

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Ronald E. Coleman,

Plaintiff,

: CASE NO. 01 CV HII-10988

-vs-

: JUDGE FAIS

Faith Mission,

Defendant.

**DECISION AND ENTRY OVERRULING PLAINTIFF'S OBJECTIONS TO
MAGISTRATE'S DECISION FILED FEBRUARY 6, 2002**

Rendered this 14th day of June 2002.

FAIS, JUDGE.

I. INTRODUCTION

This matter is before the Court pursuant to Plaintiffs Objections to the Magistrate's Decision Denying Plaintiffs Motion for Preliminary Injunction filed February 6, 2002. Defendant filed a Memorandum Contra March 28, 2002. Plaintiff filed a Reply April 5, 2002.

II. FACTUAL AND PROCEDURAL BACKGROUND

This case arises from Defendant terminating Plaintiffs participation in Defendant's Second Chance Transitional Program.

Plaintiff was a homeless individual with substance abuse problems. As such, he was eligible to participate in Defendant's Second Chance Transitional Program ("Program"). Essentially, the Program provides transitional housing for up to one (1) year and furnishes various services to help participants overcome substance abuse problems. In order to participate, Plaintiff was required to sign a Participation Agreement ("Agreement"). The Agreement

outlined Plaintiffs responsibilities and the rules he must follow in order to remain a participant in the program.

On several occasions, Plaintiff violated some of the rules. After two (2) months, Defendant terminated Plaintiffs participation in the Program. While appealing his termination, Defendant permitted Plaintiff to remain in the transitional housing. After the termination decision was upheld, Plaintiff was told he must leave the premises.

Plaintiff seeks a Preliminary Injunction forcing Defendant to allow him back into the Program. Plaintiff claims that he was a tenant and, as such, he had certain rights concerning eviction proceedings. Plaintiff argues that Defendant violated those rights by not properly evicting him as required by R.C. 5321.15.

Defendant counters that Plaintiff did not have the rights conferred by R.C. 5321.15 because there was no landlord-tenant relationship. Defendant contends that a reading of the Agreement unequivocally proves that no landlord-tenant relationship arose from the arrangement.

A hearing before a Magistrate occurred December 5, 2001, with closing arguments December 20, 2001. The Magistrate issued a Decision January 2, 2002, denying the Preliminary Injunction because Plaintiff is not a tenant.

Plaintiff objects to the Magistrate's decision because it found that Plaintiff was not a tenant pursuant to R.C. 5321.01(A). Plaintiff asserts that his relationship with Defendant constituted a landlord-tenant relationship. Therefore, Defendant did not utilize the proper process to evict Plaintiff and Plaintiff is entitled to a Preliminary Injunction.

III. STANDARD OF REVIEW

Civ.R. 53(E)(4)(a) provides that "a magistrate's decision shall be effective when adopted by the court." Further, upon considering objections, the court "may adopt, reject, or modify the magistrate's decision, hear additional evidence, recommit the matter to the magistrate with instructions, or hear the matter." Civ.R. 53(E)(4)(b). In a recent opinion, the Franklin County Court of Appeals discussed the standard of review the trial court should apply when reviewing a magistrate's decision. The court stated that it has repeatedly rejected the argument that the trial court should act as a deferential reviewing court in addressing objections. *Holland v. Holland* (Jan. 29, 1998), Franklin App. No. 97APF08-974, unreported. The court continued by noting

that in DeSantis v. Soller (1990), 70 Ohio App.3d 226, 232 it stated as follows:

In *Normandy Place Assoc. v. Beyer* (1982), 2 Ohio St.3d 102, the Ohio Supreme Court stated that ' . . . it is the primary duty of the court, and not the referee, to act as a judicial officer. . . . ' Moreover, Civ.R. 53 . . . contemplates a trial court's making an independent analysis of the underlying issues in the referee's report. Thus, the trial court must undertake the equivalent of a de novo determination, in light of any filed objections, when independently assessing the facts and conclusions contained in the report of a referee."

Also in *DeSantis, supra*, the court stated that the trial court is bound to enter its own judgment. Further, the court found that although Civ.R. 53 was amended in 1995, in *Klamfoth v. Klamfoth*, (Apr. 9, 1996), Franklin App. No. 95APFIO-1396, unreported (1996 Opinions 1471, 1481, fn. 1), the amended rule retained essentially the same language vesting the trial court the same broad discretion in ruling upon objections. Thus, the court concluded that the trial court is required to make an independent judgment rather than defer to the magistrate. *Holland v. Holland, supra*.

IV. ANALYSIS AND FINDINGS OF THE COURT

The relationship between Plaintiff and Defendant did not constitute a landlord-tenant relationship. Plaintiff does not meet the definition of “tenant” as defined in R.C. 5321.01(A). R.C. 5321.01(A) defines a “tenant” as “a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.” R.C. 5321.01(C) defines residential premises as “a dwelling unit for residential use and occupancy and the structure of which it is a part, the facilities and appurtenances in it, and the grounds, areas, and facilities for the use of tenants generally or the use of which is promised the tenant.” Finally, R.C. 5321.01(F) defines a “dwelling unit” as a “structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.” Clearly, the units at Faith Mission are used as residential premises and as dwelling units as the units are for residential use and occupancy and are used as a home, residence, or sleeping place by at least one person.

However, Plaintiff is not a tenant. In the instant case, the Agreement permits Defendant to enter the unit at any time. If this were a lease, the Agreement would contain a provision allowing such entry only with advance notice except in an emergency or when it is impracticable to do so. R.C. 5321.04(8) states a landlord’s duty with respect to entering the tenant’s unit:

Except in the case of emergency or if it is impracticable to do so, give the tenant reasonable notice of his intent to enter and enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary.

Moreover, the Agreement specifically states that the client “does not have exclusive possession of the unit.” (emphasis in original). The Agreement also clearly states that the “Agreement is not a leasing agreement with the Client, but an Agreement to participate in a transient living program. Therefore, the Agreement confers no rights of tenancy to the Client.” All of the

quoted sections are in the first paragraph on the first page of the Agreement and are not inconspicuous. Moreover, in all caps directly above the Client signature line the Agreement states:

CLIENT UNDERSTANDS THE TRANSITIONAL PROGRAM ARRANGEMENT IS NOT A LEASE AND NO LANDLORD-TENANT RELATIONSHIP SHALL BE INFERRED THEREFROM. CONTINUED SHELTER UNDER THE PROGRAM IS CONDITIONED UPON CLIENT'S FULL PARTICIPATION IN THE PROGRAM AND COMPLIANCE WITH THE RULES SET FORTH IN THIS AGREEMENT.

Clearly, Plaintiff knew when he signed the Agreement that he was not entering into a landlord-tenant relationship.

A court must consider four (4) factors when deciding whether to grant a Preliminary Injunction:

- 1) whether there is a substantial likelihood that plaintiff will prevail on the merits;
- 2) whether plaintiff will suffer irreparable injury if the injunction is not granted;
- 3) whether third parties will be unjustifiably harmed if the injunction is granted; and
- 4) whether the public interest will be served by the injunction.

Vanguard Transportation System, Inc. v. Edwards Transfer & Storage (1996), 109 App.3d 786, 789, citing *Valco Cincinnati, Inc. v. N & D Machining Service, Inc.* (1986), 24 Ohio St.3d 41, *Goodall v. Crofton* (1877), 33 Ohio St. 271. Plaintiff must present clear and convincing evidence to prove each of the aforementioned elements. See *id.* (internal citations omitted).

In this case, Plaintiff may suffer irreparable injury if he is not able to find another shelter or program to accept him. Additionally, the public interest may be served if Plaintiff overcomes his substance abuse problems and is able to become a productive member of society with a job and residence of his own.

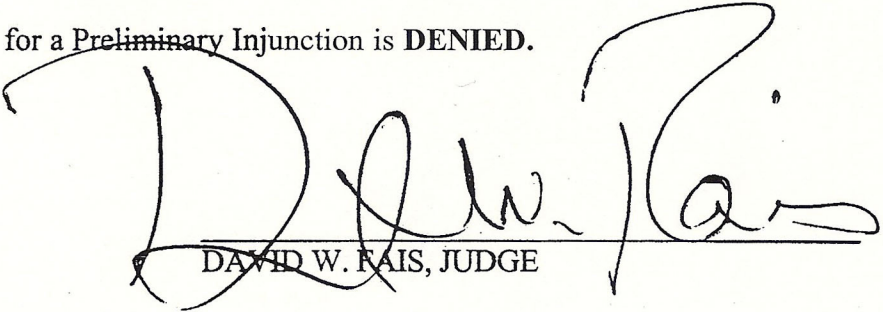
However, third parties may be unjustifiably harmed if the injunction *is* granted. If Plaintiff is permitted to continue living at the shelter and participating in the program, his continued disruptive behavior may put other client's rehabilitation in jeopardy. Granting an injunction for one person at the possible detriment of other client's rehabilitation would *not serve* the public interest. Finally, Plaintiff does not have a substantial likelihood of prevailing on the merits, as he is not a tenant and not entitled to the protections of R.C. 5321.

Accordingly, the Court does not find that Plaintiff has submitted clear and convincing evidence to prove each of the four (4) elements.

V. CONCLUSION

The Court has thoroughly reviewed the motion, submitted memoranda, the transcript of the Preliminary Injunction hearing, and relevant law. Pursuant to its careful review, the Court finds that Plaintiffs motion is not well taken. Accordingly, the **Court OVERRULES** the same. Furthermore, the Court hereby **APPROVES** and **ADOPTS** the Magistrate's Decision. Therefore, Plaintiffs request for a Preliminary Injunction is **DENIED**.

It is so ORDERED.


DAVID W. FAIS, JUDGE

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