

IN THE COURT OF APPEALS FOR MIAMI COUNTY, OHIO

FEDERAL NATIONAL MORTGAGE
ASSOCIATION

:

Plaintiff-Appellee

:

C.A. CASE NO. 2010 CA 8

v.

:

T.C. NO. 08-890

JAMES FLETCHER, et al.

:

(Civil appeal from
Common Pleas Court)

Defendant-Appellant

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.....

OPINION

Rendered on the 13th day of August, 2010.

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ADAM R. FOGELMAN, Atty. Reg. No. 0073970, 120 East Fourth Street, 8th Floor,
Cincinnati, Ohio 45202

Attorney for Plaintiff-Appellee

JAMES FLETCHER, 824 Devonshire Avenue, Tipp City, Ohio 45371

Defendant-Appellant

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FROELICH, J.

{¶ 1} James Fletcher appeals, pro se, from a judgment of the Miami County Court of Common Pleas, which ordered him to vacate the property at 824 Devonshire in Tipp City after concluding, in a forcible entry and detainer action, that he had failed to tender the amount owed to purchase the property. For the following reasons, the judgment of the trial

court will be affirmed.

I

{¶ 2} The Federal National Mortgage Association (“Fannie Mae”) purchased the property located at 824 Devonshire at a Sheriff’s auction on June 6, 2007, and the sale was confirmed on July 12, 2007. On January 29, 2008, Fannie Mae filed a complaint for forcible entry and detainer against Fletcher in the Miami County Municipal Court in order to remove him from the house.¹ Fletcher filed a counterclaim for \$34,600, an amount he had apparently paid toward the purchase of the house. Because the amount of the counterclaim exceeded the municipal court’s jurisdiction, the municipal court transferred the case to the Miami County Court of Common Pleas.

{¶ 3} Several continuances delayed the hearing on the forcible entry and detainer action. On September 21, 2009, the trial court filed an order to show cause why the action should not be dismissed for want of prosecution. In response, on October 1, 2009, Fannie Mae filed a Motion for Leave to Supplement Complaint under Civ.R. 15(A) for the Purpose of Seeking Enforcement of a Settlement Agreement. Fannie Mae alleged that the parties had reached an agreement settling their dispute on May 7, 2009, but that Fletcher had refused to sign the formal documents encompassing the terms of the settlement. The trial court granted leave for Fannie Mae to supplement its complaint and scheduled a hearing. Before the hearing, Fletcher’s attorney filed a motion to withdraw because Fletcher had “failed to

¹A co-defendant, Taunna Thornton, was also named in the lower court proceedings, but she is not involved in this appeal.

cooperate.” Fletcher was given a continuance to obtain other counsel, but he did not hire another attorney. A hearing was held on November 2, 2009, after Fannie Mae’s motion to supplement its complaint had been granted, but before the complaint had actually been supplemented. Because Fannie Mae had not yet supplemented its complaint or requested enforcement of the settlement when the hearing was held, we will refer to the November 2, 2009, hearing as a settlement conference, rather than a hearing on the enforcement of the settlement.

{¶ 4} Fletcher represented himself at the settlement conference. Counsel for Fannie Mae stated his understanding that an agreement had been reached with Fletcher, through his former attorney, but that he (Fletcher) had engaged in delay and had not executed the agreement, such that “judicial intervention” was required to either enforce the agreement or allow Fannie Mae to proceed with an eviction. According to an Entry of Settlement subsequently filed by Fannie Mae, the parties’ agreement that day was that Fletcher would have the right to tender \$311,400 in exchange for a quit claim deed from Fannie Mae for the property at 824 Devonshire. “This amount was arrived at by taking an agreed upon purchase price for the Property of \$346,000 and deducting [Fletcher’s] 2007 non-refundable deposit in the amount of \$34,600.00, which leaves [Fletcher] owing \$311,400.00 under the Purchase Contract.”

{¶ 5} In describing his dissatisfaction with the proposed terms of the settlement at the hearing, Fletcher stated that the agreement did not state “when the deed would be available ***, which was the most important aspect [in] our view.” In response, the court commented that a person would never get the deed until he paid his money. Fletcher noted

that “we have traditional financing that’s based on the mortgage” and that a deed would have to be available to the lender at the closing. Fannie Mae’s attorney indicated that Fannie Mae had understood from its dealings with Fletcher’s attorney that he needed a traditional closing, and Fannie Mae was willing have such a closing. The court seemed to conclude that the form of the proposed settlement agreement, not its substance, was the source of Fletcher’s objection, because, for the purpose of obtaining financing, he wanted something that looked more like a purchase agreement than a settlement agreement.

{¶ 6} When the court asked Fletcher whether he agreed with the rest of the terms of the purported settlement, he stated that he did not agree with the terms, but could not articulate his problems with the terms at that time.² The court asked Fletcher when he thought the transaction should be completed, and Fletcher said January 10, 2010. Because January 10 was a Sunday, the trial court ordered that Fletcher tender \$311,400 “on or before January the 11th , 2010 *** or *** Mr. Fletcher will have to vacate the premises.”

{¶ 7} On December 29, 2009, the trial court filed an Entry of Settlement, prepared by Fannie Mae, which reflected the terms discussed at the hearing. As outlined above, the court instructed Fletcher to pay Fannie Mae \$311,400 or vacate the premises by January 18, 2010.³ On January 28, 2010, Fannie Mae notified the court that Fletcher had failed to comply with the Entry of Settlement. The trial court ordered Fletcher to vacate the property, granted Fannie Mae possession of the property, and dismissed Fletcher’s counterclaims.

²On appeal. Fletcher claims that the purchase price fluctuated during the parties’ negotiations, but he had no objection to the \$311,400 payment that Fannie Mae has sought since the time of the hearing.

³It is unclear why the Entry set January 18 as the deadline, instead of

Fletcher filed a notice of appeal.

{¶ 8} Fletcher raises two assignments of error on appeal.

II

{¶ 9} The first assignment of error states:

{¶ 10} “THE TRIAL COURT ERRED IN NOT HOLDING AN EVIDENTIARY HEARING TO RESOLVE DISPUTES BEFORE ENFORCING SETTLEMENT.”

{¶ 11} Fletcher claims that the trial court was required to conduct a hearing with respect to the existence of a settlement agreement and its terms before enforcing such an agreement.

{¶ 12} When an appeal presents an evidentiary question, this court will not overturn the trial court’s finding if there was sufficient evidence to support such finding. *Brotherhood v. Gonzalez*, Mercer App. No. 10-06-33, 2007-Ohio-3340, ¶9, citing *Chirchiglia v. Bur. Of Workers Comp.* (2000), 138 Ohio App.3d 676, 679. When the dispute is a question of law, an appellate court must review the decision de novo to determine whether the trial court’s decision is based upon an erroneous standard or a misconstruction of the law. *Id.*, citing *Continental W. Condominium Unit Owners Assn. v. Howard E. Ferguson, Inc.* (1995), 74 Ohio St.3d 501, 502, 1996-Ohio-158.

{¶ 13} Based on the transcript of the proceedings and a lack of any filed Amended Complaint, we construe the hearing in the trial court as a settlement conference, rather than a hearing to enforce the settlement. Apparently, since the parties had been either unable to

reach or consummate a settlement, the trial court attempted to, and held that it did, resolve the disputed issues.

{¶ 14} It is unclear from Fletcher's argument how this hearing – or its results – differed from the type of hearing – or results – to which he argues he was entitled. What came out of the settlement hearing was the same as the agreement allegedly entered into months earlier. Fletcher acknowledged at the hearing that he had lived at 824 Devonshire for years without making any payments beyond the \$34,600 he initially paid, and he did not dispute Fannie Mae's claim that he had agreed to pay the remaining \$311,400 or vacate the house. The only specific point on which Fletcher disputed the terms of what he perceived to be the original agreement and this settlement was that it did not specify the date or the manner in which the closing would occur and the "deed would be available for the lenders." The court's resolution of the dispute, however, did provide a date, to which the parties agreed, by which Fletcher's funds and Fannie Mae's deed were to be exchanged.

{¶ 15} The trial court expressed skepticism that Fletcher's concern about the timing and manner of the deed transfer represented a legitimate problem with the proposed settlement of the dispute. Indeed, Fannie Mae expressed its willingness to facilitate the type of closing that Fletcher wanted, and the court thought it was obvious that the deed would be transferred when Fletcher paid the money he owed at the closing. The trial court gave Fletcher an opportunity to present evidence regarding any legitimate dispute over the resolution of the dispute upon which the parties had previously agreed; it concluded that the one problem identified by Fletcher was not a credible problem and did not create a legitimate basis for failing to adopt the other terms on which the parties had agreed. The evidence

supported the trial court's finding that the terms agreed to by Fannie Mae and Fletcher constituted a fair and equitable resolution of the dispute. We will not disturb this conclusion on appeal.

{¶ 16} The first assignment of error is overruled.

III

{¶ 17} The second assignment of error states:

{¶ 18} "THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT."

{¶ 19} Fletcher contends on appeal that there was insufficient evidence that his attorney had authority to enter into a settlement agreement on his behalf and that the trial court should have held an evidentiary hearing on this issue.

{¶ 20} The trial court did not enforce a settlement agreement entered into by Fletcher's attorney. Rather, it resolved the parties' dispute based on the evidence presented at the settlement conference. Thus, even if Fletcher's attorney had acted outside his authority in negotiating with Fannie Mae, Fletcher suffered no harm as a result of those negotiations.

{¶ 21} We also note that, at no time before the settlement conference or at the settlement conference in the trial court did Fletcher even claim, let alone or present any evidence to establish, that his attorney had acted beyond the scope of his authority. We cannot address a matter on appeal that was not raised below. *Schade v. Carnegie Body Co.* (1982), 70 Ohio St.2d 207, 210; *Batteiger v. Deutsche*, Montgomery App. No. 21933,

2008-Ohio-1582, ¶34.

{¶ 22} The second assignment of error is overruled.

IV

{¶ 23} The judgment of the trial court will be affirmed.

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BROGAN, J. and FAIN, J., concur.

Copies mailed to:

Adam R. Fogelman
James Fletcher
Hon. Robert J. Lindeman