M.L.R. Properties v. Baer

Manufactured home community operators are required to provide statutory notice of rule violations

MH Operators MUST give Thirty (30) Days Notice to Comply

Judicial Review – Thirty Days Notice – Material Rule Violation

1986 Ohio App. LEXIS 7105,

* M.L.R. Properties, Inc., APPELLEE vs. Dave Baer, APPELLANT

C.A. No. L-85-330

Court of Appeals, Sixth Appellate District, Lucas County, Ohio

1986 Ohio App. LEXIS 7105

June 13, 1986

PRIOR HISTORY: [*1] Appeal from Maumee Municipal Court; No. CV 85-G-316.

DISPOSITION: On consideration whereof, this court finds that substantial justice was not done the party complaining and judgment of the Maumee Municipal Court is reversed. This cause is remanded to said court for determination of appellant's damages and assessment of costs. Costs to appellee.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. See also Supp. R. 4, amended 1/1/80.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant tenant challenged a judgment from the Maumee Municipal Court (Ohio) ordering restitution of a mobile home park rental lot in a forcible entry and detainer complaint for the alleged default for payment of rent. The trial court found that appellee landlord failed to provide a statutory notice of the tenant's noncompliance with Ohio Rev. Code Ann. § 3733.101(A)(5), but that the tenant could be evicted under the park rules and regulations.

OVERVIEW: The landlord provided the tenant with a notice to leave the premises, which set forth as grounds for eviction nonpayment of rent, noncompliance with Ohio Rev. Code Ann. § 3733.101(A)(5), and violation of park rules and regulations, which provided for eviction with three days notice. The trial court issued a writ of restitution and denied the tenant's motion to stay the execution of the writ. On appeal, the tenant argued that the trial court erred in permitting the landlord to evict the tenant from the park, in permitting the landlord to evict the tenant without requiring 30 days notice, and in denying the tenant his constitution right to the equal protection of the laws. The court held that: (1) the legislature had created "formidable

restrictions" on the ability of park operators to evict their tenants; (2) the landlord was not entitled to a writ of restitution on the basis that the tenant had been lawfully evicted pursuant to Ohio Rev. Code Ann. § 1923.02(A)(10) either for default on payment of rent on breach of rental agreement; and (3) the landlord could not circumvent the law by giving only three days notice based upon the rental agreement.

OUTCOME: Finding that substantial justice was not done the party complaining, the court reversed the judgment, with costs to the landlord, and remanded the cause to the trial court for a determination of the tenant's damages and assessment of costs.

CORE TERMS: tenant, notice, manufactured, eviction, rental agreement, evict, payment of rent, mobile homes, default, writ of restitution, forcible entry and detainer, noncompliance, landlord, materially affects, breached, terminate, notice requirements, evicted, assignments of error, holdover tenants, terminated, excessive, non-compliance, disposal, tenancy, lawful, statutory provisions, entitled to relief, written notice, date specified.

OPINION

DECISION AND JOURNAL ENTRY

PER CURIAM

This case comes before the court on appeal from a judgment of the Maumee Municipal Court, wherein the trial judge issued a writ of restitution in favor of plaintiff-appellee and against defendant-appellant, ordering restitution of lot no. 55.

On or about March 3, 1984, appellant entered into a oral month-to-month tenancy with appellee [*2] for the rental of lot no. 55 in the Swanton Mobile Home Park.

On July 24, 1985, appellee provided appellant with a notice to leave the premises. The grounds for eviction set forth in the notice included: (1) nonpayment of rent; (2) noncompliance with R.C. 3733.101(A)(5); and (3) violation of park rules and regulations (excess number of occupants, excessive vehicular parking, and pedaling and soliciting).

On July 31, 1985, a complaint in forcible entry and detainer was filed. The basis of the complaint was appellant's alleged default for payment of rent for May 1, 1985.

On August 20, 1985, the trial court entered final judgment. Although the complaint sets forth only the grounds of default of payment of rent, the trial court addressed all the grounds for eviction, as set forth in the notice. In its opinion, the trial court ruled that there were no grounds for eviction based on nonpayment of rent, and that appellee did not provide the statutory notice concerning appellant's noncompliance with R.C. 3733.101(A)(5). However, the

court ruled that appellant could be evicted pursuant to the terms set forth in the park rules and regulations. The court noted that appellant signed a receipt [*3] of the park rules and regulations which provided that appellant could be evicted upon three days notice where appellant had failed to comply with the park rules and regulations. The trial court, finding that appellant had violated local park rules; granted judgment on behalf of the appellee and issued a writ of restitution. Appellant's motion to stay the execution of the writ was denied.

Appellant, Dave Baer, timely appealed setting forth three assignments of error:
"I. THE TRIAL COURT ERRED IN PERMITTING APPELLEE TO EVICT APPELLANT FROM THE SWANTON MOBILE HOME PARK FOR MERELY VIOLATING PARK RULES THAT DO NOT MATERIALLY AFFECT HEALTH AND SAFETY.

"II. THE TRIAL COURT ERRED IN PERMITTING APPELLEE TO EVICT APPELLANT WITHOUT REQUIRING THIRTY DAYS NOTICE.

"III. THE TRIAL COURT ERRED BY DENYING APPELLANT THE EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF OHIO."

Finding assignments of error nos. I and II similar, they will be addressed together. The issue raised by appellant addresses the notice requirements for tenants who reside in a manufactured home park, as defined in R.C. 3733.01(A). [1] Appellant contends that he was entitled [*4] to thirty days notice prior to eviction, whereas appellee argues that appellant was entitled to only three days notice prior to eviction. Guided by the recent Ohio Supreme Court decision in *Schwartz* v. *McAtee* (1986), 22 Ohio St. 3d 14, we reverse.

FOOTNOTES

1 The facts indicate that the Swanton Mobile Home Park would be characterized as a manufactured home park, as defined in R.C. 3733.01(A).

In *Schwartz* v. *McAtee*, *supra*, the court framed the issue in the following manner:
"The question in this case is whether a manufactured home park operator can successfully maintain an action in forcible entry and detainer against a tenant who has neither defaulted in payments of rent nor breached the terms of his rental agreement."

Initially the Ohio Supreme Court reviewed the development of manufactured home parks. HN1 Aware that manufactured homes were once thought of in terms of the traditional recreational vehicle, the court noted that they had taken on a different context in light of the increased popularity of mobile homes and their usage as a permanent residence. This changing trend

towards using mobile homes as an individual's sole residence necessitated the Ohio [*5] General Assembly's enactment of a specific legislative response to regulate the relationship between manufactured home park landlords and their tenants. Drawing obvious guidance from the previously enacted landlord-tenant law, as set forth in Chapter 5321, the legislature adopted Chapter 3733, which contains the statutory provisions governing the rights and responsibilities of manufactured home park operators and tenants. These provisions essentially parrot the provisions in the landlord-tenant law, with the principle exception concerning the landlord's ability to terminate the tenant's lease.

This exception, however, is of particular significance because it supports the proposition that a landlord cannot readily evict a tenant, as is permitted in Chapter 5321. The exception supports the proposition by negative inference, that is, the legislature, by its failure to enact a provision concerning termination of a manufactured home park's rental agreement, was cognizant of the permanent character of manufactured home living, as compared to the mobility of apartment living, and therefore intended to make it more difficult for the landlord to evict a tenant. With this in mind, the legislature [*6] created "formidable restrictions" on the ability of the park operator to evict his tenants.

In light of the development of manufactured home parks and the legislature's intent, the Ohio Supreme Court proceeded in reconciling Chapter 3733 with the eviction provisions set forth in R.C. 1923.01, *et seq*.

Chapter 1923 sets forth the basis for forcible entry and detainer actions. R.C. 1923.02 provides eleven different subsections which permit the landlord's eviction of a tenant. Despite the presence of the eleven different subsections, the Supreme Court recognized the application of only two subsections which would permit a manufactured home park operator to evict a tenant. The two subsections were R.C. 1923.02(A)(1), holdover tenants, and R.C. 1923.02(A)(10), noncomplying manufactured home tenants.

These subsections state:
"(A) Proceedings under chapter 1923. of the Revised Code, may be had:

"(1) Against tenants holding over their terms;

***

"(10) Against manufactured home tenants who have defaulted in the payment of rent or breached the terms of a rental agreement with a manufactured home park operator[.]"

HN4 Since Chapter 3733 contains no provisions for establishing [*7] when a landlord may terminate a tenancy and thereby classify the tenant as a holdover tenant, the Ohio Supreme Court recognized that the existence of a holdover tenant when three conditions were met. With respect to subsection (A)(1), the court stated:

"[A] tenant in a manufactured home park cannot be recognized as a holdover tenant unless:

"(a) he fails to fulfill an obligation imposed by R.C. 3733.101, provided it materially affects health and safety;

"(b) the park operator gives the tenant written notice of noncompliance in accordance with R.C. 3733.13; and

"(c) the tenant fails to remedy the noncompliance by the date specified in the notice which shall not be less than thirty days." *Id.*, at 19.

Under the second subsection (A)(10), the landlord may evict a tenant for only two reasons: default on payment of rent or breach of the rental agreement.

Upon review of the record, we note the landlord complaint has alleged only one ground for relief, appellant's default on payment of rent. No other allegation was set forth in the complaint. However, the trial court, in its judgment, specifically addressed three separate bases for relief--the same three grounds stated [*8] in appellee's notice of eviction. The trial court found that the first two grounds set forth in the notice, default on payment of rent and noncompliance with R.C. 3733.101(A)(5), provided no basis for the issuance of a writ of restitution. The trial court ruled that there had been no default of payment. The trial court further ruled that appellee failed to give the proper thirty day notice for an eviction of a tenant for non-compliance with the provisions set forth in R.C. 3733.101.

Upon review of the record, we conclude, as did the trial court, that there existed no basis for the issuance of the writ of restitution on the first two grounds set forth in the eviction.

Further, having failed to allege in its complaint a breach of the rental agreement, appellee was not entitled to relief based upon any possible breach of said agreement. Cf. *Schwartz* v. *McAtee*, *supra*, at 20. In view of the foregoing, appellee was not entitled to a writ of restitution on the basis that appellant had been lawfully evicted pursuant to subsection R.C. 1923.02(A)(10), *i.e.*, default on payment of rent on breach of rental agreement.

The record, however, indicates that the trial court found [*9] that appellant had breached the park's rules and regulations and could be evicted on three days' notice, since the rules and regulations contained a provision permitting eviction upon three days' notice. Appellee argues that this is a valid and enforceable provision. We disagree.

First, as previously noted, the complaint states a claim based solely on appellant's alleged default of payment of rent. Since appellee failed to set forth a claim based upon a breach of the park's rules and regulations, appellee was not entitled to relief on this ground. The trial court was without authority to issue a writ of restitution.

Second, and of equal significance, appellee's position concerning the right to give three days' notice prior to eviction is untenable in light of the history behind Chapters 3733 and 1923. Appellee argues that appellant's signature on the rules and regulations permits them to evict a tenant, within three days, upon non-compliance with the park's rules and regulations. By so doing, appellee seeks to do by a non-binding, non-contractual agreement, what appellant could not do by statute; evict on three days' notice instead of thirty days' notice.

HN5 Revised Code 3733.01, [*10] *et seq.*, specifically sets forth the provisions which govern the rights and responsibilities of home park operators and tenants. Included within this chapter is section 3733.13 which provides that where a tenant fails to fulfill his obligations as set forth in R.C. 3733.101 *and* the tenant's failure materially affects health and safety, the park operator may deliver written notice of the tenant's failure to comply with the statute and that the rental agreement will be terminated upon a date specified within the notice, but not less than thirty days. If the tenant fails to remedy the condition within the specified time, the agreement will be terminated. For there to be valid notice, it must be in writing, specify the act and omission that constitutes noncompliance, and the date the rental agreement will be terminated. R.C. 3733.13. [2]

This section applies where a tenant has breached his statutory obligations. R.C. 3733.101 refers to the tenant's obligations to keep the premises safe, to dispose of garbage in a sanitary manner, to refrain from the destruction of the premises, to not disturb the neighbor's peaceful enjoyment, and to comply with the housing, health and safety codes. The latter obligation also requires the tenant to comply with reasonable local park rules.

Where a tenant has breached the foregoing obligations *and* the breach materially affects health and safety, the park can seek to terminate the rental agreement pursuant to the minimum thirty day notice provision set forth in R.C. 3733.13.

In this case, appellee seeks to circumvent the statutory provisions by claiming that appellant's violations were not governed by R.C. 3733.13 and that they may give only three days notice for eviction purposes, since appellant willingly signed a receipt of the park's rules and regulations which had a provision permitting a three day notice for eviction. If we gave credence to appellant's intended application, we would effectively ameliorate the provisions of Chapter 3733, while simultaneously ignoring the chapter's [*12] historical developments.

As was indicated by the Supreme Court, in *Schwartz* v. *McAtee*, *supra*, HN7 a manufactured home tenant's place of residence may be characterized as being permanent, *i.e.*, immobile. Manufactured homes tenants are not characterized as apartment tenants in that apartment tenants have greater mobility and may easily remove their furniture. Manufactured home park tenants generally have their place of residence affixed to the lot, have utility lines connected, and have the proper drainage and sewage system connected; all of which are costly and give the tenant some semblance of permanency. To foster the tenant's right to reside on the lot and to protect their interests, the legislature established specific limited statutory provisions concerning a park operator's right to evict. As set forth in R.C. 1923.02(A)(10), a park operator

may evict a tenant upon three days' notice only where there has been default on payment of rent or breach of the rental conditions. There is no other specific statutory subsection which permits a park operator to evict a tenant on a three day notice of eviction.

Appellee then has attempted to implement its own provisions for [*13] eviction of the tenant, by setting forth a right to three day notice of eviction for a tenant's violation of park rules and regulations. This clearly was a matter within the province of the legislature, and was not within the prerogative of appellee, park operator. As such, the three day notice as set forth in the park rules and regulations has no effect. To have recognized its effect would belie the general purpose of HN8 Chapter 3733, which was intended to be remedial in nature and to be liberally construed in order to promote its object and to assist the parties in attaining justice.

Further, appellant's intended application specifically contradicts the provisions set forth in Chapter 3733. As was noted earlier, HN9 R.C. 3733.13 permits the park operator to terminate a rental agreement upon the occurrence of specific conditions. One such condition, as set forth in R.C. 3733.101, includes the tenant's non-compliance with park rules and regulations. It is the application of these two sections which must govern a park operator's right to evict a tenant for violation of park rules and regulations. In reading these two sections together, it is clear that a park operator may not evict a tenant [*14] for violation of park rules, unless the tenant's non-compliance materially affects health and safety, and the notice requirements have been completed. Upon application of these sections, a tenant may not be evicted until the expiration of thirty days after proper notice, and the park operator then elects to proceed under the forcible entry and detainer provisions.

Obviously aware of the possibility of the foregoing conclusion, appellee has proferred an alternative theory for its right to the writ of restitution. Appellee argued that if this court found that thirty day notice requirements were necessary, appellee's letters to appellant indicating appellant's noncompliance with park rules and regulations constituted proper thirty day notice to terminate the rental agreement and therefore allow for appellee's forcible entry and detainer action.

Specifically, appellee, in the record, has indicated that appellant was informed that he had violated park rules concerning excess number of occupants in a mobile home, excess vehicular parking, improper disposal of garbage, and the improper disposal of cigarette butts. [3] Unquestionably, these allegations materially affect the health and safety [*15] of the tenant and the tenant's neighbors. Appellant could have been evicted upon compliance by the park operator with the thirty day notice requirement in R.C. 3733.13.

FOOTNOTES

3 During the course of appellant's period of tenancy with appellee, appellant received several letters indicating that he was in noncompliance with the park's rules and regulations. The

chronological history of those letters is as follows:

March 3, 1984 Appellant signed receipt of the mobile home park's rules and regulations.

November 1, 1984 Letter indicating violation of park's rules and regulations for maintaining excessive number of unlicensed vehicles, offering a mobile home for sale, and having excessive number of occupants in the mobile home .

March 5, 1985 Letter indicating excessive number of vehicles maintained on the property.

April 2, 1985 Letter indicating excessive number of motor vehicles maintained on the property.

April 30, 1985 Letter indicating improper disposal of garbage and that the mobile home needed repair to its skirting.

May 5, 1985 Letter indicating that his guest's disposal of cigarette butts constituted a fire hazard.

June 19, 1985 Letter indicating that his guests were making too much noise and were improperly disposing of cigarette butts.

June 11, 1985 Letter indicating that his manager refused's to accept appellant's payment of rent.

However, upon review of the letters sent to appellant, we find that they clearly do not meet the notice requirements set forth in R.C. 3733.13. This section requires the notice to specifically state the date the rental agreement will be terminated. It is clear from a review of each letter that they do not contain a thirty day notice provision which indicates the date the rental agreement will be terminated. Further, none of the letters indicate that a tenant has thirty days to remedy the condition. Regrettably, we find that no valid and lawful notice has been sent to appellant. Absent proper notice, appellee improperly sought a writ of restitution.

To summarize, the trial court issued a writ of restitution against appellant, a manufactured home tenant, on the basis that appellant had received a three day notice of eviction and that appellant had failed to comply with park rules and regulations. Chapter 1923 provides two subsections permitting the eviction of a manufactured home tenant. R.C. 1923.02(A)(10) provides that a manufactured home tenant may be subject to a forcible entry and detainer action where the park operator has given a three day notice of eviction for either default [*17] of payment of rent or breach of the rental agreement. Here, the record contains no evidence supporting an eviction upon either ground. The second subsection, R.C. 1923.02(A)(1), provides that a park operator may evict a holdover manufactured home tenant. For a manufactured home operator's tenant to be classified as a holdover tenant, the park operator must comply with three specific requirements. The tenant's noncompliance with R.C. 3733.101, must materially affect health and safety, the park operator must provide a lawful notice that appellant's noncompliance must be rectified within thirty days, and the tenant must fail to remedy the condition. Where the foregoing factors have been satisfied, a tenant may be classified as a holdover tenant and therefore subject to a forcible entry and detainer action. Here, appellant has breached his statutory obligations and his breach materially affects health and safety. However, appellee has failed to provide appellant with the proper thirty day notice. Absent a lawful notice, appellee was not entitled to proceed in its forcible entry and detainer action.

Based on the foregoing, appellant's first and second assignments of error are found to [*18] be well-taken.

In appellant's third assignment of error, he raises constitutional challenges concerning the notice requirements for eviction of a home park tenant. In view of our foregoing discussion, which finds appellant's first and second assignments of error well-taken, appellant's third argument need not be raised and is therefore found not well-taken.

In reaching our decision, we are cognizant of the fact that the trial court has issued a writ of restitution and that there has been no stay of said writ. As such, appellant is currently not in possession of the premises in question. Therefore, in order to make appellant whole again, this cause is remanded to the lower court to determine the damages that appellant suffered when removed from the premises in question. To not allow appellant damages in this case would indeed be recognition that he has received a hollow victory. Otherwise appellant's challenge to the trial court's issuance of the writ of restitution would be fruitless if no relief was granted. Accordingly, in the interests of justice, this cause is remanded to the lower court for determination of damages so that appellant will be made whole.

On consideration whereof, [*19] this court finds that substantial justice was not done the party complaining and judgment of the Maumee Municipal Court is reversed. This cause is remanded to said court for determination of appellant's damages and assessment of costs. Costs to appellee.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. See also Supp. R. 4, amended 1/1/80.

John J. Connors, Jr., P.J., Arthur Wilkowski, J., CONCUR. Richard B. McQuade, Jr., J., dissents.

DISSENT BY: MCQUADE

DISSENT

MCQUADE, J.

I must respectfully dissent from the majority decision.

An analysis of this appeal must begin with the understanding that the trial court did not, in its August 20, 1985 decision, have the benefit of the Ohio Supreme Court ruling in *Schwartz* v. *McAtee* (1986), 22 Ohio St. 3d 14. Whether or not the trial court's rationale was proper is of little moment, because in light of *Schwartz*, *supra*, the trial court did the right thing.

In *Schwartz*, *supra*, the Ohio Supreme Court said in syllabus 3:
"A manufactured home park operator cannot successfully maintain an action in forcible entry and detainer against a tenant *unless* [*20] the tenant has defaulted in the payment of rent and/or breached the terms of his rental agreement." (R.C. 1923.02(A)(1) applied.) (Emphasis added.)

Stated another way, a manufactured home park operator can successfully maintain an action in forcible entry and detainer against a tenant where tenant has breached the terms of his rental agreement. "Rental agreement" is defined in both R.C. 1923.01(5) and in R.C. 3733.01(M). The definitions are nearly identical. A "rental agreement" means any agreement or lease, written or oral, that establishes or modifies the terms, conditions, rules or any other provisions concerning the use and occupancy of the premises by one of the parties.

The trial court found "*** At the time the tenancy was entered into, the park manager gave the defendant a copy of the Swanton Mobile Home Park Rules and Regulations. On March 3, 1984, the defendant in writing acknowledged his receipt to said rules and regulations and agreed to abide by ***."

The Swanton Mobile Home Park Rules and Regulations appear in the record as plaintiff's exhibit 11. They contain forty separate paragraphs which address registration, payments, care of premises, vehicles and other miscellaneous [*21] items.

Appellee's park rules and regulations are unquestionably a rental agreement because they establish "terms, conditions, rules, *** concerning the use and occupancy of the premise."

Consequently, appellee, a manufactured home park operator, could successfully maintain an action against appellant pursuant to R.C. 1923.02(A)(10) for breach of the terms of its rental agreement. *Schwartz*, *supra*.

It follows then that appellee's notice to leave premises was timely served upon appellant. R.C. 1923.04(A) provides in material part that "a party desiring to commence an action under this chapter, shall notify the adverse party to leave the premises, for the possession of which action is about to be brought, three or more days before beginning the action ***." As the majority properly notes, appellee provided appellant with a notice to leave the premises on July 24, 1985, and the instant action was commenced on July 31, 1985.

The majority emphasizes that "the landlord complaint has alleged only one claim for relief, appellant's default of payment of rent." In another party of the majority decision the majority says, "the complaint states a claim based solely on appellant's alleged [*22] default of payment. Since appellee failed to set forth a claim based upon breach of the park's rules and regulations, appellee was not entitled to relief on this ground."

In fact, the landlord complaint alleged not one but several claims for relief. The complaint states "plaintiff demand process and restitution of the premises and removal of mobile home from premises and judgment for $ 320.00 rent under said leave, $ 275.00 actual damages, $ 3.34 per day as damages for use of the premises after August 1, 1985 and reasonable attorney's fees."

Furthermore, appellee was not required to state the factual basis for the relief claimed. R.C. 1923.05 provides in material part "such complaint shall particularly describe the premises so entered upon and detained, and set forth either an unlawful and forcible entry and detention, or an unlawful and forcible detention after a peaceable or lawful entry of the described premises." Plaintiff's complaint indeed alleges that "defendant unlawfully and forcibly detained from plaintiff possession of said premises." That language alone is sufficient to state a cause of action in forcible entry and detainer. *Brown* v. *Burdick* (1874), 25 Ohio St. [*23] 260; *Glink* v. *Pennell* (1947), 81 Ohio App. 340; *Columbus Metropolitan Housing Authority* v. *Stires* (1949), 84 Ohio App. 331.

Parenthetically, it is worthy of note that the three day notice given appellant pursuant to R.C. 1923.04(A), and annexed to appellee's complaint, alleged that appellant had violated the park rules and regulations.

In addition, the evidence was replete with instances in which appellant violated the park rules and regulations. (See trial court's judgment entry.)

Accordingly, I respectfully dissent.