

IN THE JACKSON COUNTY MUNICIPAL COURT, JACKSON COUNTY

CHRISTINA BOWMAN
AND
MARK HODGES

PLAINTIFFS,

-VS-

MARY HELM

DEFENDANT.

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CASE NO. 89-CV-H-384

DECISION AND JUDGMENT ENTRY

FILED

JAN 4 1991

JACKSON COUNTY MUNICIPAL COURT
PATRICIA TEDROW CLERK

This matter came on for trial on November 29,1990. Both parties have filed post-trial briefs. Plaintiffs seek relief in seven areas: 1) actual damages for property seized by the landlord defendant 2) damages for lockout and alleged conversion of property 3) punitive damages for illegal self-help 4) reduction in rent 5) double damages for the amount of a withheld security deposit 6) attorney fees 7) costs.(see plaintiff's trial brief pg.5) Defendant has also filed a counterclaim. Upon the trial record, the briefs and arguments of the parties the Court finds and orders the following.

Defendant argues that Mark Hodges is not a proper party entitled to any relief. Mark Hodges was not a signatory to plaintiff's exhibit 19, however, that exhibit does not preclude non- signatories in the same family unit. (see item 6, plaintiff exhibit 19). It is obvious upon the record herein that Christina Bowman, Mark Hodges and their children did constitute one family. Moreover, the record indicates that defendant and her agent were aware of Mr. Hodges's occupancy of the subject premises. The Court finds he is a tenant within the contemplation of ORC Chapter 5321.

1) The defendant clearly and flagrantly violated O.R.C. 5321.15(B) through unlawful seizure of plaintiff's possessions. Actual damages are awarded plaintiffs on this issue in the amount of \$1,010.

2) The Court declines to award damages on this issue as the Court believes by doing so the Court would be requiring defendant to twice compensate the same injury remedied in item one above.

3) Defendant's actions relating to the seizure of plaintiffs' possessions were clearly wrong under the express provisions of O.R.C. 5321.15. The defendant in an exercise of misguided contentiousness and obstinacy repeatedly compounded the problem by ignoring requests for the return of the possessions. The defendant's conduct was wanton, malicious, and oppressive. As an egregious violation of law, such conduct must be deterred. The Court hereby awards punitive damages in favor of the plaintiffs in the amount of \$1,010.

4) The case of Miller v Ritchie, 45 Ohio St 3d 22(1989) authorizes a reduction in rent. The record herein, however, allows the Court little from which to choose. In essence the record indicates the defendant's position that everything was just fine relative to the subject premises and plaintiffs' position that the property in question was utterly valueless. The Court finds that the subject rental property was something less than desirable. Nevertheless, the Court can not conclude it to be without value. There was evidence that defendants expended \$30.00 for door repair and \$30.00 for repair of the water heater. Defendants are granted damages in the amount of \$60.00 on this issue. Additionally, any obligation defendants may have for payment of rent for that portion of February 1989 during which they resided at the subject property is, hereby, excused.

5) The Court finds that defendant failed to return that plaintiffs' security deposit of \$100 and damages are awarded defendants in twice that amount.

6) Attorney fees are awarded to plaintiffs in a reasonable amount to be determined by the court. Counsel for plaintiffs shall promptly submit an affidavit for such fees. Thereupon, either party may promptly request a hearing upon the amount of award of attorney fees.

7) Court costs are taxed against defendant. Plaintiffs' pleadings and memoranda of law argue for recovery of costs. The Court is uncertain what costs other than court costs are at issue.

The word "costs" has never been considered to be synonymous with expense and generally expenses become court costs only when made so by statute or Civil Rules. See for example Civil Rules 50(B), 54(D), 41(D), 37(C), 27(E) and certain statutes such as R.C. 2317.48, 5307.25, 4123.519, 2335.28 and the various sections in the Probate Code.

Although R.C. Sections 2311.17 and 2311.18 have been superseded by Civil Rule 68, the case of Benda V. Fanna, 10 Ohio St.2d 259(1967) states at 262, (emphasis added).

"The second question concerns a determination of what costs a plaintiff must bear should he reject a defendant's offer and then fail to recover a judgment for more than was offered. In other words, do the costs imposed on such a plaintiff include the entire expense of litigation imposed on a defendant, or do they include just those costs specifically imposed by statute?

"Costs were unknown at common law. They are authorized only by statute. ..." Euclid v. Vogelin, 152 Ohio St. 538, 544, and paragraph two of the syllabus thereof. Thus, "costs, in the sense the word is generally used in this state, must be defined as being the statutory fees to which officers, witnesses, jurors and others are entitled for their services in an action or prosecution and which the statutes authorize to be taxed and included in the

judgment or sentence. ... They are allowed only by authority of statute... ." State, ex rel Commrs. of Franklin County, v. Guilbert, Aud., 77 Ohio St. 333,338.

"The costs that may be fixed and taxed in a civil action in Ohio are specifically set out in the Revised Code. The provisions of Sections 2311.17 and 2311.18, Revised Code, allowing costs, while worded somewhat differently, nevertheless refer to those costs that are fixed and taxable according to statute. They do not include expenses of litigation that are not specifically provided for by statute. Thus, "costs" are not synonymous with expenses unless expressly made so by statute."

" More recently, however, the decisions evidence a willingness of the courts to allow a prevailing party to recover some expenses outside this traditional meaning of "costs." Jones vs. Pierson, 2 Ohio App 3d 447,448 (1981).

However, depositions used for discovery or impeachment purposes generally do not constitute "costs". Id. at 451; see also Hamm v. Witherstine, 20 Ohio Misc. 77 (1969). See also, Gold v. Orr Felt Co., 21 Ohio App 3d 214(1985) which excluded from "costs" the fees of an expert witness.

O.R.C. Chapter 5321 provides for damages and attorney fees. This Court finds no reference to costs within that chapter of the code. Thus, any claim for costs other than court costs is, hereby, denied.

Defendant's counterclaim is denied in whole.

Judgment accordingly. Interest is awarded on the judgment herein at 10% per annum from the date of judgment. The parties are advised that this constitutes a final appealable order. Non-documentary exhibits must be claimed within 35 days of this order or such will be destroyed.

IT IS SO ORDERED.


MICHAEL A. ESPOSITO JUDGE

JACKSON COUNTY MUNICIPAL COURT, JACKSON, OHIO

STATE OF OHIO
CITY OF _____
VILLAGE OF _____

Christina Bowman et al.
PLAINTIFF,

-VS-

Mary Helm
DEFENDANT.

CASE NO. 89 CVH 384
DATE 3-20-91

JUDGMENT ENTRY
Civil Case

() Defendant was advised of charge(s) against him and possible maximum penalty. Defendant's waiver of all rights was made knowingly, intelligently and voluntarily. Explanation of those rights included: (a) right to counsel; and appointment of counsel if entitled (b) right to trial, including trial by jury upon written demand (c) at trial the prosecution would have the burden of proof beyond a reasonable doubt; defendant could not be required to testify at that trial but would have the right to subpoena witnesses and introduce other relevant evidence in his favor; defendant would have the right to confront or cross examine the adverse witnesses. Plea of _____ accepted, (Finding of Guilty), to charge of _____

_____ an opportunity to speak was given before sentence.

- () Trial to Court. Finding of guilty, advised of right to appeal. Opportunity given to speak before sentencing.
- () The Court finds that a fine and/or jail sentence is suited to the deterrence of the offense in others and for the correction of the Defendant.
- () Jail _____ days (Suspend _____, Credit _____)
- () Fine \$ _____ (_____ Suspended) Court costs _____
- () Defendant agreed to pay by _____ or in installments of _____ per _____ beginning _____.
- () Alcohol Education Program.
- () Operator's license suspended _____ days.
- () Occupational driving privileges granted.
- () Probation for _____, conditions to include:
 - () Defendant to be a law abiding citizen.
 - () _____
 - () _____

FILED

MAR 20 1991

JACKSON COUNTY MUNICIPAL COURT
PATRICIA TEDROW, CLERK

(✓) Other orders *Hearing held upon attorney fees. Fees granted to Attny. Daniels in amount of 23.5 hrs. at \$50 per hr. and to Attny. Buchanan in amount of 18.4 hrs at \$50 per hr. This is a final appealable order.*

Prosecution _____
Defense _____

Esposito
MICHAEL A. ESPOSITO
JUDGE
JACKSON COUNTY MUNICIPAL COURT
JACKSON, OHIO