{¶19} In Appellants' first assignment they argue the trial court "framed the legal issues in a manner that did not make sense in light of the facts proven at trial." (Appellants' Brf., p. 6.) Although in this assignment they argue the trial court erred "as a matter of law," Appellants' first assignment relates not to the application of the law, but solely to the evidence presented at trial. Appellants contend:

> Both the magistrate and the trial judge analyzed the case as if the issue before them was whether an oral lease agreement was established when Defendant-Appellee Julius Oliver paid $1,400.00 for the January 2016 rent to Plaintiff-Appellant Laronica Vaughn. In treating the case in this manner, the Trial Court ignored the fact that an oral month-to-month lease existed between Plaintiff-Appellant Super Subers' Realty, Ltd. and Defendant-Appellee Julius Oliver at least as far back as 2011. When Julius Oliver paid rent in January 2016, it was merely to continue a long-standing oral month-to-month tenancy that already existed.

(Appellants' Brf., pp. 9-10.)

{¶20} " 'A contract is generally defined as a promise, or a set of promises, actionable upon breach. Essential elements of a contract include an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a

manifestation of mutual assent and legality of object and of consideration.' " *Kostelnik v. Helper,* 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, at ¶ 16, quoting *Perlmuter Printing Co. v. Strome, Inc.*, 436 F.Supp. 409, 414 (N.D.Ohio 1976). "An essential element needed to form a contract is that the parties must have distinct and common intention which is communicated by each party to the other." *Id.* If the parties have no meeting of the minds there is no contract. *Kostelnik* at ¶ 16. "A contract is binding and enforceable if it encompasses the essential terms of the agreement; minor terms left unresolved do not destroy an agreement if the essential terms are incorporated into that agreement." *Rucci v. T.C. Quality Homes, Inc.,* 7th Dist. Mahoning No. 98 CA 91, 2001-Ohio-3262, *12.

{¶21} Pursuant to R.C. 1705.21(A):

> Except as otherwise provided in the operating agreement or articles of organization, if a member who is an individual dies or is adjudged an incompetent, the member's executor, administrator, guardian, or other legal representative may exercise all of the member's rights as a member for the purpose of settling the member's estate or administering the member's property, including any authority that the member had to give an assignee the right to become a member.

{¶22} As with many legal requirements regarding limited liability companies in Ohio, the parties may incorporate certain provisions into the operating agreement or articles of organization. Where there is no written provision otherwise, the language of the statute determines the issue. There is no written operating agreement or articles of

organization for the LLC that were admitted into the record in this case. If evidence had been produced that the LLC provided for a "transfer on death," as the sole member of SSR Delores' membership would have transferred to another designated party at the time of her death. In the absence of this evidence, the LLC must pass through probate and is considered part of the deceased member's estate. *Holdeman v. Epperson,* 111 Ohio St.3d 551, 2006-Ohio-6209, 857 N.E.2d 583, ¶ 13; R.C. 1705.21(A). This issue was not raised by the parties. Hence, it appears that no transfer on death provisions existed and Vaughn first obtained the authority to act on behalf of SSR as administratrix of Delores' estate.

{¶23} While changing their position on appeal in this matter, Appellants based their claim for relief in the trial court solely on their allegation that Vaughn and Appellee entered into a valid oral lease agreement in January of 2016. When acting on behalf of SSR, in order for Appellants' claim for breach of contract to prevail Appellants had to demonstrate all the necessary elements of a contract at trial, including that Vaughn's duties as administratrix permitted her to enter into an oral month-to-month lease for the Property. Looking at the complaint filed by Appellants, paragraph ten alleged that an oral month-to-month lease commenced after Vaughn was appointed administratrix, but did not provide a date. Paragraph 11 states Appellee last paid rent in January of 2016. Finally, paragraph 14 claims Appellee continues to owe rent from February of 2016 until February of 2017. Thus, on its face, the complaint alleges the oral month-to-month lease commenced prior to February of 2016. Subsequent to Vaughn's trial testimony and the amendment of the complaint pursuant to the Civ.R. 15(B) motion, Appellants' position at

trial was that Vaughn entered into the oral lease on January 1, 2016, acting not as administratrix of Delores' estate, but in her capacity as power of attorney for Delores.

{¶24} In an apparent attempt to remedy the two assertions, the magistrate granted Appellants' motion to amend the pleadings to conform to the evidence pursuant to Civ.R. 15, based on Vaughn's trial testimony that the month-to-month lease began on January 1, 2016.

{¶25} Although not raised as an assignment of error, we note the trial court's decision to amend the pleadings is questionable, at best, based on this record. We review the decision to grant a motion for leave to amend a pleading for an abuse of discretion. *Netherlands Insurance Co. v. BSHM Architects, Inc.,* 2018-Ohio-3736, 111 N.E.3d 1229, ¶ 52 (7th Dist.), citing *Turner v. Cent. Local School Dist.,* 85 Ohio St.3d 95, 99, 706 N.E.2d 1261 (1999). An abuse of discretion connotes more than an error of judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Yashphalt Seal Coating, LLC v. Giura*, 7th Dist. Mahoning No. 18 MA 0107, 2019-Ohio-4231, ¶ 14, citing *Blakemore v. Blakemore,* 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶26} Where, as here, there is an objection to evidence on the ground that it falls outside the pleadings, the trial court may permit the pleadings to be amended. According to the language in the rule, amendment is "freely" granted if both of the following criteria are met: (1) the presentation of the merits of the case will be subserved or further served; and (2) the objecting party does not satisfy the court that admission of the evidence would prejudice him or her in maintaining the case on the merits. Civ.R. 15(B); *Hall v. Bunn,* 11 Ohio St.3d 118, 121, 464 N.E.2d 516 (1984).

{¶27} Appellants' complaint in this matter alleged the contract at issue was formed while Vaughn was administratrix of the estate, which did not occur until August 2, 2016. For the first time, at trial, Vaughn testified that the parties entered into an oral month-to-month contract in January of 2016, twenty-one days before her mother died. Considering the first prong, it is apparent why Appellants sought an amendment to the pleadings, as the defense was clear in its opening statement that the breach of contract claim alleged in the complaint contained a fatal defect: the decree of foreclosure was issued on June 22, 2016 and this predated Vaughn's appointment as administratrix on August 2, 2016. Thus, the defense was based on the fact that Vaughn lacked the capacity to enter into a lease on Appellants' behalf at the time stated in the complaint. An amendment to the pleadings pursuant to Civ.R. 15(B) allowing Appellants to substitute the earlier date would certainly benefit them. Clearly, the presentation of merits of this case would be served by the amendment, from Appellants' perspective. *Hall* at 121.

{¶28} Regarding the second prong, in order to justify the refusal to amend under Civ.R. 15(B), the objecting party must satisfy the court that admission of this evidence would present a serious disadvantage in presenting their case. *Hall* at 122. The defense argued at trial that Appellants' amendment would prejudice Appellee's case as Appellee was not prepared for or informed of this new claim. Moreover, this change in effective dates for the alleged oral contract was not new evidence, as Appellants must have known the actual date when Vaughn entered into the alleged contract at the time the complaint was filed. Appellee contended that amendment of this complaint would absolutely prejudice Appellee from maintaining its defense on the merits.

{¶29} Under the circumstances presented in this case, it was error for the court to grant Appellants' motion. At trial, the defense correctly pointed out that Appellants were not relying on new evidence, as this information was obviously known by Appellants when the complaint was filed. Additionally, Appellants sought to amend the complaint based solely on the self-serving testimony of Vaughn after the defense had explained in its opening statement that it intended to present evidence that Vaughn did not have the capacity to enter into a lease for the Property at the time she was appointed administratrix. Additionally, where the objecting party is surprised by the evidence presented, the trial court has the option to grant the motion to amend, but order a continuance to allow the objecting party the opportunity to examine it and prepare a defense. Civ.R. 15(B); *Hall* at 122. At the very least a continuance should have been granted, here.

{¶30} Although the trial court abused its discretion in this regard, the issue appears to be moot. Ultimately, the amendment had little bearing on the trial court's determination and the final outcome. While the trial court granted the motion to amend, the court clearly doubted her credibility based on her changing, confusing testimony when ruling in favor of Appellee. Therefore, although the trial court should not have granted the motion, it appears that this did not affect the outcome of this matter.

{¶31} Whether the alleged oral contract began while Vaughn acted under her power of attorney for Delores or while she was acting as administratrix of Delores' estate, Appellants' entire case is based on an alleged oral contract entered into between Vaughn and Appellee. For the first time, on appeal, Appellants rely on a contention that an oral month-to-month lease with Appellee has existed since 2011. Appellants focus solely on Appellee's possession of the property since 2011 and his regular payment of monthly rent

from 2011 until 2016. Appellants all but ignore their claim that an oral lease agreement was entered by Vaughn and the effect of the foreclosure of the Property in June of 2016.

{¶32} Of note in this regard, Appellants attached a signed copy of a 2013 lease agreement between Mose and Appellee to the complaint. The lease is signed by the parties and contains a $1,400 monthly payment provision. The parties do not dispute Appellee was paying this exact amount until at least February of 2016. The 2013 lease was admitted into evidence over defense objection that the complaint solely alleged the parties had an oral contract. Appellants' counsel concedes that their sole claim for recovery in this matter was based on an oral contract and stated that the 2013 written lease was presented "simply by way of background to show the relationship that the defendant had with the Subers." (2/12/20 Tr., pp. 19-20.) On appeal, Appellants state in their brief, "[b]ecause Mose Suber is deceased and neither Plaintiff-Appellant Laronica Vaughn nor her brother, Darvis, were present when the lease was signed, it was not proven that this was, in fact, a lease between those two individuals." (Appellants' Brf., pp. 8-9.)

{¶33} In addition to these concessions by counsel, Appellee has denied that any written lease was ever signed between the parties. Appellee has consistently claimed only an oral lease-to-purchase agreement existed and that it was established between Appellee and Mose in 2011. Despite the evidence in the record of an apparently valid 2013 lease, Appellants never asked Appellee Oliver about the 2013 lease on cross-examination and failed to challenge Appellee Oliver about his signature, which appears on the lease. Further, Appellants never raised the issue of whether an oral purchase agreement is valid, pursuant to the statute of frauds at trial.

{¶34} Appellants chose to proceed under an oral contract theory that Vaughn and Appellee allegedly agreed to in January of 2016. The trial court clearly found Vaughn's testimony that she entered into an oral contract with Appellee prior to her mother's death was not credible. The court also determined that Vaughn was not appointed administratrix of her mother's estate until after the Property at issue had entered into foreclosure. Once the Property was foreclosed, Vaughn would have no authority to enter a lease for the Property. Appellants did not raise any other basis for recovery, choosing to forego what appears to be an obvious issue regarding holdover tenancy once the written lease agreement expired. The trial court, and this Court, have no duty to frame and pursue Appellants' case for them. They chose to pursue relief only on the basis of an alleged oral contract entered by Vaughn in January 2016, and the trial court committed no error in determining that the evidence did not support this claim.

{¶35} Appellants' first assignment of error has no merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

> The Trial Court's Judgment that Defendant Julius Oliver did not owe rent to Plaintiff Super Subers' Realty, Ltd. was against the Manifest Weight of the Evidence.

{¶36} Appellants contend the trial court's judgment is against the manifest weight of the evidence.

{¶37} The manifest weight standard of review applies to both criminal and civil judgments requiring clear and convincing evidence. *Eastley v. Volkman,* 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 17.

{¶38} "In weighing the evidence, the court of appeals must be mindful of the presumption in favor of the finder of fact." *Eastley,* ¶ 21. A judgment supported by some competent, credible evidence going to all the essential elements of the case will not be reversed for being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Const. Co.,* 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus. Moreover, the trier of fact is in the best position to weigh the evidence presented and judge the credibility of witnesses by observing their gestures, voice inflections, and demeanor. *Seasons Coal Co. v. Cleveland,* 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). The finder of fact is free to believe some, all or none of the testimony presented by each witness and can decide between credible and incredible parts of witness testimony. *State v. Mastel,* 26 Ohio St.2d 170, 176, 270 N.E.2d 650 (1971). When presented with two fairly reasonable perspectives regarding the evidence or with two conflicting versions of events, neither of which can be ruled out as unbelievable, we will not choose which one is more credible. *State v. Gore*, 131 Ohio App.3d 197, 201, 722 N.E.2d 125 (7th Dist.1999).

{¶39} Relying on the factors promulgated by the Eighth District in *Abrams v. Siegel,* 166 Ohio App.3d 230, 2006-Ohio-1728, 850 N.E.2d 99, ¶ 47 (8th Dist.), Appellants contend Appellee's testimony should not have been given much weight; that the evidence presented by Appellants unequivocally demonstrated that the parties had an oral month-to-month lease and are entitled to rent payments from February of 2016 to February of 2017.

{¶40} Based on our determination of Appellants' first assignment of error, this assignment must also fail. While we note that there was evidence introduced into this record that may have provided a basis for relief on the theory of a holdover tenancy, this

theory was explicitly omitted from trial. Appellants' sole basis in seeking relief was their contention that a valid oral agreement for lease of the Property had been entered between Vaughn and Oliver in February of 2016 using Vaughn's power of attorney over Delores. The trial court determined Vaughn's testimony in this regard, the sole evidence supporting this claim, was not credible. As Vaughn did not obtain any legal power over Delores' estate until after she was appointed administratrix, and the Property in question had already entered foreclosure, Vaughn had no standing or ability to enter into a lease for the Property at that time.

{¶41} Again, the sole evidence to support the sole theory on which Appellants based their right to recovery was Vaughn's testimony. The trial court has the power to decide credibility issues, and decided against Appellants. This determination by the court is not against the manifest weight of the evidence, here. While Oliver also had credibility issues, in that he contended he had a lease-to-own agreement with Mose dating back to 2011, his testimony is irrelevant to Appellants' theory of the case. Again, Appellants chose to solely pursue relief based on an alleged oral contract entered in 2016 between Vaughn and Oliver, and the trial court correctly found no credible evidence in support. While other legal theories could possibly have been pursued in this matter, they were not. The court has no duty to frame the parties' case for them.

{¶42} Appellants' second assignment of error is without merit and is overruled.

{¶43} Based on the foregoing, Appellants' assignments of error have no merit. The judgment of the trial court is affirmed in full in this matter.

Robb, J., concurs.

D'Apolito, 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 Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellants.

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.