IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

TERRY BROWN,	:	APPEAL NO. C-050089 TRIAL NO. 02CV-32030
Plaintiff-Appellant,	:	*JUDGMENT ENTRY.*
vs.	:	
SHAUNTEL DOBBINS,	:	
Defendant-Appellee.	:	

This appeal is considered on the accelerated calendar under App.R. 11.1(E) and Loc.R. 12, and this Judgment Entry shall not be considered an Opinion of the Court pursuant to S.Ct.R.Rep.Op. 3.

Plaintiff-appellant Terry Brown was the landlord of a house leased to defendant-appellee Shauntel Dobbins. The two had executed a one-year lease, and Dobbins was responsible for $416 in rent each month. Dobbins defaulted on her rent payment, and Brown filed a complaint seeking eviction, back rent, and damages beyond normal wear and tear. Brown's amended complaint contained an additional allegation of defamation. Dobbins counterclaimed, alleging that Brown had breached their rental agreement and had inflicted emotional distress upon her. She sought compensatory and punitive damages. Both parties filed motions for summary judgment. The court granted summary judgment on Brown's defamation claim in favor of Dobbins, but denied the motions on all other claims.

Each of the remaining claims was set for trial on December 30, 2004. But Brown was not prepared to go forward with his claims on this date. He requested a jury trial, which the court denied. The court further denied Brown's request for a continuance. Upon Dobbins's motion, the court dismissed Brown's claims for want of prosecution. Dobbins then proceeded to trial on her counterclaims. The court awarded her $600.40. The court arrived at this amount by deducting Dobbins unpaid water bill from her security deposit and then doubling the remainder because Brown had not provided Dobbins with an itemized list of deductions within 30 days of her departure from the premises. The court awarded no damages for infliction of emotional distress. Brown has appealed both the dismissal of his claim and the award of damages.

Civ.R. 41(B)(1) provides that a court may involuntarily dismiss a plaintiff's claim for failure to prosecute. The court may do so upon its own motion or upon motion of the defendant. A dismissal under this rule is the equivalent of an adjudication on the merits: it operates to dismiss the claim with prejudice.[1] This court will not reverse such a dismissal absent an abuse of discretion.[2] An abuse of discretion "connotes more than an error of law or of judgment; it implies an unreasonable, arbitrary or unconscionable attitude on the part of the court."[3]

A plaintiff must receive notice that dismissal is a possibility before a claim can be dismissed under Civ.R. 41(B)(1).[4] Notice provides the plaintiff an opportunity to defend against dismissal and to explain or correct his actions.[5] Notice is sufficient if the motion to

---

[1] *In re Atkins* (1990), 67 Ohio App.3d 783, 786, 588 N.E.2d 902.
[2] *Quonset Hut, Inc. v. Ford Motor Co.* (1997), 80 Ohio St.3d 46, 47, 648 N.E.2d 319.
[3] Id.
[4] *Hillabrand v. Drypers Corp.* (2000), 87 Ohio St.3d 517, 518, 721 N.E.2d 1029.
[5] Id.

dismiss is raised in the presence of the plaintiff at a hearing in which the plaintiff has appeared but is unprepared to go forward.[6] In such a scenario, although the plaintiff has not received any prior notice, the plaintiff is present and is able to defend against dismissal.

In this case, Brown received sufficient notice before his claims were dismissed for want of prosecution. The motion to dismiss was raised in his presence, and he had the opportunity to defend against it. Furthermore, justifiable grounds supported the court's decision to dismiss the claims. At the time of trial, the litigation had been pending for over two years. On the day of trial, Brown requested a continuance so he could have a jury trial. The court rightly denied his request. Local Rule 6 of the Hamilton County Municipal Court requires that a party who has filed a jury demand serve written notice upon the clerk of court of his intention to utilize a jury at least 14 days prior to the date set for trial. Brown did not notify the clerk of his desire for a jury trial within this time period. There was no error in dismissing his case for want of prosecution.

We also find no error in the court's award of monetary damages to Dobbins. We must affirm such an award if it is supported by competent, credible evidence.[7] We give deference to the trial court because it "is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony."[8] We hold that there was competent, credible evidence supporting the award of damages.

---

[6] *Metcalf v. Ohio State University Hospitals* (1981), 2 Ohio App.3d 166, 167, 441 N.E.2d 299.
[7] *Myers v. Garson* (1993), 66 Ohio St.3d 610, 614, 614 N.E.2d 742.
[8] Id. at 615, citing *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273.

A landlord must provide a tenant with an itemized list of deductions from a security deposit within 30 days of the tenant vacating the premises.[9] The tenant must provide the landlord a forwarding address to which the landlord may mail the itemized list.[10] If a landlord fails to comply with the statutory requirements, the tenant may recover two times the money owed.[11] But if the tenant fails to provide a forwarding address, the tenant is not entitled to damages.[12]

Brown did not give Dobbins an itemized list of the deductions from her security deposit. But our review of the record further indicates that Dobbins did not provide a forwarding address. While this fact would seemingly deprive Dobbins of any entitlement to damages, we are persuaded otherwise by the reasoning of the Tenth Appellate District in *Smitson v. Zeches.*[13] In *Smitson*, the court held that a tenant "need not personally deliver the forwarding address or new address to the landlord, provided the landlord has actual knowledge of an acceptable address, such as a current business address of the tenant."[14]

After a careful review of the record, we hold that it was reasonable to infer that Brown had knowledge of Dobbins's business address. The record indicates not only that Brown knew where Dobbins worked, but that he had contacted Dobbins's employer while the litigation was pending. Brown could have mailed the itemized list of deductions to Dobbins's workplace without difficulty. Thus, the trial court rightfully doubled the amount of money owed to Dobbins from her security deposit.

---

[9] R.C. 5321.16(B).
[10] Id.
[11] R.C. 5321.16(C).
[12] R.C. 5321.16(B).
[13] *Smitson v. Zeches* (Aug. 17, 1993), 10th Dist. No. 92AP-1773.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., GORMAN and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 30, 2005

per order of the Court _____.
Presiding Judge

[14] Id.