[Cite as *Chinnock v. Kokinda*, 2011-Ohio-1151.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

WILLIAM F. CHINNOCK	C. A. No. 10CA009863
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
JOSEPH A. KOKINDA, et al.	AVON LAKE MUNICIPAL COURT COUNTY OF LORAIN, OHIO
Appellees	CASE No. CVG 1000 296

DECISION AND JOURNAL ENTRY

Dated: March 14, 2011

WHITMORE, Judge.

{¶1} Plaintiff-Appellant, William Chinnock, appeals from the judgment of the Avon Lake Municipal Court. This Court affirms.

I

{¶2} On June 8, 2010, Chinnock filed a forcible entry and detainer complaint against Defendant-Appellees, Joseph and Deborah Kokinda ("the Kokindas"), pursuant to a land contract they signed for the purchase of Chinnock's property in Avon, Ohio. The Kokindas filed a motion to dismiss on June 18, 2010. According to the Kokindas, Chinnock served them with a facially deficient three-day notice, which was not printed or written in a conspicuous manner in accordance with R.C. 1923.04(A). The trial court held a hearing on the motion to dismiss and determined that it lacked jurisdiction to hear the complaint because the three-day notice did not comply with R.C. 1923.04. Consequently, the court granted the Kokindas' motion to dismiss.

{¶3} Chinnock now appeals from the trial court's dismissal and raises five assignments of error for our review. For ease of analysis, we consolidate the assignments of error.

II

Assignment of Error Number One

"THE TRIAL COURT'S DISMISSAL OF THE CASE IS CONTRARY TO LAW BECAUSE IT VIOLATES THE CARDINAL RULE OF LAW THAT COURTS ARE MANDATED TO APPLY LEGISLATIVE ENACTMENTS TO EFFECTUATE THE INTENT AND PURPOSE OF THE LEGISLATURE TO BALANCE AND RESPECT BOTH THE PRIVATE PROPERTY RIGHTS OF THE OWNER AND THE OCCUPIER'S DUE PROCESS NOTICE RIGHTS[.]"

Assignment of Error Number Two

"THE TRIAL COURT'S DISMISSAL OF THE CASE IS CONTRARY TO LAW BECAUSE IT VIOLATES THE RULE OF LAW THAT COURTS ARE MANDATED TO APPLY LEGISLATIVE ENACTMENTS TO EFFECTUATE A REASONABLE AND JUST RESULT[.]"

Assignment of Error Number Three

"THE TRIAL COURT'S DECISION TO DISMISS THE CASE IS CONTRARY TO LAW BECAUSE IT VIOLATES THE RULE OF LAW THAT COURTS ARE MANDATED TO APPLY STATUTORY ENACTMENTS TO AVOID UNREASONABLE OR ABSURD CONSEQUENCES[.]"

Assignment of Error Number Four

"THE TRIAL COURT'S DECISION TO DISMISS THE CASE IS CONTRARY TO LAW BECAUSE IT VIOLATES THE RULE OF LAW THAT COURTS ARE MANDATED TO APPLY LEGAL EDICTS TO EFFECTUATE PUBLIC POLICY, INCLUDING THE CONSTITUTIONAL GUARANTEES THAT (A) PRIVATE PROPERTY IS SACRED AND UNALIENABLE IN OUR FREE SOCIETY, (B) FOR EVERY WRONG THERE IS A REMEDY; AND (C) EVERY MAN IS ENTITLED TO HIS DAY IN COURT[.]"

Assignment of Error Number Five

"THE TRIAL COURT'S DECISION TO DISMISS THE CASE IS CONTRARY TO LAW BECAUSE IT VIOLATES THE RULE OF LAW THAT COURTS MUST DECIDE CASES UPON THEIR MERITS AND NOT UPON TECHNICALITIES[.]"

{¶4} In all of his assignments of error, Chinnock argues that the trial court erred by dismissing his complaint on the basis that his three-day notice did not comply with R.C. 1923.04(A). He further argues that the Kokindas were not prejudiced by any alleged inadequacy in the three-day notice because they were represented by counsel at all relevant times. We disagree.

{¶5} This Court reviews de novo a trial court's decision to grant a motion to dismiss. *Niepsuj v. Summa Health System*, 9th Dist. Nos. 21557 & 21559, 2004-Ohio-115, at ¶5. "A de novo review requires an independent review of the trial court's decision without any deference to the trial court's determination." *State v. Consilio*, 9th Dist. No. 22761, 2006-Ohio-649, at ¶4.

{¶6} R.C. 1923.04(A) provides as follows:

> "[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.
>
> "Every notice given under this section by a landlord to recover residential premises shall contain the following language *printed or written in a conspicuous manner*: 'You are being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance.'" (Emphasis added.)

In defining the term "conspicuous," this Court has relied upon the definition set forth in Ohio's Uniform Commercial Code. *Administrator of Veteran Affairs v. Jackson* (1987), 41 Ohio App.3d 274, 276. That definition reads, in relevant part, as follows:

> "A term or clause is 'conspicuous' when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is 'conspicuous.' Language in the body of a form is 'conspicuous' if it is in larger or other contrasting type or color." R.C. 1301.01(J).

"[P]roper notice [under R.C. 1923.04] is jurisdictional in a forcible entry and detainer action." *J&M Trailer Court v. Dissette* (Sept. 9, 1987), 9th Dist. No. 1556, at *1.

{¶7} The three-day notice that Chinnock sent the Kokindas contains the language required under R.C. 1923.04(A), but sets forth the language in the same type, color, and font as the remainder of the notice. Pursuant to R.C. 1301.01(J), Chinnock's notice was not conspicuous. See *Jackson*, 41 Ohio App.3d at 276 (applying R.C. 1301.01(J) definition of "conspicuous" in forcible entry and detainer action). Specifically, the required R.C. 1923.04(A) language was in the body of the letter that he sent to the Kokindas and was not "in larger or other contrasting type or color." R.C. 1301.01(J). As such, the trial court correctly concluded that the three-day notice here did not comply with R.C. 1923.04(A).

{¶8} Chinnock argues that, even if the notice did not comply with R.C. 1923.04(A), the Kokindas were not prejudiced by the inadequate notice. As previously noted, however, proper notice is a jurisdictional requirement in forcible entry and detainer actions. *J&M Trailer Court*, at *1. The trial court, therefore, did not err by granting the Kokindas' motion to dismiss.

III

{¶9} Chinnock's assignments of error are overruled. The judgment of the Avon Lake Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Avon Lake Municipal Court, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

MOORE, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

JOHN C. FAZIO, Attorney at Law, for Appellant.

WILLIAM F. CHINNOCK, pro se, Appellant.

BRIAN G. DATTILO, Attorney at Law, for Appellees.