

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

M. AARON TAYLOR,	:	APPEAL NO. C-180704
Plaintiff-Appellant,	:	TRIAL NO. 16CV-19445
vs.	:	<i>JUDGMENT ENTRY.</i>
STACEY BARLESTON,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant M. Aaron Taylor appeals from the trial court’s judgment awarding damages and attorney fees to defendant-appellee Stacey Barleston arising from their landlord-tenant dispute. In four assignments of error, Taylor argues that (1) the award of damages in favor of Barleston violated R.C. 5321.16, (2) the award of attorney fees to Barleston violated R.C. 5321.16, (3) the amount of attorney fees awarded was unreasonable, and (4) the trial court erred by denying Taylor’s motion for summary judgment.

Barleston rented an apartment from Taylor with the help of the Cincinnati Metropolitan Housing Authority (“CMHA”). Shortly after moving in, Barleston informed Taylor that several things in her apartment did not work and needed repair—the refrigerator, the toilet, and the electricity in the bathroom. CMHA

inspected the apartment on August 16, 2016, and directed Taylor to make the requested repairs.

In early September 2016, Taylor initiated an action against Barleston for (1) eviction due to nonpayment of rent, (2) recovery of unpaid rent, and (3) damages to the premises beyond normal wear and tear. Barleston brought six counterclaims: (1) failure to return the security deposit, (2) breach of contract, (3) negligence, (4) breach of duty imposed by law, (5) retaliatory eviction, and (6) order of repairs (injunctive relief requiring repairs be made before the premises can be re-rented).

A second inspection by CMHA on September 22 found no progress on the repairs. After CMHA inspected the apartment a third time on October 21 and found that the repairs were still not complete, CMHA told Barleston to vacate the premises, which she eventually did on December 10.

Taylor's first cause of action became moot when Barleston moved out of the apartment. The case proceeded to a bench trial, where the trial court granted Barleston's Civ.R. 41(A) motion as to Taylor's third cause of action because Taylor had not demonstrated any damage above ordinary wear and tear. At the end of the trial, the court found in favor of Taylor on his second cause of action, holding that he was entitled to \$392 for unpaid rent for the months of August and September.

However, the court found in favor of Barleston on two of her counterclaims. It found that Taylor had breached the rental contract by failing to make the required repairs, and awarded Barleston \$392, the amount of rent she had paid for October and November. It also found that Taylor had failed to comply with R.C. 5321.16 when he failed to return Barleston's security deposit or provide her with an itemized list of deductions from the security deposit, and awarded Barleston \$1,300 in damages and \$12,313 in attorney fees. The court dismissed Barleston's remaining counterclaims.

The resulting verdict was in favor of Barleston for \$908 in damages and \$12,313.13 in attorney fees.

We discuss Taylor's first, second, and third assignments of error together.

In his first and second assignments of error, Taylor argues that the award of damages and attorney fees to Barleston violated R.C. 5321.16. In Taylor's third assignment of error, he argues that the award of \$12,313.13 in attorney fees was unreasonable.

R.C. 5321.16(B) requires a landlord to return to the tenant the security deposit as well as an itemized list of any deductions taken from the deposit. When a landlord violates R.C. 5321.16(B), section (C) allows a tenant to recover the security deposit plus damages in an amount equal to the security deposit ("double damages"), in addition to reasonable attorney fees. The tenant is required to provide the landlord with a forwarding address to which the landlord can mail the deposit and itemized list of deductions. R.C. 5321.16(B). If the tenant fails to do so, then she will not be entitled to damages or attorney fees under R.C. 5321.16(C).

Taylor contends that Barleston failed to provide him with written notice of her forwarding address, and so she was barred from receiving double damages or attorney fees. However, Taylor did not make this argument at trial.

Taylor also did not file a memorandum contra to Barleston's motion for attorney fees, and did not otherwise object to the amount of attorney fees in the trial court.

"[F]ailure to timely advise a trial court of possible error, by objection or otherwise, results in a waiver of the issue for purposes of appeal." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997), citing *Gallagher v. Cleveland Browns Football Co.*, 74 Ohio St.3d 427, 436-37, 659 N.E.2d 1232 (1996).

Taylor contends that we should apply the plain-error doctrine to reverse the trial court's judgment on the security deposit and attorney fees. While the plain-error doctrine can be applied in civil cases, the Ohio Supreme Court has warned that reviewing courts must proceed with the utmost caution, limiting the doctrine strictly to those extremely rare cases where exceptional circumstances require its application to prevent a manifest miscarriage of justice, and where the error complained of, if left uncorrected, would have a material adverse effect on the character of, and public confidence in, judicial proceedings.

Goldfuss at 121. The court explained:

While invocation of the plain error doctrine is often justified in order to promote public confidence in the judicial process, “[it is doubtful] that the public’s confidence in the jury system is undermined by requiring parties to live with the results of errors that they invited, even if the errors go to ‘crucial matters.’ In fact, the idea that parties must bear the cost of their own mistakes at trial is a central presupposition of our adversarial system of justice.”

Id., quoting *Montalvo v. Lapez*, 77 Haw. 282, 305, 884 P.2d 345 (1994) (Nakayama, J., concurring in part and dissenting in part).

The court went on to state, “The plain-error doctrine should never be applied to reverse a civil judgment simply because a reviewing court disagrees with the result obtained in the trial court, or to allow litigation of issues which could easily have been raised and determined in the initial trial.” *Goldfuss* at 122.

Even if we believed the trial court erred, our review of the record leads us to conclude that this is not such a rare and exceptional case where the errors, “if left

uncorrected, would have a material adverse effect on the character of, and public confidence in, judicial proceedings.” *See id.* at 121. Thus, the plain-error doctrine does not apply to this case. The arguments advanced in the first, second, and third assignments of error have been waived.

In Taylor’s fourth assignment of error, he argues that the trial court erred in denying his motion for summary judgment. In his motion for summary judgment he argued that he was entitled to judgment as a matter of law because Barleston failed to pay rent for the months of August and September, 2016.

Any error by a trial court in denying a motion for summary judgment is rendered moot or harmless if a subsequent trial on the same issues raised in the motion demonstrates that there were genuine issues of material fact supporting a judgment in favor of the party against whom the motion was made.

Continental Ins. Co. v. Whittington, 71 Ohio St.3d 150, 156, 642 N.E.2d 615 (1994). The trial in the present case demonstrated that there were genuine issues of material fact as to whether the August and September rent were paid. Therefore, even if the court erred in denying Taylor’s motion for summary judgment, the issue is now moot.

Taylor’s assignments of error are overruled, and 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.

MYERS, P.J., BERGERON and CROUSE, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on December 18, 2019

per order of the court _____.

Presiding Judge