[Cite as *Myles v. Westbrooke Village Apts.*, 2010-Ohio-3775.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

ROBIN MYLES	:	
	:	Appellate Case No. 23554
Plaintiff-Appellant	:	
	:	Trial Court Case No. 09-CVF-326
v.	:	
	:	(Civil Appeal from Montgomery
WESTBROOKE VILLAGE APARTMENTS	:	County Court Area #1)
	:	
	:	
Defendant-Appellee	:	
	:	

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O P I N I O N

Rendered on the 13th day of August, 2010.

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Attorney for Defendant-Appellee

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FAIN, J.

{¶ 1} Plaintiff-appellant Robin Myles appeals from a judgment of the Montgomery County Municipal Court, Area One, denying her claim for "emotional stress" against defendant-appellee, Westbrooke Village Apartments.

{¶ 2} For the reasons set forth below, we affirm.

I

{¶ 3} On March 5, 2009, Myles, acting pro se, filed a complaint in small claims court. The complaint alleged as follows:

{¶ 4} "Emotional stress. Company claims I owe them $285.00 for last month rent I moved in 1-27-09. Co. Claims I owe for 2-1-09."

{¶ 5} Westbrooke, through counsel, filed an answer and a motion to transfer the matter from small claims court to the regular civil docket. The trial court granted the motion.

{¶ 6} Thereafter, trial was held before the court on June 29, 2009.[1] Myles presented the testimony of Orlando Mason. On direct examination, Mason testified that he helped Myles move out of the Westbrooke apartment on "January 27."[2] He testified that "shortly after January 27" he returned to the apartment to check for mail and found an eviction notice attached to the apartment door. On cross-examination, Mason testified that he is married to Myles.

{¶ 7} Myles then testified on her own behalf. She first stated that she did not properly turn in a thirty-day notice of her intent to vacate, but confusingly also stated that Westbrooke failed to properly enter her notice into the computer. She then stated, "I know I turned [the notice of intent to vacate] in." She then stated that she went in to the manager's office on January 18 and handed in her notice. Myles then stated "I don't know why I'm here today, to be honest." She then stated that

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[1] Myles has failed to provide a written transcript of the proceedings below, as required by the Rules of Appellate Procedure. Although not required to do so, we have reviewed the videotape of the proceedings.

[2] Mason did not testify as to the year.

Westbrooke gave her a bill noting that they had deducted her $100 deposit from the amount of rent the complex was claiming as due for February.

{¶ 8} Under cross-examination, Myles testified that she had moved out of the Westbrooke apartment by the end of the lease term in January 2009. She further claimed that she had turned in a notice of intent to vacate in December 2008. Finally, she testified that she turned in the apartment keys on January 27.

{¶ 9} Following her own testimony, Myles indicated that she had no other witnesses and rested her case. She did not attempt to submit any documentary evidence into the record.

{¶ 10} Westbrooke then presented the testimony of Lisa Orner, an employee of the apartment complex. According to Orner, in December 2008 Myles came to the office and indicated that she was interested in moving to a different apartment complex. Orner testified that she and Myles discussed the possibility of Myles moving into a different apartment with more amenities within the Westbrooke complex. Orner testified that Myles did not give a notice of intent to vacate at that time. Orner testified that Myles did present a notice of intent to vacate January 19, 2009. A copy of that notice, which was signed by Myles and Orner's manager, was admitted into evidence. According to Orner and the face of the document, Myles indicated her intent to "vacate the premises on or before February 18." Orner testified that she accepted the document and informed Myles that she would owe money for February rent. According to Orner, Myles did not vacate the apartment until February 18, 2009.

{¶ 11} Following this testimony, the defense rested and the matter was

deemed submitted. The trial court rendered judgment against Myles on her claim for relief. Myles appeals.

{¶ 12} Myles's appellate brief does not comply with the Rules of Appellate Procedure. Specifically, she fails to provide a table of contents, table of cases, a reference to the place in the record where the error is reflected, a statement of the case, or a statement of the facts as required by App.R. 16(A).

II

{¶ 13} Myles's First Assignment of Error state as follows:

{¶ 14} "THERE WERE UNJUSTIFIABLE ERRORS AND ABUSE OF DISCRETION IN THE RULING BY JUDGE ADELE RILEY."

{¶ 15} In this assignment of error, Myles contends that the trial court erred by failing to "consider or view the relevant Lease agreement, which clearly showed that the lease term ended on January 31, 2008." She further contends that she was not "treated with respect and courtesy when [she attempted] to present evidence that [she] had no legal obligation for the rent charged by [Westbrooke] for February 2008." In support, Myles argues: "Judge Adele Riley failed to view the lease and overlooked the testimony given by witness of the Defendant, admitting to receiving notice to vacate submitted by Plaintiff. Witnesses testified that on January 17, 2008 [Myles] gave notice of [her] intent not to continue or renew that the Lease [sic], even though there was no legal requirement that [she] do so – since the lease ended on January 31, 2008. The Staff erroneously had [Myles] state on the notice that the date of vacating would be February 18, 2008 – the correct date should have been

January 18, 2008. The record will show that [Myles] did in fact vacate the premises on or before January 25, 2008, and that [she] had already commenced a new lease agreement with another landlord prior to the termination of the subject litigated lease on January 31, 2008."

{¶ 16} We begin by noting that Myles made no attempt during trial, or for that matter at any time during the proceedings below, to introduce the lease into evidence, so that the trial court can hardly have been in error for having failed to admit or to consider the lease.[3] *Shultz v. Duffy*, Cuyahoga App. No. 93215, 2010-Ohio-1750, ¶ 4 - 5. In any event, we find no error in the trial court's failure to review the lease, since the testimony clearly indicates that the lease terminated on January 31, 2009, rather than in 2008, as Myles now argues. In other words, the relevant lease was placed into evidence, in pertinent part, through the direct testimony of Myles and Orner.

{¶ 17} We next turn to the claim that Myles was not "treated with respect and courtesy when [she] attempted to present evidence." Having reviewed the entire videotape of the trial below, we find no merit in this argument. First, Myles did not attempt to introduce any documentary evidence at trial. Second, we disagree with Myles's assessment of her treatment at trial. It is clear that the trial judge and opposing counsel acted professionally at all times during the proceedings. Indeed, the trial court went beyond the call of duty in attempting to help guide Myles through the procedures of trial.

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[3] Although Myles has appended to her appellate brief a document purporting to be the subject lease, we note that it is not properly before us and we cannot consider it as evidence, since it is not a part of the record for purposes of appeal.

{¶ 18} Finally, we address the claim that the trial court "overlooked the testimony given by witness of the Defendant," Lisa Orner. In support, Myles contends that she presented Westbrooke with a notice of intent to vacate during December 2008. She further argues that Orner admitted receiving the December notice. We can find no evidence, credible or otherwise, to support Myles's assertion that she presented a notice of intent to vacate during December. Nor does the record support her claim that Orner admitted receiving such a notice.

{¶ 19} Next Myles concedes that she presented a notice of intent to vacate the premises dated January 19. However, she contends that Westbrooke staff caused her to improperly indicate on that notice that she would vacate the premises on February 18, 2008, when in reality the correct date was January 18, 2008. She further contends that the record demonstrates that she vacated the premises on or before January 25, 2008.

{¶ 20} Again, we note that the relevant dates in this case occurred during 2009, not 2008, as repeatedly stated in Myles's appellate brief. And contrary to Myles assertions, there is no evidence in the record to indicate that the Westbrooke staff or Myles wrote the incorrect date for vacation of the premises in the notice of intent to vacate dated January 19, 2009. Nor is there any evidence to support an inference that the staff coerced or tricked Myles into inserting the date of February 18, 2009, as the date for vacating the apartment.

{¶ 21} Furthermore, according to Myles's husband, she did not move her belongings out of the apartment until January 27, not January 25, as she now asserts. Conversely, Orner testified that Myles did not surrender the apartment until

February 18, 2009, after the termination date specified in the lease.

{¶ 22} The credibility of witnesses and the weight to be given to their testimony are primarily matters for the trial court as the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, at paragraph one of the syllabus. Thus, the trial court was free to believe all, some, or none of the testimony provided by Orner, Mason and Myles. Obviously, the trial court chose to credit the testimony of Orner with regard to the date that Myles vacated the apartment.

{¶ 23} Of critical importance to this appeal, as noted in Part I, above, Myles presented a claim for "emotional stress." Giving Myles the benefit of the doubt, we will construe her claim as one for intentional infliction of emotional distress.

{¶ 24} To prevail on a claim for intentional infliction of emotional distress a plaintiff must prove: "(1) the defendant intended to cause emotional distress to the plaintiff, (2) the defendant's conduct was so extreme and outrageous as to go beyond the bounds of decency and when such conduct can be considered utterly intolerable in a civilized society, (3) defendant was the proximate cause of plaintiff's psychiatric injury, and (4) the mental anguish suffered by the plaintiff is so serious and of a nature that no reasonable person can be expected to endure." *Malone v. Lowry,* Greene App. No. 06-CA-101, 2007-Ohio-5665, ¶ 17.

{¶ 25} The determination of Myles's claim for relief hinges on simple facts. Myles failed to vacate the Westbrooke apartment until February 18, 2009 – eighteen days after the lease agreement expired. Westbrooke then charged Myles rent for the month of February, which Myles refused to pay. There is nothing in this record to support a finding that the actions of Westbrooke or its employees constituted

extreme or outrageous conduct.

{¶ 26} Additionally, although she did testify that the dispute with Westbrooke caused her blood pressure to become elevated causing her to go "to the hospital" and start taking blood pressure medication, Myles failed to allege that she suffered any emotional distress or psychiatric injury.

{¶ 27} We conclude that Myles has failed to demonstrate that the trial court improperly ignored evidence or that she was not treated in a fair and impartial manner. We further conclude that her claim for intentional infliction of emotional distress fails.

{¶ 28} Myles's First Assignment of Error is overruled.

III

{¶ 29} Myles's Second Assignment of Error states:

{¶ 30} "THE MONTGOMERY COUNT COURT, AREA 1 SMALL CLAIMS DIVISION ERRED IN ITS DECISION ACCORDING TO (OHIO APP. 8TH DISTRICT 1996, 112), (OHIO APP. 3RD DISTRICT 428, 679 N.E.2D 16)."

{¶ 31} It appears that in this Assignment of Error Myles attempts to argue that the trial court erred in rendering judgment against her because the evidence shows that Westbrooke violated the terms of the lease agreement. Specifically, she asserts the following as her entire argument:

{¶ 32} "1. Defendants/Landlord violated the terms of the lease agreement which ended on January 31, 2008.

{¶ 33} "2. Plaintiff/Tenant did vacate the premises before or by the end date

of the lease - January 31, 2008.

{¶ 34} "3. Defendants/Landlord were obligated to return Plaintiff's deposit.

{¶ 35} "4. Defendants are [sic] illegally kept the Plaintiff/Tenant security deposit and other monies that is not owed.

{¶ 36} "5. Defendants breached the rental agreement."

{¶ 37} We assume that the argument of breach is premised upon the contention that Westbrooke failed to return Myles's hundred-dollar security deposit. But Myles failed to place the lease agreement into evidence thereby precluding review of the claim of breach. More importantly, Myles did not assert a claim for breach of contract in her complaint, nor did she amend her claim for relief to include breach of contract, at any time during the proceedings below. Thus, this argument was not made in the trial court, and is not properly before us.

{¶ 38} Myles's Second Assignment of Error is overruled.

IV

{¶ 39} Myles asserts the following as her Third Assignment of Error:

{¶ 40} "THE OHIO REVISED CODE 5321.02 (LANDLORD-TENANT RIGHTS AND OBLIGATIONS), PROHIBITS RETALIATION OF THE LANDLORD."

{¶ 41} Myles contends that Westbrooke has "retaliated against [her] by trying to damage her credit rating with reporting ambiguous late fees and non-payment to a credit agency."

{¶ 42} Myles failed to assert a violation of R.C. 5321.02 in her complaint, or at any point during the proceedings in the trial court. Furthermore, there is no

evidence in the record to support her assertions that Westbrooke reported late fees or non-payment to any credit agency.

{¶ 43} The Third Assignment of Error is overruled.

V

{¶ 44} All of Myles's assignments of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and VUKOVICH, J., concur.

(Hon. Joseph J. Vukovich, Seventh District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

Robin Myles
Lawrence Lasky
Hon. Adele M. Riley