

[Cite as *Stevenson v. Dunn*, 2023-Ohio-2411.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY

IDA STEVENSON	:	
	:	
Appellant	:	C.A. No. 2023-CA-12
	:	
v.	:	Trial Court Case No. CVI2201419
	:	
BILL DUNN	:	(Civil Appeal from Municipal Court)
	:	
Appellee	:	
	:	

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OPINION

Rendered on July 14, 2023

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IDA STEVENSON, Appellant, Pro Se

BILL DUNN, Appellant, Pro Se

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TUCKER, J.

{¶ 1} Plaintiff-appellant Ida Stevenson appeals from a judgment of the Fairborn Municipal Court denying her claim for breach of contract. For the reasons set forth below, we affirm.

I. Facts and Procedural History

{¶ 2} Stevenson has an interest in a Fairborn rental property.¹ She purchased two storm doors for the property. She and her husband installed one of the doors. However, they were unable to install the second door because it was too large for the opening. Stevenson sought and received recommendations for contractors and ultimately secured the services of defendant-appellee Bill Dunn.

{¶ 3} The parties did not execute a written contract. However, there was evidence that the parties agreed that Stevenson would pay Dunn \$200 for his services. Dunn began work on the door on October 5, 2022. He informed Stevenson that he would accept \$180 as payment if she tendered cash. After Stevenson remitted payment of \$180, Dunn informed her that he was leaving the door propped open overnight to permit a sealant to dry and would return the following day to finish the job. Dunn never returned to the job.

{¶ 4} On October 12, 2022, Stevenson filed an action in small claims court seeking \$180 in damages based upon her claim that Dunn had breached the contract. The matter was tried before a magistrate on November 29, 2022. On December 7, 2022, the magistrate issued a decision finding that Dunn had breached the contract. However, the magistrate declined to award damages to Stevenson because she did not sustain her

¹ The nature of Stevenson's interest in the property is unclear from the record, but it is probably an ownership interest.

burden of proof with regard to damages. The decision stated, in pertinent part:

In the present case the Magistrate finds a contract between the parties for the repair and installation of a storm door. Plaintiff performed on the contract and provided the agreed upon amount of cash to Defendant. Although Defendant performed some of the agreed upon work, it is undisputed that Defendant did not install the closer or latch. Therefore, Defendant did not perform on the contract to its completion. Plaintiff alleges that she was subsequently forced to hire another contractor to complete the installation at the rate of \$45.00 per hour. Based on the evidence and testimony presented, the new contractor completed certain tasks beyond the scope of the original contract between Plaintiff and Defendant. While clear that Defendant failed to fulfil the contract, Plaintiff has not provided any documentation related to the costs of repair. Plaintiff provides no invoices, estimates or receipts related to the repairs completed by the new contractor. The evidence before the Magistrate does not differentiate between the repair costs as they relate to the original contract with Defendant and the additional work completed by the second contractor. As a result, Plaintiff has not met her burden of proof in establishing damages related to the costs of repairing Defendant's breach.

{¶ 5} On January 18, 2023, the trial court entered a judgment affirming and adopting the decision of the magistrate. Stevenson appeals.

II. Discussion

{¶ 6} Stevenson has failed to comply with App.R. 16(A)(3), which requires “[a] statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.” A review of her appellate brief indicates that she disputes the findings made by the magistrate. Thus, we conclude Stevenson intended to raise the following assignment of error:

THE DECISION OF THE TRIAL COURT IS NOT SUPPORTED BY
THE EVIDENCE.

{¶ 7} We begin by noting that our review is limited to plain error because Stevenson did not file objections to the magistrate’s decision as required by Civ.R. 53(D). She also did not file a transcript of the hearing before the magistrate with the trial court. See *Barclay Square Condominium Owners Assn. v. Ruble*, 2d Dist. Montgomery No. 29613, 2023-Ohio-1311, ¶ 22-23. “[I]n appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.” *In the Matter of A.J.S. and R.S.*, 2d Dist. Miami No. 2007-CA-2, 2007-Ohio-3433, ¶ 16, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099, syllabus.

{¶ 8} Further complicating the matter, Stevenson has failed to file a transcript of the proceedings for our review. Thus, “we employ the presumption of regularity in the proceedings of the trial court.” *Cropper v. Cropper*, 2d Dist. Champaign No. 2017-CA-

13, 2018-Ohio-1536, ¶ 12, citing *Beverly v. Roberts*, 2d Dist. Clark No. 2008-CA-95, 2009-Ohio-1628, ¶ 10, quoting *State v. Smith*, 2d Dist. Montgomery No. 20835, 2005-Ohio-5588, ¶ 10.

{¶ 9} To establish a claim for breach of contract, a plaintiff must prove: (1) the existence of a contract, (2) performance by the plaintiff, (3) breach by the defendant, and (4) damages or loss resulting from the breach. *Lucarell v. Nationwide Mut. Ins. Co.*, 152 Ohio St.3d 453, 2018-Ohio-15, 97 N.E.3d 458, ¶ 41. “As a general rule, an injured party cannot recover damages for breach of contract beyond the amount that is established by the evidence with reasonable certainty, and generally, courts have required greater certainty in the proof of damages for breach of contract than in tort.” *Rhodes v. Rhodes Indus., Inc.*, 71 Ohio App.3d 797, 808-809, 595 N.E.2d 441 (8th Dist.1991), citing *Kinetico, Inc. v. Indep. Ohio Nail Co.*, 19 Ohio App.3d 26, 482 N.E.2d 1345 (8th Dist.1984), citing Restatement of the Law 2d, Contracts (1981) 144, Section 352.

{¶ 10} As stated, Stevenson did not provide a transcript of the magistrate’s hearing for the trial court to review. She also did not provide one for our review. In the absence of a transcript, we cannot say that the magistrate erred in concluding that Stevenson had failed to present competent, credible evidence of her claimed damages. Further, there is nothing in the record before us to demonstrate that the magistrate committed plain error in denying Stevenson’s claim for damages.

{¶ 11} We also note that the Supreme Court of Ohio has stated that “if a plaintiff proves breach of contract at trial but fails to prove actual damages resulting from that breach, the trial court may enter judgment for the plaintiff and award nominal damages.”

DeCastro v. Wellston City School Dist. Bd. of Edn., 94 Ohio St.3d 197, 761 N.E.2d 612 (2002), syllabus. However, there is nothing in the record before us to indicate that Stevenson had asked the magistrate for nominal damages. Further, she failed to object to the magistrate's decision, and she makes no reference to nominal damages in her appellate brief. Thus, Stevenson has waived this issue for appeal. Absent a demonstration that a significant right is involved, an appellate court should not reverse and remand a case for a new trial if only nominal damages could result. *Id.* at 200.

{¶ 12} Because we must presume regularity, and because the record in this case is insufficient to support Stevenson's claim of error, we are constrained to conclude that the magistrate's findings of fact are supported by the evidence presented during the trial and that the trial court did not err in affirming and adopting those findings and conclusions of law. Accordingly, Stevenson's assignment of error is overruled.

III. Conclusion

{¶ 13} The judgment of the municipal court is affirmed.

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LEWIS, J. and HUFFMAN, J., concur.