

COURT OF APPEALS  
KNOX COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

DEBORAH AND WILLIAM  
EDMINISTER, TRUSTEES

Plaintiffs-Appellees

-vs-

MICHAEL R. LYON

Defendant-Appellant

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. W. Scott Gwin, J.

Hon. Craig R. Baldwin, J.

Case No. 16CA000006

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Mount Vernon  
Municipal Court, Case No. 15 CVG  
00845

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

August 29, 2016

APPEARANCES:

For Plaintiffs-Appellees

For Defendant-Appellant

NICHOLAS M. FIORILLI  
112 North Main Street  
Mount Vernon, OH 43050

JOHN S. DILTS  
28 South Park Street  
Mansfield, OH 44902

*Farmer, P.J.*

{¶1} On February 10, 2012, Harry and Virginia Temple executed durable power of attorneys naming their daughter, appellee, Deborah Edminister, as their attorney-in-fact.

{¶2} On March 19, 2012, the Temples, through appellee, created the Temple Investment Property Trust and the Temple Keystone Inheritance Trust. On same date, the Temples, through appellee, executed quit claim deeds to transfer their real estate to the trusts.

{¶3} Appellant, Michael Lyon, was farming the real estate that had been transferred to the trust. He paid rent to farm the land from 2012 through 2014.

{¶4} On November 5, 2014, appellee, together with her husband, William Edminister, sent a notice to appellant to remove all of his equipment, feed, and livestock from the property by March 1, 2015, as they were putting the farmland out to bid for rent for the 2015 season.

{¶5} Appellant refused to vacate the farmland as he was in possession of a lease that granted him the right to farm the land for five years at a set annual rental rate. The lease was dated August 21, 2012, and contained the signatures of appellant, Harry Temple, and Elaine Wilson as notary public. Appellant continued to farm the land and paid rent for 2015. Appellees did not accept payment.

{¶6} On October 15, 2015, appellees served appellant with a three day notice to leave the premises. Appellant did not leave the premises and planted a wheat crop.

{¶7} On November 12, 2015, appellees filed a forcible entry and detainer complaint against appellant. Appellant filed an answer and counterclaim on December 7, 2015, alleging malice on the part of appellees.

{¶8} A bench trial was held on February 17, 2016. By journal entry filed February 29, 2016, the trial court found in favor of appellees, finding although the lease was defectively executed, appellant's rent payments were accepted until 2015 and therefore the lease was an equitable or implied lease, creating by its provisions a year-to-year tenancy. The trial court found appellees effectively communicated their desire to terminate the equitable lease effective January 1, 2015, and granted a writ of restitution and ordered appellant to vacate the premises by March 14, 2016. The trial court also found in favor of appellees on appellant's counterclaim.

{¶9} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶10} "THE COURT LACKED JURISDICTION TO ENTER A RULING OF EVICTION WHEN THE PLAINTIFF'S ACCEPTED AND RETAINED PAYMENT FROM THE DEFENDANT FOR JANUARY, FEBRUARY AND MARCH OF 2016 AFTER PROVIDING A 3 DAY NOTICE TO THE DEFENDANT ON OCTOBER 15, 2015."

II

{¶11} "THE COURT ERRED WHEN IT DETERMINED THAT THE EVICTION HEREIN WAS PROPER WHEN NON-PAYMENT OF RENT IS NOT THE ISSUE, 2 NOTICES NEED TO BE PROVIDED. THE NOTICES NEED TO BE PROVIDED BY

THE ACTUAL OWNERS OF THE PROPERTY, THE TRUST DESIGNEES OR BY THE INDIVIDUALS REQUIRED BY THE TRUST DOCUMENT."

III

{¶12} "THE COURT ERRED WHEN IT DETERMINED THAT THE LEASE HEREIN WAS NOT VALID AND ENFORCEABLE WHEN IT WAS SIGNED BY THE OWNER OF THE PROPERTY, AT THE TIME, BY THE DEFENDANT AND A NOTARY PUBLIC, WHO ACKNOWLEDGED THAT SHE DID INDEED SIGN THAT DOCUMENTATION. FURTHER, THE PLAINTIFF ACKNOWLEDGED THAT THE SIGNATURE ON THE DOCUMENT WAS INDEED HER FATHER'S AND THAT ALL OF THE PAYMENTS HAD BEEN MADE UNDER THE AGREEMENT BY THE DEFENDANT."

IV

{¶13} "THE COURT ERRED WHEN IT DETERMINED THE DEFENDANT COULD BE EVICTED DURING THE LEASE TERM DUE TO NO ACTUAL LEASE VIOLATION BUT MERELY BECAUSE THE PLAINTIFF'S WANTED MORE RENT."

{¶14} Before addressing the assignments of error, it is important to note the trial court's specific findings and conclusions in its February 29, 2016 journal entry leading to its decision to issue the writ of restitution and evict appellant from the premises:

{¶15} 1) The written lease to farm the land was invalid because it failed to have a proper notary acknowledgment pursuant to R.C.147.53.

{¶16} 2) Because appellees accepted appellant's payment until 2015, the lease became an equitable or implied lease.

{¶17} 3) The duration of the equitable or implied lease is determined by the provisions for payment of rent. The lease provided for annual rent payments thereby creating a year-to-year tenancy.

{¶18} 4) On November 5, 2014, appellees notified appellant of their desire to accept new bids to farm the premises for 2015.

{¶19} 5) Appellees did not accept appellant's rent payments for 2015.

{¶20} 6) On October 15, 2015, appellees served appellant with a three day notice of eviction and thereafter, appellant planted a new crop.

{¶21} 7) The termination date of the equitable or implied lease was January 1, 2015.

I

{¶22} Appellant claims the trial court lacked jurisdiction to order the eviction because appellees accepted and retained payments for January, February, and March of 2016 after serving the October 15, 2015 three day notice. We disagree.

{¶23} The bench trial on the matter was held on February 17, 2016. Appellant's counsel admitted that appellees received four checks from appellant in 2015 "that they sent back." T. at 58. Appellant's counsel explained appellant "still owes for '15 because the checks weren't cashed, but they were timely presented, and '16 and '17, which have not - - we've not made any payment this year." *Id.* Appellant then stated he had paid for January, February, and March. *Id.* When asked if that check was returned, appellees' counsel stated "I have it here." *Id.* The parties then entered into the following stipulation (T. at 58-59):

THE COURT: Do we have a stipulation that he made payments for 2012, '13 and '14 and attempted to make payments for '15 but the 2015 payments were returned or going to be returned?

MR. FIORILLI [APPELLEES' COUNSEL]: Yes.

THE COURT: Is that a stipulation?

MR. FIORILLI: Yes.

MR. DILTS [APPELLANT'S COUNSEL]: Yes. And they also have the payment for 2016 - -

THE COURT: All right.

MR. DILTS: - - here is my understanding.

THE COURT: Okay.

{¶24} We find this stipulation resolves the issue and demonstrates that although the payments were tendered, they were not accepted. Therefore, the trial court had jurisdiction to entertain the forcible entry and detainer action.

{¶25} Assignment of Error I is denied.

II

{¶26} Appellant claims the November 5, 2014 notice of termination of tenancy was invalid because it was not provided by the proper parties in violation of R.C. 5321.17. We disagree.

{¶27} R.C. 5321.17 governs termination of periodic tenancies, but pertains to residential premises. *Maggiore v. Kovach*, 101 Ohio St.3d 184, 2004-Ohio-722. The

lease sub judice is for the rent of land to farm in a commercial setting and is governed by R.C. 1923.04 under forcible entry and detainer actions and states the following:

Except as provided in division (B) or (C) of this section, a party desiring to commence an action under this chapter shall notify the adverse party to leave the premises, for the possession of which the action is about to be brought, three or more days before beginning the action, by certified mail, return receipt requested, or by handing a written copy of the notice to the defendant in person, or by leaving it at the defendant's usual place of abode or at the premises from which the defendant is sought to be evicted.

{¶28} In his brief at 5, appellant argues Defendant's Exhibit B, The Temple Keystone Inheritance Trust, Memorandum of Trust Real Estate, provides that a trust advisor must approve leases on the subject land, the Trust Advisor being Thom L. Cooper. Because appellees did not obtain the trust advisor's approval, appellant argues the November 5, 2014 termination notice was in direct violation of the trust agreement. Appellant's Brief at 6.

{¶29} Because R.C. 5321.17 is inapplicable to this case, we find the November 5, 2014 termination notice to be a non sequitur. Nevertheless, we note it is Defendant's Exhibit D, Memorandum of Trust Financial Institutions, executed on March 19, 2012, that contains the approval provision at ¶ 9 and 10. However, Defendant's Exhibit B, recorded August 4, 2015, specifically states at ¶ 10 the trust advisor's approval was no

longer required after the passing of the Temples, who passed in May and June of 2015. T. at 21.

{¶30} Appellees sent a three day notice to appellant on October 15, 2015, served by certified mail. T. at 14-15; Plaintiff's Exhibit 3. The forcible entry and detainer action was filed twenty-eight days later on November 12, 2015.

{¶31} Upon review, we find appellees complied with the requirements of R.C. 1923.04.

{¶32} Assignment of Error II is denied.

### III

{¶33} Appellant claims the trial court erred in determining the lease to farm the land was not properly notarized and therefore invalid. We disagree.

{¶34} R.C. 147.53 governs content of acknowledgment and states:

The person taking an acknowledgment shall certify that:

(A) The person acknowledging appeared before him and acknowledged he executed the instrument;

(B) The person acknowledging was known to the person taking the acknowledgment, or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

{¶35} The trial court was the trier of fact and had the ultimate responsibility to resolve all factual and credibility issues. We note the weight to be given to the evidence

and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison*, 49 Ohio St.3d 182 (1990). The trier of fact "has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page." *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 1997-Ohio-260.

{¶36} Elaine Wilson, the notary on the lease signed by Harry Temple and appellant, testified she had no recollection of notarizing Harry Temple's signature or ever meeting him. T. at 36-37, 40; Plaintiff's Exhibit 1. Appellant testified he saw Harry Temple sign the lease, and Harry Temple went with him to sign the lease. T. at 46, 47, 51. The trial court had conflicting evidence on the issue and some evidence via Ms. Wilson that appellant was aware of a possible defect with the notarization. T. at 37-39.

{¶37} Upon review, we find the trial court did not err in concluding the lease was defective and therefore invalid pursuant to R.C. 147.53.

{¶38} Assignment of Error III is denied.

#### IV

{¶39} Appellant claims the trial court erred in ordering the eviction when no lease violations existed and appellees merely wanted more rent. We disagree.

{¶40} In support of his arguments, appellant again invoked R.C. 5321.17 which we have determined in Assignment of Error II not to be applicable sub judice.

{¶41} Based upon our decision in Assignment of Error III that the lease was invalid and the trial court correctly finding a year-to-year tenancy had been created, we find appellees were free to terminate the lease at-will at the commencement of the year tenancy.

{¶42} Assignment of Error IV is denied.

{¶43} The judgment of the Mount Vernon Municipal Court of Knox County, Ohio  
is hereby affirmed.

By Farmer, P.J.

Gwin, J. and

Baldwin, J. concur.

SGF/sg 812