

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

Jennifer Snyder

Court of Appeals No. L-17-1019

Appellee

Trial Court No. CVG-1601335

v.

Beth Wylie and Nicole Wylie

DECISION AND JUDGMENT

Appellants

Decided: September 29, 2017

* * * * *

Vijay K. Puligandla, for appellant.

* * * * *

SINGER, J.

{¶ 1} This is an accelerated appeal from a judgment issued by the Sylvania Municipal Court in favor of appellee in a forcible entry and detainer action. For the reasons that follow, we affirm.

Assignments of Error

1. The Court erred by finding that the Appellee had given the Appellant[s] the appropriate notice in the Notice to Leave Premises to initiate the eviction procedure (Trial court JE, p. 2, 5th full paragraph, and p. 3, 3rd paragraph at second bullet point).

2. The Court erred by finding in favor of the Appellee on the Landlord's Complaint that she filed (Trial Court JE, p. 3, 3rd paragraph at third bullet point). The complaint should have been dismissed.

Facts

{¶ 2} Appellants, Beth and Nicole Wylie, appeal the December 27, 2016 judgment in which appellee, Jennifer Snyder, was granted restitution of the premises known as 555 S. Meilke Rd., Holland, Ohio. Appellants, and more specifically appellant Beth Wylie, lived at the property since March 2013. Richard Wylie, Beth Wylie's father, transferred the property to Brian Williams, her son, in November 2011.

{¶ 3} Williams executed a deed in November 2012, granting title of the property to himself and appellee. Appellee was Williams' girlfriend and mother of his child.

{¶ 4} Another deed to the property was executed on November 7, 2016, granting sole ownership of the property to appellee.

{¶ 5} The November 2012 and 2016 deeds were issues of contention because appellants claimed, as reflected in a December 6, 2016 police report filed by Williams, that appellee forged the deeds. All deeds were notarized and recorded. There was no written lease agreement between appellants and Williams or appellee. According to

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appellants, Williams had entered into an oral agreement to exchange the property for a commercial property appellant-Beth Wylie owned. Appellee, to the contrary, asserted that Beth Wylie's obligation under a verbal agreement was to pay the property taxes in exchange for residing in the property.

{¶ 6} Appellants failed to pay the property taxes, and on October 20, 2016, the Lucas County treasurer notified Williams and appellee that the property was prioritized for foreclosure. The notice stated the amount due was \$5,886.55, and that only an owner-occupier may make arrangements for installment payments to avoid foreclosure.

{¶ 7} Appellee then sought to gain possession of the property and enter into a payment plan, as an owner-occupier, in an effort to pay off the property taxes. In doing so, on October 26, 2016, appellee served appellants with a three-day notice, which stated that an eviction would be filed against appellants if they did not leave the premises. The stated ground for the eviction was "ownership of property has changed." In fact, based on the title of record, ownership of the property had not changed until Williams executed the November 7, 2016 deed.

{¶ 8} On November 2, 2016, appellee filed a landlord's complaint in the Sylvania Municipal Court to evict appellants from the property. In the complaint, appellee stated the ground for eviction as "non payment of property taxes," and that she was entitled to judgment in the amount of \$5,886.55.

{¶ 9} The matter proceeded to trial on the first cause for restitution of the property on December 13, 2016. Present at the hearing were appellants and appellee. Appellants made the claim that Williams owned the property, that the deeds did not reflect his

signature, that appellee forged the documents, and that, in turn, Beth Wylie was owner of the property due to the exchange of her commercial property with Williams. She also testified that she had put \$30,000 into the home based on the agreed exchange of property.

{¶ 10} Appellee countered presenting the November 2012 and 2016 deeds, and also text messages from Williams that reinforced appellee's claim that she was the rightful owner of the property and that he agreed with the eviction action against appellants. Specifically appellee testified:

I have text messages stating from him [appellant-Beth Wylie]'s trying to pull something. I have text messages saying [appellants] don't even speak to him because he refuses to say that I forged the paper work. He was there— I actually spoke to the notary on this last [deed], complains (*sic*) she will come in that he was there, he was with me when he signed those papers. And I have numerous text messages stating we're moving back into this home over there. He wants his mother out, she refuses to sign, you know, and he refuses to say that I forged the paperwork because that is what they have been getting him to try to do since she received the eviction papers.

{¶ 11} The trial court accepted the deeds, police report, testimony and printed text messages as evidence and requested sua sponte that the notary and Williams attend a new hearing scheduled for December 19, 2016.

{¶ 12} At that hearing, the notary could not be present, but appellee offered an affidavit from her that corroborated the fact that Williams executed the November 2016 deed. The affidavit was admitted into the record without objection.

{¶ 13} Williams appeared and testified that appellee had power of attorney in 2012, and that she signed the November 2012 deed without his proper authorization. He also stated that the November 2016 deed was signed by him, but that he intended to remove appellee from the deed and therefore not grant her sole title to the property.

{¶ 14} The court considered the evidence and credibility of the witnesses and eventually deemed appellants to be trespassers and ordered they vacate the property within 30 days. In its judgment entry the trial court found as follows:

- Plaintiff has established by clear and convincing evidence that she is indeed and is the sole owner of property described as 555 S. Meilke [Rd.], Holland, Ohio 43528.
- Plaintiff has posted the appropriate notice to Defendants Beth Wylie and Nicole Wylie to vacate the premises in question.
- Restitution of the premises is granted to Plaintiff with a Writ to issue, however no execution through January 23, 2017.
- Plaintiff's second cause of action is continued for further hearing.

{¶ 15} The judgment was journalized on December 27, 2016, and appellants timely appealed.

Standard of Review

{¶ 16} This appeal turns on the interpretation and application of R.C. 5321.17, 1923.02 and 1923.04. Accordingly, we review the trial court's decision de novo. *See State v. Straley*, 139 Ohio St.3d 339, 2014-Ohio-2139, 11 N.E.3d 1175, ¶ 9 (stating that interpretation of a statute is a matter of law that is reviewed de novo).

{¶ 17} We do note, however, this court must give great deference to the factual determinations of the trial court. *See State v. DePew*, 38 Ohio St.3d 275, 277, 528 N.E.2d 542 (1988). Hence factual findings will not be disturbed if there is substantial, competent evidence on which the trial court could reach its conclusion. *See Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984).

Assignment of Error No. 1

{¶ 18} Appellants first argue they were month-to-month tenants and appellee should have issued a 30-day notice under R.C. 5321.17 before serving or posting a three-day notice under R.C. 1923.04. Appellees did not file an appellate brief in response.

{¶ 19} R.C. 5321.17, in relevant part, states:

(B) Except as provided in division (C) of this section, the landlord or the tenant may terminate or fail to renew a month-to-month tenancy by notice given the other at least thirty days prior to the periodic rental date.

* * *

(D) *This section does not apply to a termination based on the breach of a condition of a rental agreement or the breach of a duty and obligation imposed by law[.]*

See (Emphasis added.) R.C. 5321.17(B) and (D).

{¶ 20} R.C. 1923.02(A)(2), in pertinent part, provides that eviction proceedings may be had “[a]gainst tenants* * *in possession under an oral tenancy, who are in default in the payment of rent[.]”

{¶ 21} In order to bring an action pursuant to R.C. 1923.02, for restitution of the premises, a notice to the adverse party must be given three or more days before the commencement of the action. Further, the notice must contain the following language either printed or written in a conspicuous manner:

{¶ 22} 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.

See R.C. 1923.04(A).

{¶ 23} Here, we find appellee was co-owner of the property as of October 26, 2016, as indicated in the November 2012 deed, and that appellee served a three-day notice to appellants on October 26, 2016. Also, as reflected in text messages submitted, there is credible evidence submitted to the court that Williams wanted appellants evicted from the property, and that he wanted to deed the property to appellee as sole owner. The specific ground for the eviction was appellants’ failure to pay taxes, which failure to do so was apparent from the delinquency notice issued by the Lucas County Treasurer.

{¶ 24} Moreover, although appellant-Beth Wylie claimed to be owner of the property by virtue of an exchange of real property with Williams, there was no

documentation to reflect such exchange. *See* R.C. 1335.04 (codifying the statute of frauds, which requires a writing in exchanges of real property). *See also Van Auken v. Kellan Properties*, 6th Dist. Erie No. E-95-037, 1996 Ohio App. LEXIS 4228, *14 (Sep. 30, 1996)(“[T]he statute [of frauds] is satisfied only where there is a writing sufficient to evidence that an agreement has been reached concerning the sale of real property.”). The property was placed solely in appellee’s name as of November 2016, and thus neither Williams nor appellants had any competent evidence that they had an ownership interest in the premises beyond that date.

{¶ 25} Accordingly, this court finds that the trial court neither erred in finding appellee was the owner of the premises nor in finding the three-day notice sufficient to notify appellants of the pending eviction. Appellants’ first assignment of error is not well-taken.

Assignment of Error No. 2

{¶ 26} Appellants next argue the three-day notice was false and improper because the stated ground provided in the notice was “ownership of property has changed,” when in fact appellee had not gained sole ownership until after the notice had been given.

{¶ 27} “Ohio’s statutory notice provisions applicable to forcible entry and detainer actions do not appear to require that the specific grounds for eviction be set forth in the notice.” *See N. W. Ohio Food Marts, Inc. v. Mugg*, 6th Dist. Lucas No. L-86-115, 1987 Ohio App. LEXIS 6092, *6 (Mar. 13, 1987). *See also* R.C. 1923.04, *supra*.

{¶ 28} Here, and even accepting appellants contention that appellee was not sole owner of the property until after notice had been issued, appellants fail to show how the

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stated ground given within the notice prejudiced their rights. Further, R.C. 1923.04 does not mandate that specific grounds be set forth in a three-day notice, so long as the mandated language is provided therein. *See* 1923.04(A), *supra*. The October 26, 2016 notice precisely stated in bold, capitalized letters as follows:

NOTICE: 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.

{¶ 29} Appellants concede they received the three-day notice on October 26, 2016, and appellee did not file the landlord complaint against appellants until November 2, 2016. We therefore find appellee complied with statutory-notice requirements under R.C. 1923.04(A), and that appellants have failed to show their argument has merit. Consequently, the second assigned error it is not well-taken.

Conclusion

{¶ 30} On consideration whereof, the judgment of the Sylvania Municipal Court is affirmed and costs to appellants shall be assessed 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, P J.
CONCUR.

JUDGE