[Cite as *Ebbing v. Lawhorn*, 2012-Ohio-3200.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

JOSEPH P. EBBING,	:	
Plaintiff-Appellant,	:	CASE NO. CA2011-07-125
	:	O P I N I O N
- vs -		7/16/2012
	:	
SAMANTHA LAWHORN, et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM HAMILTON MUNICIPAL COURT
Case No. 10CVG03548

Joseph P. Ebbing, 3800 Princeton Road, Hamilton, Ohio 45011, plaintiff-appellant, pro se

Samantha Lawhorn, c/o Lifespan, 1900 Fairgrove Avenue, Hamilton, Ohio 45011, defendant-appellee, pro se

Christopher P. Frederick, 304 North Second Street, Hamilton, Ohio 45011, for defendant-appellee, Lifespan, Inc.

HUTZEL, J.

{¶ 1} Plaintiff-appellant, Joseph Ebbing, appeals a decision of the Hamilton Municipal Court dismissing his monetary claim against defendants-appellees, Samantha Lawhorn and Lifespan, Inc., in a forcible entry and detainer action.

{¶ 2} On December 13, 2010, appellant filed a complaint against Lawhorn and

Lifespan for forcible entry and detainer (FED), as well as for the recovery of unpaid rent and damages regarding a rental property in Hamilton, Ohio. Lawhorn was the tenant; Lifespan paid her rent. On December 29, the municipal court entered judgment in favor of appellant on his claim for possession and ordered restitution of the premises. The matter then proceeded on appellant's claim for unpaid rent and damages. Hearings on the latter claim were held on February 2, February 9, February 16, March 1, and March 16, 2011.

{¶ 3} On February 15, 2011, appellant filed a motion for default judgment against Lawhorn and Lifespan, seeking $2,655.09 from Lawhorn and $1,003.87 from Lifespan. The motion was overruled by the municipal court. Appellant's testimony during the March 1 hearing revealed that appellant was not a party to the lease agreement and that the rental property was owned by a corporation, Abba1st.com, Inc., which itself was owned by appellant's wife. Pleadings filed by appellant, documents he submitted, and his testimony revealed the following facts regarding the lease agreement.[1]

{¶ 4} According to appellant, in October 2009, Lawhorn "made application to [appellant] to rent" the property. Appellant approved the application and presented Lawhorn with two identical written lease agreements. One of the agreements included Lawhorn's children's father. The lease agreements were presented to Lifespan for its approval as it would be paying Lawhorn's rent. Subsequently, appellant and Amanda Bussell, a Lifespan employee, spoke by phone. According to appellant, Bussell told him he would be paid by the third of each month as long as Lawhorn was living on the premises on the first of the month. Bussell also told appellant that Lifespan would not approve paying the rent if Lawhorn's children's father was also a tenant. As a result, this individual was removed from the lease

1. During the hearings held between February 2 and March 16, 2011, Lifespan did not testify either because it was not present at the hearings or there was never an opportunity for Lifespan to testify about its version of the facts leading to the written lease agreement.

agreement. Subsequently, appellant gave two copies of the written lease agreement to Lawhorn, one for her and one for Lifespan. Both were signed by appellant's wife. Lawhorn did not return either signed lease agreement to appellant.

{¶ 5} Appellant attached an unsigned copy of the written lease agreement to his first motion for default judgment. The introductory paragraph of the agreement identifies the parties to the lease agreement as follows:

> THIS LEASE AND OPTION TO PURCHASE made this date signed below by and between **Abba1st.com, Inc.**, [address of the corporation] hereafter designated and referred to as "Landlord," and **Samantha A. Lawhorn**, [address of the rental property] hereafter designated and referred to as "Tenant."

The last page of the lease agreement has two lines for signature, one for "Samantha A. Lawhorn," and one for "Erin M. Ebbing, President Abba1st.com." Appellant's name or his title as the manager of the property on behalf of Abba1st.com, and as an employee of Abba1st.com, does not appear anywhere in the lease agreement.

{¶ 6} On March 4, appellant filed a second motion for default judgment, again seeking $2,655.09 from Lawhorn and $1,003.87 from Lifespan. On March 16, the magistrate dismissed appellant's claim for unpaid rent and damages on the ground he was not the proper party to file the FED action. Appellant filed objections.

{¶ 7} On June 10, the municipal court overruled his objections and dismissed the case. The court found that because appellant was not the owner of the property, a party to the lease agreement, or an attorney, his actions in filing the FED complaint and subsequent pleadings amounted to the unauthorized practice of the law. The court cited *Cleveland Bar Assn. v. Picklo*, 96 Ohio St.3d 195, 2002-Ohio-3995, in support of its decision. The court also found that appellant was not the real party in interest as required under Civ.R. 17.

{¶ 8} Appellant appeals, raising three assignments of error.

{¶ 9} Assignment of Error No. 1:

{¶ 10} THE TRIAL COURT ERRED BY AFFIRMING THE MAGISTRATE'S DECISION AND DISMISSING PLAINTIFF'S SECOND CAUSE AGAINST BOTH DEFENDANTS.

{¶ 11} Appellant argues that the municipal court erred by dismissing his claim for unpaid rent and damages on the ground he was not the proper party to file the FED action. Appellant asserts that as the manager of the property, and in light of the definition of "landlord" under R.C. 1923.01 and 5321.01, he was a landlord and the real party in interest, thus, the proper party to file the FED action. Appellant cites *Oakbrook Realty Corp. v. Harris*, 10th Dist. No. 89AP-819, 1991 WL 70146 (Apr. 30, 1991), in support of his argument. Appellant also asserts that (1) because the Ohio Supreme Court did not strike the definitions of "landlord" from R.C. 1923.01 and 5321.01 in *Picklo*, (2) rather, the supreme court simply held that a non-attorney cannot appear "in court on another's behalf and conducting another's case," and (3) because he was representing himself and not Abba1st.com when he filed the FED action, *Picklo* is not applicable to the case at bar.

{¶ 12} We start our analysis with Civ.R. 17(A) which states in pertinent part, "[e]very action shall be prosecuted in the name of the real party in interest." The "real party in interest" has been defined as "the party who will directly be helped or harmed by the outcome of the action. The real party in interest must have a real interest in the subject matter of the litigation and not merely an interest in the outcome of the case." *Harris v. Pristera*, 11th Dist. No. 2009-A-0059, 2011-Ohio-2089, ¶ 24. In the case at bar, the municipal court held that the case "could" be dismissed on the ground that the real party in interest was not a party to the lawsuit.

{¶ 13} However, Civ.R. 1(C), which limits the scope of the Ohio Civil Rules, states: "These rules, to the extent they would by their nature be clearly inapplicable, shall not apply to procedure * * * in forcible entry and detainer[.]" Civ.R. 1(C)(3). We note that in light of Civ.R. 1(C)(3), several courts have held that the real party in interest rule, as stated in Civ.R.

17(A), does not apply to FED actions. *See Alex-Bell Oxford Limited Partnership v. Woods*, 2d Dist. No. 16038, 1998 WL 289028 (June 5, 1998); *Adlaka v. Quaranta*, 7th Dist. No. 09 MA 134, 2010-Ohio-6509; *Oakbrook*, 1991 WL 70146.

{¶ 14} For purposes of FED actions, R.C. 1923.01(C)(2) defines "landlord" as "the owner, lessor, or sublessor of premises, or the agent or person the landlord authorizes to manage premises or to receive rent from a tenant under a rental agreement[.]" Under R.C. Chapter 5321, which governs the obligations of landlords and tenants, R.C. 5321.01(B) defines "landlord" as "the owner, lessor, or sublessor of residential premises, the agent of the owner, lessor, or sublessor, or any person authorized by the owner, lessor, or sublessor to manage the premises or to receive rent from a tenant under a rental agreement[.]"

{¶ 15} Citing *Oakbrook* in support, appellant asserts that as the manager of the rental property, and in light of the foregoing definitions of "landlord," he was a landlord and thus, the proper party to file the FED action. Oakbrook was a management company that managed apartments for a property owner. Oakbrook entered into a lease agreement with a tenant for one of the apartments. When the tenant stopped paying rent, Oakbrook filed an FED action against him. The municipal court dismissed the action on the ground that since Oakbrook was a management company and not the owner of the apartment, it was not the real party in interest as required under Civ.R. 17(A).

{¶ 16} The Tenth Appellate District reversed the municipal court's decision. At issue before the court was whether an FED action could be brought by a real estate management company as the landlord or whether the action had to be brought by the owner of the premises. The appellate court noted that under an agreement with the property owner, Oakbrook, and not the property owner, executed all leases in its own name, collected all rents in its own name, collected and held all security deposits in its own name, contracted for all maintenance and services in its own name, and controlled the day-to-day operation of the

premises. In light of the foregoing and given the definition of "landlord" under R.C. 1923.01(C)(2) and 5321.01(B), the appellate court concluded that "Oakbrook was the agent and person authorized to manage premises and collect rents and * * * therefore, a landlord who is empowered by statute to bring an action in forcible entry and detainer." *Oakbrook*, 1991 WL 70146 at *3. The appellate court further stated that since Oakbrook was "a landlord by definition, [Oakbrook], in effect, became the 'real party in interest.'" *Id.*

{¶ 17} We find that *Oakbrook* is not applicable to the case at bar. In that case, Oakbrook, the management company, executed all leases *in its own name*, and in fact entered into the lease agreement with the tenant. In the case at bar, it is undisputed that appellant was not a party to the written lease agreement. Rather, Abba1st.com and Lawhorn were the only two parties to the written lease agreement, Abba1st.com as the landlord and Lawhorn as the tenant, and were the only parties identified in the written lease agreement. For the same reason, we find that similar holdings from other appellate courts are not applicable here. *See Adlaka*, 2010-Ohio-6509; *Knoppe v. Applegate*, 5th Dist. No. 08 CAG 08 0051, 2009-Ohio-2007; *J&E Management, Inc. v. Wolf*, 8th Dist. No. 35563, 1977 WL 201207 (Feb. 10, 1977). All three cases found that the plaintiff (either an individual or a management company), who was a *party to the lease agreement* but not the owner of the property, was a landlord under R.C. 1923.01 and thus the proper party to bring an FED action against the tenant.

{¶ 18} As stated earlier, the municipal court cited *Picklo*, a 2002 Ohio Supreme Court decision, in support of its decision. *Picklo*, 2002-Ohio-3995. For several years, Lynn Picklo, who was not an attorney, filed complaints for FED and for recovery of unpaid rent and appeared in court on behalf of the property owner. The Cleveland Bar Association filed a complaint alleging that Picklo had engaged in the unauthorized practice of law. As authority for her actions, Picklo cited the definition of "landlord" under both R.C. 1923.01(C)(2) and

5321.01(B).

{¶ 19} The supreme court found that "the definitions in R.C. 1923.01(C)(2) and 5321.01(B) represented unconstitutional invasions of [its] power to define the practice of law." *Id.* at ¶ 3. The supreme court then held that "to the extent that R.C. 1923.01(C)(2) and 5321.01(B) purport to enlarge the class of persons who may legitimately engage in conduct defined as the practice of law, we must strike these statutes as unconstitutional." *Id.* at ¶ 5. The court then "enjoined [Picklo] from any further filings and appearances in court that constitute the unauthorized practice of law." *Id.* at ¶ 8.

{¶ 20} The holding in *Picklo* was subsequently applied in an FED action by the Sixth Appellate District in *Batt v. Nairebout*, 6th Dist. No. L-03-1001, 2003-Ohio-3421. Nick Batt, who used to be, but was no longer an attorney licensed to practice law in Ohio, filed an FED action. He alleged in the complaint that he owned, managed, or leased the property. When he did not present evidence of ownership of the property, the magistrate, pursuant to *Picklo*, recommended that Batt could not appear on behalf of the owner if he was the manager or lessor of the property. The municipal court adopted the magistrate's decision and dismissed the action. On appeal, Batt argued that under R.C. 1923.01(C)(2), a person need not be the owner of the property to bring an FED action. The Sixth Appellate District upheld the municipal court's decision as follows:

> The Ohio Supreme Court specifically held that the prosecution of an FED action by a landlord's agent who was not a licensed attorney constituted the unauthorized practice of law. Batt declined to provide evidence of his ownership of the subject-property and, therefore, absent such evidence, the trial court had no proof that Batt was not an agent.

(Internal citation omitted.) *Nairebout* at ¶ 4.

{¶ 21} In the case at bar, appellant is not the owner of the rental property; Abba1st.com is. Appellant does not own Abba1st.com; his wife solely owns the corporation.

More importantly, appellant is also not a party to the written lease agreement between Abba1st.com and Lawhorn, and is not identified at all in the lease agreement. By contrast, Abba1st.com is explicitly designated as the landlord. Appellant filed the FED action in his own name, based on the lease agreement between Abba1st.com and Lawhorn, and represented to the municipal court that he is an employee of the corporation and the manager of the property for the corporation. Appellant denied he was representing the corporation in the FED action, asserting instead that he was only representing himself as the manager of the property. In addition to filing the FED complaint, appellant also filed motions for default judgment. Appellant is not an attorney.

{¶ 22} In light of the foregoing facts and the supreme court's decision in *Picklo*, we find that, notwithstanding his assertions to the contrary, appellant in effect was representing the corporation when he filed the FED action and the subsequent motions for default for judgment and when he appeared in court. As a result, we agree with the municipal court that appellant's actions "essentially amount[ed] to the unauthorized practice of law and as such the matter is subject to dismissal." *See Picklo*, 2002-Ohio-3995; *Nairebout*, 2003-Ohio-3421. In addition, in light of the foregoing facts, we also find that appellant was not the proper party to bring the FED action against Lawhorn. Thus, the municipal court did not err in dismissing appellant's claim for unpaid rent and damages.

{¶ 23} Appellant's first assignment of error is overruled.

{¶ 24} Assignment of Error No. 2:

{¶ 25} THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION TO STRIKE APPELLEE LIFESPAN'S RESPONSE TO PLAINTIFF'S OBJECTIONS.

{¶ 26} Assignment of Error No. 3:

{¶ 27} THE TRIAL COURT ERRED BY NOT AWARDING JUDGMENTS (SIC) IN FAVOR OF APPELLANT, AGAINST APPELLEES.

{¶ 28} In both of these assignments of error, appellant merely asserts that both his motion to strike and his second motion for default judgment were "well supported and incontrovertible; However, the trial court refused or failed to review said motion[s], and instead made a decision based upon a false legal premise set forth in such response." [sic] Appellant then incorporates by reference his motion to strike and his second motion for default judgment.

{¶ 29} The appellate rules expressly provide what an appellant must include in an appellate brief and the resulting consequences if an appellant chooses to ignore the rules. App.R. 16(A)(7) states that an appellant shall include "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary." Thus, pursuant to App.R. 16, arguments are to be presented within the body of the merit brief.

{¶ 30} If an appellant fails to comply with App.R. 16(A), an appellate court may overrule the assignment of error as stated in App.R. 12(A)(2): "The court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A)."

{¶ 31} It is well-established that "the Rules of Appellate Procedure do not permit parties to 'incorporate by reference' arguments from other sources." *Kulikowski v. State Farm Mut. Ins. Co.*, 8th Dist. Nos. 80102 and 80103, 2002-Ohio-5460, ¶ 56; *Tripodi Family Trust v. Muskingum Watershed Conservancy Dist.*, 5th Dist. No. 2007 AP 09 0056, 2008-Ohio-6902; *McNeilan v. Ohio State Univ. Med. Ctr.*, 10th Dist. No. 10AP-472, 2011-Ohio-678. It is not the duty of an appellate court to search the record for evidence to support an

appellant's argument as to an alleged error. *Cireddu v. Cireddu*, 8th Dist. No. 76784, 2000 WL 1281253, *9 (Sept. 7, 2000). An appellate court is not a "performing bear," required to dance to each and every tune played on appeal. *Id*.

{¶ 32} Consequently, and pursuant to App.R. 12 and 16, we decline to consider appellant's second and third assignments of error.

{¶ 33} Judgment affirmed.

POWELL, P.J., and YOUNG, J., concur.

Young, J., retired, of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 6(C), Article IV of the Ohio Constitution.