

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Susan G. Gaylord

Court of Appeals No. L-13-1219

Appellee

Trial Court No. CVG-13-10585

v.

Robert Tipping

DECISION AND JUDGMENT

Appellant

Decided: June 13, 2014

* * * * *

Francis C. Collins, for appellee.

Walter J. Skotynsky, for appellant.

* * * * *

JENSEN, J.

{¶1} Appellant, Robert Tipping, appeals from the Toledo Municipal Court's September 18, 2013 judgment entry denying a motion to set aside a magistrate's order which granted restitution in a forcible entry and detainer (FED) action. For the reasons that follow, we affirm the decision of the trial court.

{¶2} On July 11, 2013, appellee, Susan G. Gaylord, filed a complaint in forcible entry and detainer against appellant in the Toledo Municipal Court. The sole claim in the complaint alleged nonpayment of rent and sought a writ of restitution for return of property located at 5828 Clover Lane, Toledo, Ohio. Appellant filed an answer and counterclaim.

{¶3} On August 6, 2013, the trial court issued a journal entry deeming the answer “moot as only one cause.”

{¶4} A hearing on the complaint was held August 8, 2013. Counsel for the appellant indicated that his client “will confess judgment for possession” in exchange for a one month delay in executing the writ of restitution. The magistrate accepted the agreement and issued an order granting restitution. The magistrate noted he would “make a ruling on the counterclaim in two weeks.” The trial court “approved” the magistrate’s order on August 13, 2013.

{¶5} On August 27, 2013 the trial court issued a journal entry dismissing the counterclaim “moot as only one cause.”

{¶6} On August 30, 2013, Tipping, through attorney Walter Skotynsky, filed a motion to set aside the magistrate’s August 8, 2013 order. Appellee filed a memorandum in opposition.

{¶7} On September 18, 2013, the trial court issued a journal entry denying appellant’s motion to set aside the magistrate’s order, without explanation.

{¶8} It is from the September 18, 2013 journal entry that appellant has appealed, raising the following assignments of error:

ASSIGNMENT OF ERROR NUMBER ONE: The trial court erred as a matter of law on September 18, 2013 in denying Defendant-Appellant's August 30, 2013 Motion to Set Aside the Magistrate's Order of August 8, 2013 in which the Magistrate granted Plaintiff-Appellee's restitution of the premises in question. Defendant-Appellant was denied due process of law and the court acted capriciously and arbitrarily by said denial in that the trial court failed to grant Defendant-Appellant a hearing (requested in that motion for August 30, 2013) to present his reasons for simply agreeing to vacate, after years of making renovations to the property in question, and to present his option to purchase said premises.

ASSIGNMENT OF ERROR NUMBER TWO: The trial court erred by arbitrarily, capriciously, and in violation of due process denying the August 30, 2013 Motion to Set Aside Magistrate's Order, and not granting the requested hearing, even though the Court new, or should have known, that Defendant-Appellant had a substantial rent-place-in-escrow argument to make, which argument was contained in Defendant-Appellant's Answer and Counterclaim filed July 24, 2013 (in the Toledo Municipal Court eviction action, CVG-13-10585).

ASSIGNMENT OF ERROR NUMBER THREE: The trial court acted manifestly against the weight of the evidence in denying, on September 18, 2013, Defendant-Appellant's August 30, 2013 Motion to Set Aside Magistrate's Order of August 8, 2013, with no hearing.

{¶9} In his first assignment of error, appellant asserts the trial court erred when it denied his motion to set aside the magistrate's August 8, 2013 order. Civ.R. 53(D)(2)(b) provides that "[a]ny party may file a motion with the court to set aside a magistrate's order." However, "[t]he motion shall state the moving party's reasons with particularity and shall be filed not later than ten days after the magistrate's order is filed." *Id.* Here, appellant filed his motion to set aside the magistrate's order 22 days after the order was filed. Thus, appellant's motion was untimely and the court did not err in denying the motion. Appellant's first assignment of error is not well-taken.

{¶10} Because the court did not error in denying the untimely motion to set aside the magistrate's August 8, 2013 order granting restitution of the premises, appellant's second and third assignments of error are moot.

{¶11} For the foregoing reasons, we affirm the judgment of the trial court. The costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

James D. Jensen, J
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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