[Cite as *Westerfeld v. Gaulke*, 2010-Ohio-2806.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF WAYNE	)	

BRANDON WESTERFELD, et al. Appellants v. JASON GAULKE, et al. Appellees	C.A. No. 09CA0043 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF WAYNE, OHIO CASE No. 08-CV-0581

DECISION AND JOURNAL ENTRY

Dated: June 21, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Jason and Angela Gaulke rented a house from Brandon and Jeri Westerfeld for one year. After they moved out, the Westerfelds refused to return their deposit and sued them for damage to the house. The Gaulkes counterclaimed, seeking the return of their deposit and damages under Section 5321.16 of the Ohio Revised Code. The trial court ruled in favor of the Gaulkes. The Westerfelds have appealed, arguing that the court's decision is against the manifest weight of the evidence. This Court affirms because the trial court's findings are supported by competent and credible evidence.

FACTS

{¶2} The Gaulkes began renting the Westerfelds' house in May 2007. Under the terms of their lease, the Gaulkes agreed not to keep a dog in the house, not to make any alterations

without the Westerfelds' consent, and to purchase and operate a dehumidifier in the basement. They also agreed to let the Westerfelds inspect the house every 60 days.

{¶3} Soon after they moved into the house, the Gaulkes attached a satellite dish to the roof. Despite their agreement not to keep a dog in the house, Mrs. Gaulke often let her pug inside. Each time the Westerfelds inspected the house, however, they told the Gaulkes that everything looked fine.

{¶4} As the Gaulkes were preparing to move out of the house, Mrs. Gaulke noticed that the dehumidifier that they had been operating in the basement was leaking and that the carpet around it was wet. To dry the carpet, the Gaulkes rented an industrial fan and let it run over the area for three days. According to Mrs. Gaulke, the area was dry at the time they moved out, though she conceded that, "if you put your hand down there [was] maybe a tad bit of dampness." According to the Westerfelds, the Gaulkes did not tell them that there had been a problem with the dehumidifier.

{¶5} After the Gaulkes moved out, the Westerfelds inspected the house. Because they had seen the pug inside the house, they used a blacklight to examine the carpet in the basement. In a few areas, they found marks on the wall and floor, suggesting animal urine. They have claimed that there was a large area of the basement carpet that was wet near where the dehumidifier had been.

{¶6} The Westerfelds told the Gaulkes that, because of the damage to the house, they would not be returning their deposit. They also asked for $14,700 for repairs. In addition to the pet and water damage, the Westerfelds alleged that the satellite dish damaged the roof, that there were an excessive number of nails and screws in the walls, that the carpets throughout the house needed to be professionally cleaned, and that the Gaulkes had failed to maintain the furnace,

water softener, and dryer vent. When the Gaulkes refused to pay for the claimed damage, the Westerfelds sued them. The Gaulkes counterclaimed, seeking the return of their deposit, statutory damages, and attorney fees.

{¶7} The trial court noted that, despite the Westerfelds' numerous inspections and social visits at the house, they did not complain about any of the alleged damage until after the Gaulkes moved out. It found that, although the pug was inside the house at times, it was house-trained and there was no evidence that it had been in the basement of the house or that it had relieved itself in the house. It also found that the Westerfelds had rented the house to new tenants without making any of the repairs that they had alleged were necessary. The court concluded that the Westerfelds had not proven that the Gaulkes materially breached their lease or their obligations under Section 5321.05 of the Ohio Revised Code. It also concluded that the Westerfelds had not proven any damage beyond normal wear and tear. It further concluded that they had wrongfully withheld the Gaulkes' security deposit, in violation of Section 5321.16. It awarded the Gaulkes $4000 and attorney fees. The Westerfelds have assigned as error that the trial court's findings are against the manifest weight of the evidence.

MANIFEST WEIGHT

{¶8} In *State v. Wilson*, 113 Ohio St. 3d 382, 2007-Ohio-2202, at ¶26, the Ohio Supreme Court held that the test for whether a judgment is against the weight of the evidence in civil cases is different from the test applicable in criminal cases. According to the Supreme Court in *Wilson*, the standard applicable in civil cases "was explained in *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279." *Id.* at ¶24. The "explanation" in *C.E. Morris* was that "[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." *Id*. (quoting *C.E. Morris Co.*, 54 Ohio St. 2d at syllabus); but see *Huntington Nat'l Bank v. Chappell*, 183 Ohio App. 3d 1, 2007-Ohio-4344, at ¶17-75 (Dickinson, J., concurring in judgment only).

{¶9} The Westerfelds have argued that the Gaulkes caused more than normal wear and tear to the house. According to them, the court's findings are not supported by the record. Regarding the wet spot on the basement carpet, they have noted that the Gaulkes admitted that the dehumidifier began leaking and that they had no idea how long it leaked before they discovered the problem. Regarding the satellite dish, they have noted that there was no dispute that the Gaulkes installed it on the roof. They have also noted that the Gaulkes did not present any evidence to dispute Mr. Westerfeld's claim that the installation of the dish voided the warranty on the roof shingles.

{¶10} Regarding the wet spot on the basement carpet, there was testimony from Mrs. Gaulke that the carpet was dry when they moved out of the house. According to Mr. Westerfeld, he did not observe a wet spot when he inspected the house on the last day the Gaulkes occupied it. In addition, while the Westerfelds said that the carpet was so damaged that it needed to be replaced, Mr. Westerfeld admitted that they rented the house to new tenants without replacing it. The trial court, therefore, could have determined that the witnesses who said that there was water damage to the carpet were not credible or that, even if there was damage, it was normal wear and tear.

{¶11} Regarding the satellite dish, the lease provided that the Gaulkes were not to "remove any fixtures or appurtenances from the Premises or drive an excessive number of nails or screws into the walls or woodwork, or make any alterations including painting, without the Landlord's consent." The Gaulkes admitted that they installed the satellite dish soon after they

moved into the house. When the Westerfelds inspected the house after the satellite dish was installed, however, they told the Gaulkes that "[e]verything looks good!" Despite several more inspections during the Gaulkes' tenancy, the Westerfelds never objected to the satellite dish. Accordingly, there was evidence from which the trial court could infer that they had consented to it.

{¶12} The Westerfelds have also argued that the Gaulkes breached a material term of their lease by letting their dog in the house. The lease provided that the Gaulkes would not "keep any pet in the residence . . . ." The trial court concluded that the Westerfelds failed to prove a material breach of the lease, even though Mrs. Gaulke admitted that she frequently let her pug in the house.

{¶13} Although Mrs. Gaulke testified that she let her pug in the house, she said that it usually stayed by her side and that she never left it in the house by itself. She said that it did not cause any damage to the house and that it had never been in the basement because it was too scared to go down the stairs. She also testified that, when she toured the house to determine whether she wanted to rent it, she saw a litter box in the basement. The Westerfelds admitted that they had lived in the house before they rented it to the Gaulkes and that they had owned a cat. They also admitted that they had the cat euthanized after they saw it urinate on the basement carpet of their new home. Accordingly, there was evidence from which the trial court could conclude that it was the Westerfelds' cat, not the Gaulkes' dog that was the source of the urine on the basement carpet. It, therefore, was reasonable for the court to conclude that the Gaulkes did not cause a material breach of the lease by sometimes letting the pug in the house.

{¶14} There was competent, credible evidence to support the trial court's finding that the Gaulkes did not cause more than normal wear and tear to the house or materially breach the

lease. Accordingly, its decision is not against the manifest weight of the evidence. The Westerfelds' assignment of error is overruled.

CONCLUSION

{¶15} The trial court's decision is not against the manifest weight of the evidence. The judgment of the Wayne County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellants.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
BELFANCE, J.
CONCUR

APPEARANCES:

TIMOTHY B. PETTORINI, Attorney at Law, for appellants.

IVAN L. REDINGER, JR., Attorney at Law, for appellees.