[Cite as *Dickard v. Waller*, 2012-Ohio-1131.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

DONALD DICKARD,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
		CASE NO. 2011-L-071
- vs -	:	
KEITH WALLER,	:	
Defendant-Appellant.	:	

Civil Appeal from the Painesville Municipal Court, Case No. CVF1000612.

Judgment: Affirmed.

Paul R. Malchesky, Cannon, Aveni & Malchesky Co., L.P.A., 41 East Erie Street, Painesville, OH 44077 (For Plaintiff-Appellee).

James V. Loiacono, Denman & Lerner Co., L.P.A., 8039 Broadmoor Road, #21, Mentor, OH 44060 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Keith Waller, appeals the judgment of the Painesville Municipal Court, affirming the magistrate's decision in favor of plaintiff-appellee, Donald Dickard, in the amount of $4,135 on his claim of breach of contract, and in favor of Dickard on Waller's counterclaim for breach of a lease agreement. The issue before this court is whether the magistrate's decision is supported by the weight of the evidence and is in accordance with the law. For the following reasons, we affirm the decision of the court below.

{¶2} On March 23, 2010, Dickard filed a Complaint in the Painesville Municipal Court for breach of contract in the amount of $4,135. Dickard alleged that he "provided services, labor and materials" to Waller, "an individual with residence in the Township of Concord, County of Lake and State of Ohio," for which he "has made due demand for payment," while Waller "has failed to make any payments towards his debt." Complaint, ¶ 2-4.

{¶3} On December 1, 2010, Waller filed an Answer and Counterclaim, alleging that Dickard "is indebted to [him] for rent," for the lease of structures located at 1630 West Jackson Street, Painesville Township, Ohio. Counterclaim, ¶ 2-3.

{¶4} On March 3, 2011, the matter was tried before a magistrate of the Painesville Municipal Court.

{¶5} On March 18, 2011, the magistrate issued Findings of Fact, Conclusions of Law and Amended Decision. The Magistrate's Amended Decision provides, in relevant part, as follows:

> **{¶6}** The Plaintiff testified that he * * * has worked part-time as a mechanic for the Defendant, since 1987. Plaintiff further testified that the Defendant has a business called Perfect Turf, and the Plaintiff's responsibilities were to repair and maintain equipment owned by Perfect Turf.
>
> **{¶7}** Plaintiff did his work for the Defendant in the Defendant's garage, and he kept his tools in a corner of said garage. Plaintiff identified * * * invoices he gave to the Defendant for work he had performed for the Defendant and had not yet been paid. The total charges of

these invoices equal $4,135.00, and they remain unpaid by the Defendant.

{¶8} Plaintiff further testified that he did other work for the Defendant on the Defendant's personal cars and boat at no charge, and this was done in exchange for him being allowed to keep his motorcycle, tools, etc. in Defendant's garage.

{¶9} Plaintiff further testified that he presented the invoices referred to above to the Defendant sometime in 2005 - 2006 * * *. Defendant did pay Plaintiff for about $2,500.00 worth of other invoices, and these payments were usually paid in cash.

{¶10} Plaintiff further testified that the Defendant left him a phone message in February 2007, which Plaintiff played for the Court. In this message, the Defendant offered to pay the Plaintiff approximately $1,000.00 and title to a motorcycle for the financial obligations due and owing to Plaintiff. Plaintiff testified that this was not enough to cover all that was owed. * * *

{¶11} Plaintiff testified that he always dealt with the Defendant personally, not Perfect Turf.

{¶12} Finally, the Plaintiff testified that he never had a lease with the Defendant; that the Defendant never asked him to pay rent; that he never received an invoice, letter, or any other documentation requesting rent; and that the first time he learned of Defendant's claim for rent was in the pleadings filed in this case.

{¶13} * * *

{¶14} The Defendant testified that Perfect Turf was incorporated in 1983, and it is still in existence. In 1983 until 1987, he was president. Then his wife became president until the year 2000. Then the Defendant became president again until 2005, when Mark Cichanski became president until January 1, 2006, and then Defendant became president again to the present. On January 1, 2008, Key Development Group, purchased the assets of Perfect Turf.

{¶15} He further testified that all of the invoices at issue were for work done on Perfect Turf equipment, and all payments were by Perfect Turf checks. Any cash payments that Plaintiff received, were for work that Plaintiff did on Defendant's personal equipment and/or vehicles.

{¶16} Defendant further testified that his corporation, Waller, LLC, leased the building location on Jackson Street, and Waller, LLC, subleased the space in the building to Perfect Turf and other businesses. He testified that he is asking for rent from February 2005 until July 30, 2010. He believes the rent should be $3.00 a square foot, which would equal about $300.00, plus utilities, for a total of $350.00 a month. He testified that he told Plaintiff's wife, who is office manager for Perfect Turf, to invoice the Plaintiff for his rent

obligation. Defendant testified that Plaintiff moved out December 30, 2007, and, therefore [is] asking for rent in the amount of approximately $14,000.00. He did verify that the voice on the tape described above was his voice. He waived his own paycheck from Perfect Turf because of the financial difficulties the company was going through. He was trying to get the Plaintiff paid by Perfect Turf and that was the content of the telephone message.

{¶17} * * *

{¶18} He further testified that he paid the Plaintiff the $1,000.00 check * * *, despite his claim for rent due and owing. He verified that Waller, LLC, leased the Jackson Street property, but further testified that he signed the lease as being individually liable. Therefore, Defendant believes the Plaintiff owes him personally for the rent, and Perfect Turf owes Plaintiff for the invoices at issue. * * * Defendant * * * testified that he had no documents verifying the existence of rent invoices.

{¶19} * * *

{¶20} Defendant called Mark Cichanski, Jr., as a witness. * * * In 2005, he was president of Perfect Turf, from February 2005 until November 2005. He sometimes told Plaintiff what equipment to work on, and other Perfect Turf employees would instruct Plaintiff on what to work on. Mark * * * verified that all work was done on Perfect Turf equipment.

{¶21} * * *

{¶22} The Plaintiff brought his action against the Defendant individually, for the work he performed as evidenced in the invoices * * *. The Defendant does not dispute the fact that the invoices are due and owing, but takes the position they are due and owing from Perfect Turf Corporation, and not him individually * * *. This Court believes from the totality of the evidence, Plaintiff [per]formed his work at the request of the Defendant individually, and there was no evidence whatsoever offered that Defendant ever notified Plaintiff that the work he was performing was at the request of Perfect Turf, and that Perfect Turf would be liable for the work performed by the Plaintiff. The Defendant has the burden of showing an understanding between the parties as to who is responsible for the invoices. The Defendant failed to meet that burden by offering any evidence whatsoever that he or anyone on his behalf communicated to the Plaintiff that Perfect Turf, not the Defendant individually, would be responsible for paying Plaintiff for the work he performed.

{¶23} * * * Defendant has failed to meet his burden on his Counterclaim. First of all, he testified that he was not the owner of the Jackson Street property, contrary to what he alleged in his Counterclaim. Instead, Waller, LLC, leased said property from the owner. Furthermore, the Defendant testified that he had the office manager

> of Perfect Turf invoice the Plaintiff for the alleged rental obligation. This Court is of the opinion that the Defendant failed to meet his burden of proof that there was an oral month-to month lease agreement. He alleges that the office manager of Perfect Turf invoiced the Plaintiff for the rental obligation but produced no documents to verify this allegation. Furthermore, he was not the owner or Lessor of the Jackson Street property. His corporation, Waller, LLC, was the Lessor, therefore, even if there was an oral month-to-month lease, it would not have been with the Defendant individually.

{¶24} Based on the above findings, the magistrate found in favor of Dickard on the Complaint in the amount of $4,135, plus interest and court costs, and in favor of Dickard also on Waller's Counterclaim.

{¶25} On April 8, 2011, Waller filed an Objection to Magistrate's Amended Decision. Dickard responded on April 21, 2011.

{¶26} On April 29, 2011, the municipal court issued a Judgment Entry, affirming the Magistrate's Amended Decision and entering judgment in Dickard's favor.

{¶27} On May 31, 2011, Waller filed his Notice of Appeal. On appeal, Waller raises the following assignment of error:

{¶28} "[1.] The trial court committed prejudicial error when it found the Magistrate's Amended Decision to be supported by reliable, probative and substantive evidence, and that same was in accordance with law."

{¶29} Under the civil manifest weight of the evidence standard, "[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *State v. Wilson,* 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 24, quoting *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus. "A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not." *Id.*, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 81, 461 N.E.2d 1273 (1984).

{¶30} This court's ability to review the proceedings in the municipal court in the present case is limited on account of Waller's failure to file a copy of the transcript of the trial before the magistrate.

{¶31} Ohio's Rules of Appellate Procedure provide the following: "If the appellant intends to present an assignment of error on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the weight of the evidence, the appellant shall include in the record a transcript of proceedings that includes all evidence relevant to the findings or conclusion." App.R. 9(B)(4). This court, and others, has consistently interpreted the Rule to mean that "failure [to file a transcript of the magistrate hearings or a statement of the evidence] precludes [an] appellant from contesting the lower court's findings or conclusions as being unsupported by the evidence or contrary to the weight of the evidence." *Savage v. Savage*, 11th Dist. Nos. 2004-L-024 and 2004-L-040, 2004-Ohio-6341, ¶ 34; *Maynard v. Landon*, 5th Dist. No. 2006-CA-0015, 2007-Ohio-2813, ¶ 22, citing *Hartt v. Munobe*, 67 Ohio St.3d 3, 7, 615 N.E.2d 617 (1993) ("[t]he failure to file a complete transcript or its equivalent is generally fatal to an appeal

based on the manifest weight of the evidence"); *Waszkowski v. Lyons*, 11th Dist. No. 2008-L-077, 2009-Ohio-403, ¶ 17.

{¶32} According to Waller, it "clearly" appears from the magistrate's findings/conclusions that, although "there was a lack of communication or understanding regarding the precise nature of the terms of [Dickard's] employment * * *, it certainly was cleared up when he began taking direction and orders from 'Perfect Turf' officers and employees, and when [he] performed work on vehicles and equipment bearing said company's logo." Appellant's Brief, 6. We disagree.

{¶33} "Under Ohio law, it is well established that a corporate officer will generally not be held individually liable on contracts which he enters into on behalf of the corporation." *Hommel v. Micco*, 76 Ohio App.3d 690, 697, 602 N.E.2d 1259 (11th Dist.1991), citing *Centennial Ins. Co. of New York v. Vic Tanny Internatl. of Toledo, Inc.*, 46 Ohio App.2d 137, 142, 346 N.E.2d 330 (6th Dist.1975). However, "the corporate officer has a responsibility to clearly identify the capacity in which he is dealing in a specific transaction * * *." *Id.*, quoting *Universal Energy Servs., Inc. v. Camilly*, 11th Dist. No. 90-A-1533, 1991 Ohio App. LEXIS 2003, *7 (May 3, 1991). The failure to do so may result in the corporate officer being held individually liable on a particular contract or instrument. *Id.*; *Schmidt v. Brower*, 11th Dist. No. 2010-A-0014, 2010-Ohio-4431, ¶ 12.

{¶34} In the present case, the magistrate found that Waller failed to introduce any evidence that it was communicated to Dickard that Perfect Turf would be responsible for the invoices. Waller does not challenge this finding, but asserts that Dickard should have inferred as much from the circumstances of his employment. The

magistrate's finding is consistent with the law that Waller bore the responsibility to "clearly identify" the capacity in which he was dealing with Dickard. On the face of the Magistrate's Decision, this finding is supported by Dickard's testimony that he dealt with Waller personally, evidence that the work was performed in Waller's garage, and a recorded phone message in which Waller offered to pay Dickard $1,000 plus title to a motorcycle to satisfy the debt. Accordingly, the Magistrate's Decision is supportable by the evidence cited in the Decision.

{¶35} Waller further argues that the magistrate's findings that Dickard "had his own space [in the garage], with a television and lounge chair, and was allowed to work on other vehicles, * * * substantiates [his] claim for rent." We disagree. These findings substantiate the fact that Dickard was allowed to use part of the garage for his own purposes. They do not compel the existence of a month-to-month lease.

{¶36} The sole assignment of error is without merit.

{¶37} For the foregoing reasons, the judgment of the Painesville Municipal Court, affirming judgment in Dickard's favor in the amount of $4,135, is affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.