

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
RAYMOND L. PIANKA, JUDGE

PK MANAGEMENT LLC
Plaintiff (s)

Date: July 6, 2011

-VS-

2011 CVG 008188

DERRICK HAYES
Defendant (s)

JUDGMENT ENTRY

This case is before the Court on Plaintiff's motion for an order requiring Defendant to post bond under R.C. 1923.08. For the reasons that follow, Plaintiff's motion is denied.

Plaintiff filed its action in forcible entry and detainer on May 5, 2011. The initial hearing on Plaintiff's first cause of action for restitution of the premises was scheduled for May 26, 2011. On May 23, 2011, Defendant filed a timely demand for a bench trial, under Housing Court Local Rule 3.06.¹ The Court granted the Defendant's motion, and, as provided in the Local Rule, set the case for pretrial. The pretrial was scheduled for and held on June 16, 2011.

Plaintiff argues that a continuance was granted to Defendant under R.C. 1923.08, and so should have been conditioned upon the posting of bond by Defendant.

¹ Cleveland Municipal Court, Housing Division Local Rule 3.06 states, in its entirety:

3.06 REQUESTS FOR BENCH TRIAL

A. Any party requesting a bench trial must file a written Motion for Bench Trial. The motion must be filed so as to allow two (2) full business days, excluding weekends and legal holidays, to elapse before the time fixed for the original hearing or the time to which the hearing is continued. For example, assuming no intervening holidays:

Original Hearing Day

Monday
Tuesday
Wednesday
Thursday
Friday

Request/Demand must be filed by

Preceding Wednesday
Preceding Thursday
Preceding Friday
Preceding Monday
Preceding Tuesday

B. The party seeking the bench trial must state the basis for the motion. Among the factors the Court may consider when ruling on a motion for a bench trial are (i) the complexity of the legal and/or factual issues presented, (ii) the time needed to conduct discovery, (iii) the time needed for presentation of evidence at trial, (iv) burden on the parties if the motion is granted or denied and (v) any other factors which the Court deems relevant. The motion for bench trial must be served upon the opposing party/counsel pursuant to the above requirements and Rule 3.051.

C. In the event the motion for bench trial is granted, the matter shall be set for pretrial and removed from the general call docket.

Ohio Revised Code 1923.08 provides that: "No continuance in an action under this chapter shall be granted for a period longer than eight days, unless the plaintiff applies for the continuance and the defendant consents to it, or unless the defendant applies for the continuance and gives a bond to the plaintiff, with good and sufficient surety, that is approved by the court and conditioned for the payment of rent that may accrue, if judgment is rendered against the defendant."

Plaintiff relies primarily upon R.C. 1923.08 and a case from the Eleventh Appellate District, *State ex rel. GMS Mgmt. Co., Inc. v. Callahan* (1989), 65 Ohio App.3d 335, 583 N.E.2d 1339, for the proposition that a trial court cannot continue a hearing in an eviction action without requiring the defendant to post bond.

The language of R.C. 1923.08 anticipates the posting of bond by the defendant as a condition of any continuance requested by the defendant. Similarly, *GMS v. Callahan* involved a continuance requested by the defendant. "In the present case, the primary question for determination is whether a municipal court must require the defendant in a forcible entry and detainer case to immediately post a bond when he is granted a continuance." *GMS Mgmt. Co.*, supra, at 338. As Defendant in this case notes, he did not request a continuance.

Plaintiff relies upon two cases from the Eighth Appellate District, as well: *GEM Mgmt. Co. v. Walker* (Feb. 28, 1991), No. 60139, and *Martin v. Rogers* (1987), 42 Ohio App.3d 110, 526 N.E., 2d 665. In each of these cases, the appellate court affirmed this Court's order requiring a defendant in a forcible entry and detainer action to post bond while awaiting jury trial. As Defendant observes, however, the appellate court's analysis in these cases did not rely upon R.C. 1923.04, and, in both decisions, the appellate court stated that the trial court "may" require a bond, indicating the presence of trial court discretion.

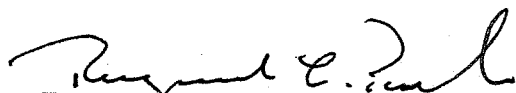
Trial courts have the inherent power to manage their cases and dockets. *Patton v. Risner*, 3d Dist. No. 16-09-14, 2010-Ohio-191, citing *State ex rel. Charvat v. Frye*, 114 Ohio St.3d 76, 2007-Ohio-2882, 868 N.E.2d 270, at ¶23. In addition, trial courts have special expertise and familiarity with case management problems, and may use that expertise to make decisions regarding the flow of their own dockets and cases. *State ex rel. Givaudan Flavors Corp. v. Nadel*, 1st Dist. No. C-070673, 2007-Ohio-5971. "Trial courts are on the front lines of administration of justice in our judicial system, dealing with the realities and practicalities of managing a caseload * * *." *Brewer v. Brewer*, 5th Dist. No. 08 CA 0040, 2009-Ohio-249, citing *State v. Craig*, 8th Dist. No. 88313, 2008-Ohio-3978, at ¶11, and *State v. Busch*, 76 Ohio St.3d 613, 615, 1996-Ohio-8.

The Local Rules providing for the Motion for Bench Trial were drafted and enacted by this Court to manage its docket. Prior to the enactment of Local Rule 3.06, the only way a party could remove a factually complex case, or one requiring discovery, from the regular call, was to file a jury demand. The Motion for Bench Trial permits the Court to conduct a pretrial quickly on those more complicated or contentious cases, while permitting most cases to continue on the general call, which may contain fifty or more hearings in any given morning.

The Motion for Bench Trial results in the removal of the case from the general call, and the scheduling of a pretrial at a future date. The pretrial is scheduled for a future date, to permit the Court to manage its docket. The Court could attempt to conduct a pretrial the same day as the first cause hearing; however, plaintiffs often have multiple cases on the docket, and so may not be available for an immediate pretrial. And, the court needs some predictability for its own staffing.

The Court certainly could require a bond to be posted at the time of the filing of the Motion for Bench Trial. It would be difficult, however, to determine the appropriate amount of bond from the parties' pleadings, particularly in light of the number of complaints filed pro se with this Court. Indeed, Plaintiff's own complaint, filed by counsel, does not identify the current amount of monthly rent, the date of Defendant's last rent payment, or the amount owed. The Court could set a bond hearing, but, as pretrials are scheduled as quickly as practicable, usually within three weeks, the bond hearing likely could be held no sooner—and so practically would lead to the same result as Plaintiff requesting bond at the first pretrial.

This Court attempts to manage its cases in a fair, yet practical manner. When granting a Motion for Bench Trial, the Court, in the same order, schedules a pretrial to be held within fewer than 30 days. Bond routinely is addressed at the pretrial; indeed, as evidenced by *GEM Mgmt. Co. v. Walker* and *Martin v. Rogers*, supra, and the numerous other cases in which counsel for both parties in this case have appeared, the Court routinely orders defendants to post unpaid rent as bond. This exercise of the Court's inherent powers is consistent with R.C. 1923.08, and appropriate. **Plaintiff's motion to require rent to be posted as bond under R.C. 1923.08 is denied.** However, **Plaintiff may move orally or in writing, for an order requiring Defendant to post bond, as part of the Court's case management order.** This motion may be made at or, if in writing, before the next pretrial in this case, which remains scheduled for **July 7, 2011, at 10:30 a.m. on the 13th floor.**



Judge Raymond L. Pianka
Housing Division

A copy of this judgment entry was sent by regular U.S. mail to parties/counsel on 7/7/11, by gmu.