

MUNICIPAL COURT
CLERMONT COUNTY, OHIO

FILED

MHC5, LLC,
dba Woodville Gardens MHC,
Plaintiff,

vs.

ORVILLE JOHN MARTIN,
Defendant

CASE NO. 2011 CVG 03184

DECISION ON MOTION FOR
SUMMARY JUDGMENT

OCT 26 A 9:06
TIMOTHY R. GOOD
CLERK OF MUNICIPAL COURT
CLERMONT COUNTY, OHIO

On October 21, 2011, this matter came before the Court for a hearing on the defendant's Motion for Summary Judgment. The plaintiff was represented by attorney Kathleen Mezher. The defendant was represented by Noel Morgan. After hearing oral argument, the Court took the matter under advisement and hereby renders a decision as follows.

The Defendant, Orville Martin, has been a resident of Woodville Gardens Mobile Home Park since 1996. Orville's son, Scott Martin, was also a tenant with his own home in Woodville Gardens until he was evicted in December 2010. Scott Martin and his two children moved in with Orville when he could not find accommodations elsewhere following his eviction. On May 31, 2011, the plaintiff served Orville Martin with a notice of "Material Violation of Park Rules, Public Health Council, or State and Local Health and Safety Codes." The only violation cited in the notice was "Allowing Non-Resident to live in home. Scott Martin and children, Chelsea and Brandon Martin were evicted, therefore not allowed to remain on said premises." The "Notice to Leave the Premises," dated July 1, 2011, lists "holdover tenant" as the sole ground for eviction. The defendant submits in his motion for summary judgment that the plaintiff has no basis for terminating the defendant's tenancy under the Revised Code or the park rules.

Pursuant to Civ.R. 56(C), summary judgment is appropriate when: “(1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor.” Simmons v. Yingling, Warren App. No. CA2017-11-117, 2011-Ohio-4041, quoting Zivich v. Mentor Soccer Club, Inc., 82 Ohio St.3d 367, 369-370, 696 N.E.2d 201, 1998-Ohio-389. Initially, the party moving for summary judgment has the burden of identifying those portions of the record which demonstrate that there is no genuine issue of material fact. Drescher v. Burt, 75 Ohio St.3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264. Once the moving party meets his burden, then the nonmoving party must respond by setting forth specific facts to show that a triable genuine issue of fact exists. Mitseff v. Wheeler (1988), 38 Ohio St.3d 114-115, 526 N.E.2d 798. The nonmoving party cannot rest on mere allegations. Drescher at 292-293.

Civ.R. 56(C) limits the forms of evidence the parties may present to support their position on a summary judgment motion. Evidence must be presented in the form of “pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact.” Citimortgage, Inc. v. Elia, Summit App. No. 25482, 2011-Ohio-2499, ¶9. If a party seeks to use evidentiary materials not listed in Civ.R.56(C), the materials should be incorporated by reference into an affidavit which complies with Civ.R.56(E). Id.

The defendant submits that summary judgment is appropriate because he has not violated any pertinent provisions of the Revised Code or Woodville Gardens’ rules and regulations. A

mobile home park owner cannot unilaterally terminate a tenancy without reason and then evict the homeowner as a holdover tenant. Schwartz v. McAtee (1986), 22 Ohio St.3d 14, 488 N.E.2d 479. When a park owner seeks to terminate a tenancy for violation of the park rules and regulations, the violation must be of a material nature before a court will order an eviction. R.C. §3733.13; Buckeye Lake Estates Mobile Home Park v. Abel (Feb. 15, 2002) Licking Muni.Ct. No. 01CVG01777; Thompson v. KMV II, Ltd., Portage App. No. 2001-P-0125, 2003-Ohio-1096; Moonlight Mobile Home Parks, Inc. v. Eichner (Oct. 29, 1993), Lucas App. No. L-93-028.

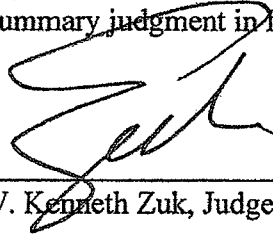
The plaintiff submits that the defendant is subject to eviction because he violated park rules by allowing his son's family to stay with him. The notices sent to the defendant do not set forth any specific rule which the defendant violated. The thirty-day notice states that the defendant violated the park rules by "[a]llowing Non-Resident to live in home," without any reference to a particular rule, and the notice to leave fails to allege any violation of park rules whatsoever. The plaintiff cites several sections of the park rules, and asks the Court to draw inferences from these rules. The Court cannot infer rules in such a way as to rewrite the lease. Gray-Jones v. Jones (2000), 137 Ohio App.3d 93, 105, 738 N.E.2d 64.

Considering the evidence most favorably to the plaintiff, the defendant's conduct could be considered, at best, a violation of Section III, paragraph 1, which states that "[e]ach home is to be a single family dwelling." Assuming arguendo that the defendant has violated this provision by turning his home into a two-family home, the defendant nevertheless has failed to allege that such a violation is a material one. Nor has the plaintiff presented any facts in the form required by Civ.R. 56(C) to indicate that the alleged violation is material. The plaintiff has not

incorporated any of its evidence into an affidavit in order to supply facts which in turn could create an issue as to materiality. Thus, the Court concludes that no genuine issues of material fact exist, and the defendant is entitled to judgment as a matter of law.

In consideration of the foregoing, the Court finds the defendant's motion for summary judgment to be well-taken. The Court hereby grants summary judgment in favor of the defendant.

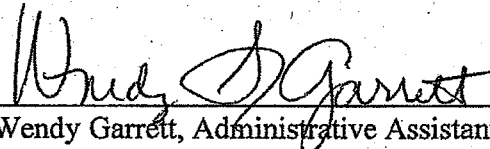
Date: 10/25/11



W. Kenneth Zuk, Judge

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Decision was served by Facsimile upon counsel for the plaintiff, Kathleen D. Mezher, 8075 Beechmont Ave., Cincinnati, Ohio, 45255-3139, and upon counsel for the defendant, Noel M. Morgan, Legal Aid Society of Southwest Ohio, 215 East Ninth Street, Suite 500, Cincinnati, Ohio, 45202, on this 26th day of October, 2011.



Wendy Garrett, Administrative Assistant