[Cite as *Kanna v. Hosseinipour,* 2015-Ohio-2938.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

REKHA KANNA

Plaintiff-Appellee

-vs-

MORTEZA HOSSEINIPOUR

Defendant-Appellant

JUDGES:
Hon. W. Scott Gwin, P. J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. 14 CAE 10 0071

O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal from the Court of Common Pleas, Case No. 12 CV H 10 1165
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	July 21, 2015

APPEARANCES:

For Plaintiff-Appellee

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Wise, J.

{¶1}. Appellant Morteza Hosseinipour appeals the decision of the Court of Common Pleas, Delaware County, regarding a dispute with Appellee Rekha Kanna over a failed real estate investment. The relevant facts leading to this appeal are as follows.

{¶2}. In December 2006, Appellant Hosseinipour and his then-girlfriend, Ellyse Yuan, jointly purchased a parcel of residential real estate on Seldom Seen Road in Delaware County as an investment or "flip" property. Yuan thereafter apparently lost interest in the project. After some remodeling work had been completed on the residence, Appellee Kanna entered the picture and purchased Yuan's interest in the Seldom Seen property via an oral contract. On July 9, 2007, appellee, to complete her investment, tendered a $5,357.06 check to appellant and a $49,642.94 check to Yuan.

{¶3}. According to appellant, a written document memorializing the 2007 oral agreement was executed on March 18, 2011.

{¶4}. Despite various efforts by appellant to renovate the house, the Seldom Seen property had not been successfully resold as of the present appeal.

{¶5}. On October 4, 2012, appellee filed a complaint against appellant in the Delaware County Court of Common Pleas, setting forth claims of breach of contract, declaratory action, partition of real estate, fraud, and unjust enrichment.

{¶6}. On November 26, 2012, appellant filed an answer and certain counterclaims.

{¶7}. On December 26, 2012, appellee filed an answer to the counterclaims.

{¶8}. The matter proceeded to a bench trial on February 27-28 and March 11-12, 2014.

{¶9}. On October 1, 2014, the trial court issued a five-page judgment entry which, among other things, found the existence of a 2007 oral contract for a "50/50 partnership," ordered partition of the property, and ordered certain reimbursements to appellant upon the future sale of the property. In said decision, the court made no direct mention or analysis of any written agreement or contract.

{¶10}. On October 29, 2014, appellant filed a notice of appeal. He herein raises the following two Assignments of Error:

{¶11}. "I. THE COURT ERRED WHEN IT DISMISSED THE EXECUTED CONTRACT INTEGRATED IN 2011 WHEN IT CHOSE TO CONSTRUE THE ORIGINAL ORAL CONTRACT IN 2007 INSTEAD.

{¶12}. "II. THE COURT ERRED WHEN IT ORDERED ONE HALF OF ALL EXPENSES TO BE PAID TO DEFENDANT FROM PROCEEDS OF SALE WHEN DEFENDANT PAID FOR ALL EXPENSES AND IS DUE FULL REIMBURSEMENT OF HIS EXPENSES NOT ONE HALF OF IT FROM THE PROCEEDS."

I.

{¶13}. In his First Assignment of Error, appellant contends the trial court erred in basing its decision on the 2007 oral contract rather than the purported 2011 written contract. We disagree.

{¶14}. As an appellate court, we are not the trier of fact; instead, our role is to determine whether there is relevant, competent, and credible evidence upon which the factfinder could base his or her judgment. *Tennant v. Martin–Auer,* 188 Ohio App.3d 768, 936 N.E.2d 1013, 2010–Ohio–3489, ¶ 16, citing *Cross Truck v. Jeffries*, 5th Dist. Stark No. CA–5758, 1982 WL 2911. A reviewing court, in addressing a civil manifest

weight challenge, must determine whether the finder of fact, in resolving conflicts in the evidence, clearly lost his or her way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *See Hunter v. Green,* Coshocton App.No. 12–CA–2, 2012–Ohio–5801, 2012 WL 6094172, ¶ 25.

{¶15}. Generally, agreements for the sale of real estate come within the Statute of Frauds and must be in writing and signed by the party to be charged. *See Shimko v. Marks,* 91 Ohio App.3d 458, 461, 632 N.E.2d 990 (5th Dist. 1993), citing R.C. 1335.05. "However, part performance of an oral contract for the sale of real estate can be sufficient to remove the contract from the operation of the statute." *Id*., citing *Delfino v. Paul Davies Chevrolet, Inc.* (1965), 2 Ohio St.2d 282, 31 O.O.2d 557, 209 N.E.2d 194.

{¶16}. We initially note there is no transcript of any of the pertinent evidentiary hearings in the record before us.[1] Pursuant to App.R. 9(B)(1), "[i]t is the obligation of the appellant to ensure that the proceedings the appellant considers necessary for inclusion in the record, however those proceedings were recorded, are transcribed in a form that meets the specifications of App.R. 9(B)(6)." In such a situation, we generally must presume the regularity of the proceedings below and affirm. *See, e.g., State v. Myers,* 5th Dist. Richland No. 2003CA0062, 2004–Ohio–3715, ¶ 14, citing *Knapp v. Edwards Laboratories.* (1980), 61 Ohio St.2d 197, 400 N.E.2d 384.

{¶17}. In support of his present argument, appellant attempts to challenge or point out, *inter alia*, purported testimony such as appellee's claim that she did not read or did not comprehend the 2011 document, as well as appellant's statement that the

[1] Appellant, who is presently incarcerated in Ohio for an unrelated crime, sought preparation of a transcript at the State's expense. The trial court denied the request because the underlying action was civil and did not involve the State of Ohio as a party.

parties agreed to and accepted certain terms and conditions in 2007. *See* Appellant's Brief at 8, 9. Appellant also argues that "[t]here is no evidence that Hosseinipour led Kanna to believe that she was signing a document that said anything different from what the document actually said." *Id.* at 8.

{¶18}. We thus find appellant's arguments in this assigned error are contingent on trial testimony pertaining to the specifics of the parties' negotiations and contracting activity. We are therefore compelled to invoke the rule of *Knapp*.

{¶19}. Accordingly, appellant's First Assignment of Error is overruled.

II.

{¶20}. In his Second Assignment of Error, appellant contends the trial court erred in its methodology of ordering appellee to reimburse him for one-half of certain expenses he may have paid for upkeep of the property. We disagree.

{¶21}. In the judgment entry under appeal in the case sub judice, the trial court essentially ordered that upon the sale of the property, after the payment of court costs, costs of sale, and unpaid real estate taxes, appellant was to receive "1/2 of all expenses over and above the expenses itemized in Exhibit 3 incurred after July 9, 2007." Judgment Entry at 4. After that, the "balance of the sales proceeds shall be split equally 50/50." *Id.*

{¶22}. Appellant maintains that because the court-ordered expense reimbursement to him comes "off the top," *i.e.*, before the split of the proceeds, the trial court's prioritization results in appellee not being required to reimburse appellant from her actual share of the proceeds. While appellant's argument at first blush may have some mathematical merit, we note “[t]he fact-finder has the discretion to award

damages within the range of evidence presented at trial, so long as a rational basis exists for its calculation." *Andrew v. Power Marketing Direct, Inc.*, 10th Dist. Franklin No. 11AP–603, 2012-Ohio-4371, ¶ 70, quoting *Sharifi v. Steen Automotive, LLC,* 370 S.W.3d 126 (Tex.App. 2012). Moreover, we again emphasize that in the absence of a transcript, an appellate court must presume regularity in the trial court proceedings. *See Hartt v. Munobe* (1993), 67 Ohio St.3d 3, 7, 615 N.E.2d 617. As such, we are not inclined to disturb the specifics of the trial court's remedy of reimbursement in this instance.

{¶23}. Appellant's Second Assignment of Error is therefore overruled.

{¶24}. For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Delaware County, Ohio, is hereby affirmed.

By: Wise, J.

Gwin, P. J., and

Farmer, J., concur.

JWW/d 0625