

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Olympic Realty,	:	
	:	No. 11AP-971
Plaintiff-Appellee,	:	(M.C. No. 2011 CVG 038034)
v.	:	
	:	(REGULAR CALENDAR)
Voytek Zaleski,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 29, 2013

Lardiere McNair, LLC, and Christopher L. Lardiere; Eastman & Smith LTD, and Colleen L. Maloney, for appellee.

Bricker & Eckler LLP, Anne Marie Sferra, and Maggie Abbulone, for appellant.

Willis Law Firm, LLC, Dimitrios G. Hatzifotinos, William L. Willis, and Michael J. Cassone, Amicus Curiae Columbus Apartment Association on behalf of appellee.

APPEAL from the Franklin County Municipal Court.

McCORMAC, J.

{¶ 1} Voytek Zaleski, defendant-appellant ("appellant"), appeals from a judgment of the Franklin County Municipal Court that granted judgment to Olympic Realty, defendant-appellee ("appellee"), in a forcible entry and detainer case.

{¶ 2} Appellant asserts two assignments of error:

[I.] The trial court erred in overruling and summarily rejecting Appellant's objections to the Magistrate's decision.

[II.] The trial court committed plain error in failing to recognize that Ohio's Fair Housing Act applies to nonrenewal of a lease.

{¶ 3} We reject both assignments of error for the reasons stated in this decision and render final judgment to appellee.

{¶ 4} This case was consolidated with case No. 11AP-668 for oral argument; however, the cases were decided separately in the trial court and will be decided separately in this court.

{¶ 5} Appellee entered into a written lease with appellant on August 23, 1999 in which appellee agreed to rent to appellant the premises known as 4739 Hilton Avenue C-14, Columbus, Ohio. The lease was on an annual basis allowing each of the parties to terminate the lease if the notice requirements in the lease were not followed. Appellee did comply with the notice requirement stating that the lease would not be renewed and that appellant's tenancy would terminate on September 30, 2011. When appellant did not vacate the premises, appellee filed a complaint for forcible entry and detainer on October 7, 2011.

{¶ 6} The case was assigned to a magistrate who conducted a hearing on November 4, 2011. The hearing was brief and composed of 11 pages of testimony. Appellant agreed that he had received a notice to leave alleging that he was a holdover tenant and that his right to be there had ended. He further stated that he still lived there. His testimony was that appellee "in an unlawful, discriminatory practice, during the past six months he seems to have imposed requirements of me that he has not imposed on other residents." (Tr. 4.) Appellant then stated that he was prohibited from walking on the floor in a manner that caused it to squeak even though other residents were allowed to make louder noises. He also said he was prohibited from entering areas directly above those occupied by the resident below. Appellant based his refusal to leave the premises after his lease had expired on appellee's unlawful discriminatory practices. The magistrate responded that, "[e]ven if I believe what you say, that he treated you differently than the other tenants, you still don't get a chance to live there indefinitely. At some point your tenancy can end, all right?" (Tr. 11.) The magistrate stated that appellee did everything required to end the tenancy and that at the end of the tenancy appellant must leave. "You hadn't left, so they're getting today the order that would have you set out if

they'd have to act on that order." (Tr. 11.) He stated that appellant would be given five days to leave the premises.

{¶ 7} The magistrate rendered his decision on the same day of the hearing, November 4, 2011, and it was filed with the court on November 7, 2011. The magistrate's decision was a form decision finding that, based on the evidence presented, the magistrate found that the notice to vacate conforming to R.C. 1923.04 was properly served and that appellee had proven the allegations set forth in the complaint by a preponderance of the evidence. He concluded that appellee was entitled to restitution of the premises and costs.

{¶ 8} On the same day of the hearing, November 4, 2011, appellant filed an objection to the magistrate's decision stating that the magistrate did not give him an opportunity to substantiate his position and to cite the statute which appellee had violated which might have given him the opportunity to continue occupancy of the apartment. Appellant also stated that the magistrate did not give him an opportunity or advise him that the parties to this action were also involved in litigation in case No. 11AP-668, currently pending in this court, and that a stay of restitution had been issued in that case.

{¶ 9} On November 7, 2011, at 9:04 a.m., the trial court entered judgment finding that appellant's objections are not supported by evidence or record and are denied, upholding the magistrate's decision.

{¶ 10} It is important to keep in mind that the action herein is one to reclaim property where the lease holder's right of the property has been terminated by the acts of the owner. In this case, the owner has given the tenant notice in accordance with the rental contract that they will not renew the lease. Owners are then provided summary actions called forcible entry and detainer to quickly reclaim the property. R.C. Chapter 1923. R.C. 1923.02 pertains to "Persons to subject to forcible entry and detainer action. (A)(1) Against tenants * * * holding over their terms," which is the situation in this case. R.C. 1923.06 provides that any defense in an action under this chapter may be asserted at trial. R.C. 5321.02 states that "a landlord may initiate eviction proceedings against a tenant holding over their term."

{¶ 11} Appellee commenced this action by proving that appellant had held over his term by proving the proper notices were given to him and that appellant had refused to vacate the property. Appellant was then required to establish a defense if he had one. The

only defense raised in appellant's testimony was that he had been treated differently than other tenants there and that "was an lawful discriminatory practice." Appellant did not present anything other then this general statement that he was treated differently than other tenants and that was unlawful discrimination. Appellant did not provide any specific statements regarding the alleged unlawful discrimination.

{¶ 12} In appellant's objections to the magistrate's report he cited Ohio's Fair Housing Act, R.C. Chapter 4112, that prohibits certain unlawful discrimination in R.C. 4112.02(H)(1) and (4). R.C. section 4112.02(H)(1) provides that it should be an unlawful discriminatory practice to refuse to rent, lease or otherwise deny or make unavailable housing accommodations because of "race, color, religion, sex, military status, * * * ancestry, disability, or national origin." R.C. 4112.02(H)(4) also uses the same categories regarding holdovers because of "race, color, religion, sex, military status, * * * ancestry, disability, or national origin." Never once, even before the magistrate or in his objections to the court does appellant provide evidence that he was refused holdover because he was a member of a protected category under Ohio's Fair Housing Act.

{¶ 13} It should be noted that discriminating merely because the lessor did not like appellant is not enough. Thus, appellant presented no applicable defense.

{¶ 14} Appellant further states that he should have been able to explain what was happening in the other action where the issue was whether the owner had proved violations of the lease that had enabled appellee to oust appellant immediately. The validity of the "for cause" termination will be determined in the companion case No. 11AP-668. Regardless of the determination, it will not provide a defense in this case.

{¶ 15} The next issue is the application of the Ohio Rules of Civil Procedure to the summary action of forcible entry and detainer. Civ.R. 1(C), referring to the scope and applicability of the civil rules, states an exception to their use where "they would by their nature be clearly inapplicable, shall not apply to procedure * * *, (3) in forcible entry and detainer." Forcible entry and detainer was accepted because it was designed to be a summary action allowing speedy relief. Adding procedure through objections that could be independently raised in another action could delay and hinder the efficacy of a forcible entry and detainer action. A direct defense can be inserted in the action, such as payment of the rent when non-payment is the reason, or an unlawful discrimination that is

specifically applicable, such as race, or national origin where appellant was excluded for that reason. *See Miele v. Robovich*, 90 Ohio St.3d 439 (2000).

{¶ 16} It is not a violation of the Civil Rules or rules pertaining to objections to a magistrate's decision to develop a form report such as the one used in this case and for the trial court to summarily review it and enter judgment immediately. Since the normal objection procedure would encumber the speedy nature of a forcible entry and detainer action, it is not error for the trial court to adopt procedures helpful in enhancing that goal. When an issue had been raised by pleading a viable defense, it would be part of the record of the case. A viable defense was not asserted prior to or within the hearing. The alleged defense, which was untimely raised, was not a defense to this action. Appellant's first assignment of error is overruled.

{¶ 17} Appellant had an opportunity to present specific and meaningful objections to the magistrate and failed to do so. The fact that appellant was pro se at trial does not require the trial court to be lenient. The trial court did not commit plain error in failing to recognize that Ohio's Fair Housing Act applies to non-renewal of a lease. It is doubtful that the plain error doctrine has any application to this case, but, even if it does, there was no manifest miscarriage of justice. Appellant has presented no evidence that the trial court's ruling is a manifest miscarriage of justice. *See Reichert v. Ingersoll*, 18 Ohio St.3d 220, 223 (1985); *State v. Davis*, 127 Ohio St.3d 268, 2010-Ohio-5706. Appellant's second assignment of error is overruled.

{¶ 18} Appellant's motion to strike any notice of supplemental authority is denied as there was no attempt to use the supplemental authority as evidence. Appellant's motion to strike is moot.

{¶ 19} Appellant's assignments of error are overruled, and the judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

BROWN and CONNOR, JJ., concur.

McCORMAC, J., retired of the Tenth Appellate District,
assigned to active duty under authority of the Ohio
Constitution, Article IV, Section 6(C).
