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IN THE AKRON MUNICIPAL COURT
SUMMIT COUNTY, OHIO

FILED

JAN 18 3 56 PM '08

AKRON MUNICIPAL COURT
JIM LARIA
CLERK

JOHN BOYD,
Plaintiff/Landlord

Cases No. 07 CVG 11772
07 CVG 14908

vs.

BEATRICE WILLIAMS,
Defendant/Tenant

Magistrate Laura A. Killian

Magistrate's Decision

These cases came before the court on defendant Beatrice Williams' motion for contempt, and plaintiff John Boyd's new eviction action. On January 3, 2008, those cases were consolidated and set for hearing on January 9, 2008.

John Boyd appeared at the January 9, 2008 hearing with attorney James Connor. Beatrice Williams appeared with attorney Joann Sahl. Evidence was taken, and arguments were heard on both the second eviction in Case No. 07 CVG 14908 and the contempt motion in Case No. 07 CVG 11772.

Background and Facts:

In Case No. 07 CVG 11772, John Boyd sought to evict Beatrice Williams from the house he owns at 893 Packard Drive in Akron, Ohio. On November 13, 2007, that eviction was denied because Ms. Williams was not late with her rent, but rather Mr. Boyd was attempting to collect more rent from her than allowed by the HAP lease. In response to the argument from Ms. Williams counsel that Ms. Williams had money on account for her rent due to the overpayment of a security deposit, this magistrate also found that:

"Mr. Boyd is in wrongful possession of \$290 he was instructed by AMHA to return to Ms. Williams....[and] ...Ms. Williams has already paid her rent to Mr. Boyd through April of 2008, she will owe Mr. Boyd only \$10 in May of 2008 and Mr. Boyd will be entitled to \$35 per month in rent from Ms. Williams thereafter."

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Mr. Boyd did not file and objection to or appeal of the November 13, 2007 magistrate's decision. This magistrate's decision was adopted by Judge Eve Belfance on November 13, 2007.

On November 15, 2007, John Boyd sent Beatrice Williams a letter stating that "Be advised that due to eviction procedures are no longer being pursued by me, I am requesting your portions of the subsidized rent for the months of September, October and November be paid in full ASAP." [sic]. On November 29, 2007, counsel for John Boyd filed a notice of voluntary dismissal of the complaint in Case No. 07 CVG 11772.¹ Mr. Boyd returned the excess \$290 from the security deposit to PRC on December 5, 2007, got a receipt dated December 11, 2007 for that return, and on December 12, 2007 served Ms. Williams a three day notice to vacate 893 Packard Drive. Although Mr. Boyd and his counsel claim that he had to return the excess security deposit money to PRC, there was no evidence presented of that requirement, nor is there anything in the HAP lease between Mr. Boyd and Ms. Williams to support that assertion. Mr. Boyd has continued to accept \$525 per month from AMHA for Ms. Williams' lease.

Conclusions of Law:

The only issue in Case No. 07 CVG 14908, the pending eviction case, is whether Beatrice Williams is delinquent in her rent to John Boyd for the 893 Packard Drive rental. And this is not a new issue for this magistrate to decide. Although counsel for Ms. Williams argues that the second eviction case is inappropriate under the "law of the case" doctrine, the concept of "issue preclusion" is more applicable to this case.

"Issue preclusion" is traditionally known as "collateral estoppel"- one type of *res judicata*. Grava v. Parkman Twnshp. (1995), 73 Ohio St.3d 379, 381. Under *res judicata*, a final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction...is a complete bar to any subsequent action on the same claim or cause between the parties. Norwood v. McDonald (1943), 142 Ohio St. 299. The Ninth District Court of Appeals has held that:

¹ This case was re-instated by a December 27, 2007 filed with the instant motion for contempt.

Under Ohio law, the doctrine of *res judicata* embraces the doctrine of collateral estoppel. Grava v. Parkman Twnshp. (1995), 73 Ohio St. 3d. Pursuant to the *res judicata* doctrine, '[a] valid, final judgment rendered upon the merits bars all subsequent actions based on any claim arising out of the transaction or occurrence that was the subject matter of the previous action.' *Id.* at syllabus. Accordingly, before *res judicata*/collateral estoppel can apply, one must have final judgment." McDowell v. DeCarlo, 2007-Ohio-1262 (Ohio App. 9 Dist.) at para. 7, citing Cote v. Eisinger, 2006-Ohio-4020, (Ohio App. 9 Dist.) at para. 8.

The November 13, 2007 magistrate's decision in Case No. 07 CVG 11772 found that Beatrice Williams was not delinquent in her rent payments to John Boyd. Additionally, after taking evidence and considering the argument that Ms. Williams was not only not delinquent but had rent payments on account, this magistrate found that Ms. Williams would not owe any rent to Mr. Boyd until May of 2008. That finding was not objected to and was adopted by a judge of this court. Mr. Boyd's unilateral decision to return the security deposit excess to PRC did not, and does not, change the previous finding of this court. As the issue of whether Beatrice Williams owes rent to John Boyd for the period of September 2007 through May of 2008 has already been determined by this court, *res judicata* applies and the second eviction case, Case No. 07 CVG 14908, has no merit.

Under Revised Code Section 2705.02(A), a person may be punished for contempt if that person is guilty of "[d]isobedience of, or resistance to, a lawful writ, process, order, rule, judgment or command of a court or officer." Contempt may be direct or indirect- that is, either in the presence of the court, or away from the presence of the court. State ex rel Johnson v. County Court of Perry County (1985), 25 Ohio St.3d 53 at 57. Contempt may be either civil- offenses against another party, or criminal- offenses against the dignity and process of the court. *Id.* at 18-19.

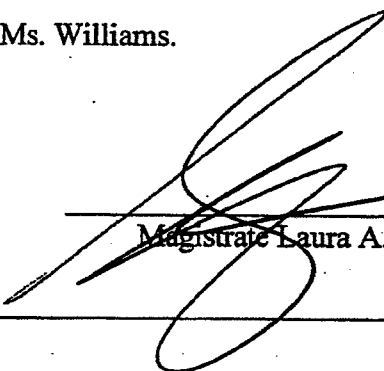
This magistrate finds that John Boyd is guilty of both direct and indirect contempt, and both civil and criminal contempt. Specifically, John Boyd is guilty of indirect and civil contempt for sending the December 15, 2007 letter to Beatrice Williams demanding rent for September, October, and November of 2007. Mr. Boyd is guilty of indirect and civil contempt for issuing Ms. Williams a three day notice on December 12, 2007. Finally, Mr. Boyd is guilty of both civil

and criminal direct contempt for filing, and pursuing, the second eviction case, Case No. 07 CVG 14908.

For all the above reasons, it is the decision of this magistrate that the writ of eviction sought in Case No. 07 CVG 140908 be denied, with costs to be borne by John Boyd. It is further the decision of this magistrate that the second cause of Case No. 07 CVG 14908 be dismissed with prejudice.

It is further the decision of this magistrate that John Boyd is guilty of contempt of court, and shall be sentenced to the Summit County Jail for a period of thirty (30) days. That sentence shall be suspended on the condition that John Boyd not take any unwarranted evictions steps against Beatrice Williams, or otherwise harass Ms. Williams.

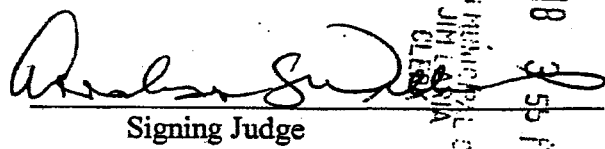
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JAN 18 3 55 PM '09
KRON MUNICIPAL COURT
JIM LARIA
CLERK



Magistrate Laura A. Killian

JUDGMENT ENTRY

The decision of the Magistrate is hereby approved. It is the judgment of the court that a writ of restitution **may not** issue and that the **second cause be dismissed with prejudice**. Costs to be paid by the plaintiff. It is further the judgment of the court that John Boyd is **guilty of contempt of court** and shall be sentenced to thirty (30) days in the Summit County Jail, suspended on the condition he not take any unwarranted evictions steps against Beatrice Williams nor otherwise harass her.



Signing Judge

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JIM LARIA
CLERK

January 18, 2009

cc: Ronald Martin/James Connor, counsel for John Boyd
Joann Sahl, counsel for Beatrice Williams