

[Cite as *Schultz v. Wurdlow*, 2010-Ohio-1140.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Kelly J. Schultz et al.,	:	
Plaintiffs-Appellees,	:	
v.	:	No. 09AP-301 (M.C. 2008 CVI 031737)
Lawrence Earl Wurdlow,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 23, 2010

Paul G. Wilkins, for appellees.

Lawrence Earl Wurdlow, pro se.

APPEAL from the Franklin County Municipal Court

CONNOR, J.

{¶1} Defendant-appellant, Lawrence Earl Wurdlow ("landlord"), appeals the judgment of the Franklin County Municipal Court granting plaintiffs-appellees, Kelly J. Schultz and Daniel Duke ("tenants") summary judgment. For the following reasons, we reverse the judgment granted by the trial court.

{¶2} On July 11, 2008, tenants filed suit in the small claims division of the Franklin County Municipal Court against landlord to recover their \$350 deposit, which landlord had allegedly wrongfully withheld. According to tenants, landlord had neither provided an explanation regarding his decision to withhold the deposit, nor had he

responded to the tenants' inquiries regarding the deposit. The matter was assigned to a magistrate in the small claims division. After a number of continuances, the matter was scheduled to come before the magistrate on October 8, 2008 at 1:30 p.m. According to the record, landlord allegedly appeared at 1:43 p.m., at which time he was instructed by the magistrate's bailiff that the matter had already been heard, and the tenants had been sent home. On October 9, 2008, landlord filed a request for reconsideration, in which he explained the reason for his tardiness.

{¶3} On October 10, 2008, the magistrate issued a decision indicating that the case was called at 1:45 p.m., at which time tenants appeared, and landlord did not. As a result, the magistrate granted judgment for tenants in the amount of \$700, plus court costs and interest at a rate of eight percent per annum from the date of the judgment. Also on October 10, 2008, a judge of the trial court adopted the magistrate's decision as its own.

{¶4} On October 17, 2008, the trial court denied landlord's request for reconsideration. On October 24, 2008, landlord filed objections to the magistrate's decision. On October 27, 2008, landlord filed amended objections to the magistrate's decision.

{¶5} In response to landlord's objections, on October 29, 2008, the matter was assigned to a municipal court judge, in accordance with Rule 7.03 of the Franklin County Municipal Court. A notice in the record indicated that an objection was filed, tenants were afforded an opportunity to file a response, and the objections would be ruled upon after the time for response had passed. Further, the notice provided: "Pursuant to Ohio Civil Rule 53(D)(4)(e)[sic.], the Objection to the Magistrate's Decision shall serve as an

Automatic Stay of execution of the Judgment in this case until the Court disposes of all objections and vacates, modifies or adheres to the judgment previously entered." (Trial court's notice of filing, October 29, 2008, at 1.) Based upon these circumstances, the trial court scheduled a hearing to consider the matter on November 13, 2008.

{¶6} On November 12, 2008, landlord filed a motion for new trial and attached an affidavit, in which he averred to the circumstances surrounding his admitted tardiness at the October 8, 2008 hearing.

{¶7} On November 13, 2008, the trial court referred this matter to mediation on December 15, 2008. The parties appeared for the mediation but failed to reach an agreement on the resolution of the matter. The notice in the record indicated that the matter was ready to have a hearing date set. A pre-trial was scheduled for February 5, 2009.

{¶8} On January 6, 2009, tenants filed a motion for summary judgment on landlord's motion to reconsider and motion for new trial. In this motion, tenants argued that landlord had admitted to the elements of tenants' claims by failing to respond to a series of requests for admissions, in accordance with Ohio Civ.R. 36. Shortly after this motion was filed, the trial court issued a notice continuing the pre-trial to February 27, 2009. On February 24, 2009, the trial court issued an entry granting summary judgment. Specifically, the trial court held that there were no genuine issues of material fact and that tenants were entitled to "\$2,263.50, plus statutory interest at the rate of 5% per annum from the date of judgment." (Trial court's entry, February 24, 2009, at 1.)

{¶9} After the trial court's February 24, 2009 judgment, landlord filed a series of postjudgment motions along with his notice of appeal. On appeal, landlord raises the following assignments of error:

First Assignment of Error: The trial court erred in granting a motion of summary judgment to the Appellees based upon the use of [Civ.R.] 36, a discovery motion which is inapplicable to the Small Claims Division of the Court, for [Civ.R.] 36 is in conflict with [R.C.] Chapter 1925.01, et seq., in conflict with the Local Rules of the Franklin County Municipal Court, specifically Local Rule #11, in conflict with Rule 1(C)(4) of the Ohio Rules of Civil Procedure, and in conflict with the rulings of the courts throughout the State of Ohio, including the Ohio Supreme Court.

Second Assignment of Error: The Court has permitted the Small Claims Division to be used for legal maneuvering, legal strategies, and exercises which appear to be wholly inconsistent with the articulated intentions of the Ohio legislature, the Ohio Supreme Court, the Franklin County Appellate Court, Tenth District, and other courts within other Jurisdictions throughout the state.

{¶10} For ease and clarity, we will consider landlord's assignments of error out of order. In his second assignment of error, landlord challenges the procedure through which judgment was rendered by the trial court. Because the trial court never resolved landlord's timely objections to the magistrate's decision, we find landlord's procedural challenge to be meritorious.

{¶11} When a party files timely objections to a magistrate's decision, the trial court "shall rule on those objections * * * [and] undertake an independent review" of the issues to determine if the magistrate properly determined the facts and correctly applied the law. *Zwahlen v. Brown*, 1st Dist. No. C-070263, 2008-Ohio-151, ¶14, citing Ohio Civ.R. 53(D)(4)(d). Further:

If the court enters a judgment during the fourteen days permitted by Civ. R. 53(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.

Ohio Civ.R. 53(D)(4)(e)(i).

{¶12} The Second Appellate District has considered a near identical appeal in the recent past. See *O'Bryan v. K & H Co. Lakeshore Apts.*, 181 Ohio App.3d 741, 2009-Ohio-1417. In *O'Bryan*, a former tenant filed suit against her former landlord based upon the alleged wrongful withholding of her security deposit. *Id.* at ¶1. After presiding over a trial, a magistrate rendered a decision in favor of the tenant. *Id.* at ¶4. The trial court adopted the magistrate's decision as its own. *Id.* The landlord filed timely objections to the magistrate's decision. *Id.* at ¶5. The trial court never ruled on these objections and instead set the matter for trial. *Id.* at ¶15. After hearing evidence on the merits and without having ever ruled upon the landlord's pending objections to the magistrate's decision, the trial court granted judgment in favor of the landlord. *Id.* at ¶16. When presented with procedural arguments upon appeal, the Second Appellate District provided:

Had the trial court not adopted the magistrate's decision as its own judgment, it would have had authority, independent of whether any objections to the magistrate's decision were timely filed, to hear the matter itself and to render a judgment without regard to the magistrate's decision. Civ. R. 3(D)(4)(b).

But the trial court rendered judgment * * * when it adopted the magistrate's decision, immediately, as the judgment of the trial court. This would have become a final judgment of the trial court, incapable of modification or vacation by the trial court, but for Civ. R. 53(D)(4)(e)(i) * * * which recognizes that the rendering of a judgment during the fourteen-day [period]

during which objections may be filed subjects that otherwise final judgment to the contingency that timely objections may be filed, the disposition of which may authorize the vacation or modification of the judgment by the trial court.

[T]he last sentence of [Civ.R. 53(D)(4)(e)(i)] conjoins the vacation or modification of the judgment previously rendered with the disposition of the pending objections, thereby establishing that the judgment previously rendered (by the *trial court*, not the decision by the magistrate) may not be vacated or modified other than in conjunction with the disposition of pending objections to the magistrate's decision.

(Emphasis sic.) *Id.* at ¶¶24-26. As a result, the Second Appellate District reversed and remanded the judgment to permit the trial court to reach a resolution on the landlord's objections. *Id.* at ¶32; see also *Chan v. TASR, Total Abatement Specialist & Remodelers*, 1st Dist. No. C-070275, 2008-Ohio-1439, ¶12 ("Because the record does not affirmatively reflect that the trial court considered and ruled on the objections, we reverse the judgment of the trial court and remand this case for an appropriate review and resolution of TASR's objections.")

{¶13} Again, the instant appeal presents nearly identical facts and procedural circumstances as were presented in *O'Bryan*. As a result, we feel compelled to follow the well-reasoned analysis set forth by the Second Appellate District. In the instant matter, it is undisputed that the trial court modified its prior judgment without ever rendering a decision on landlord's pending objections, which runs contrary to the requirements of Civ.R. 53(D)(4)(e)(i). As a result, we find that the trial court erred by issuing a judgment that modified and superseded its prior judgment without following the process that is required to issue such a modified judgment.

{¶14} Based upon the foregoing, we sustain landlord's second assignment of error and overrule as moot landlord's first assignment of error. In light of the fact that there has not yet been a resolution in this matter, we overrule tenants' pending motion for attorney fees, filed with this court on September 24, 2009. We reverse and remand this matter for proceedings consistent with this decision, including the trial court's consideration and resolution of landlord's pending objections.

*Judgment reversed;
cause remanded.*

TYACK, P.J. and FRENCH, J., concur.
