Appendix A

Butler County
Area III Court

MAR 04 2020

FILED

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

THE LANDINGS AT BECKETT RIDGE:	**Case No. CVG1901594**
Plaintiff, :	
vs. :	
ROSALIND HOLMES, et al. :	**DECISION AND ENTRY**
Defendants. :	**(FINAL APPEALABLE ORDER)**

This matter came on pursuant to objections to the Magistrate's Decision filed by Rosalind Holmes, in which the magistrate ordered Rosalind Holmes to vacate the premises due to non-payment of rent. The Landings At Becket Ridge, through counsel, has opposed the objections.

The parties do not dispute that Holmes has already vacated the premises pursuant to the magistrate's decision. It is well settled law that when a tenant vacates the premises pursuant to an eviction action, any further proceedings are moot. "Once the landlord has been restored to the property, the [result of the] forcible entry and detainer action becomes moot because, having been restored to the premises, there is no further relief that may be granted." *Tenancy, LLC. v. Roth,* 5th Dist., 2019-Ohio-4042, ¶29.

Accordingly, because Holmes is no longer living on the premises, there is no relief that this court can provide her. Her objections are hereby OVERRULED, and the Magistrate's Decision will stand as an order of the court.

Judge Dan Haughey

cc: Dave Donnett, Esq.
Rosalind Holmes

√ A copy of the Decision of Magistrate in the above-captioned matter was mailed to Plaintiff and Defendant this 4 day of March, 2020.

J Ballinger
Deputy Clerk

Appendix B

FILED
2020 DEC 28 AM 10: 57
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

Butler County
Area III Court
MAR 16 2021
FILED

THE LANDINGS AT BECKETT RIDGE, :

Appellee, :

- vs -

ROSALIND HOLMES,

Appellant. :

CASE NO. CA2020-04-050

JUDGMENT ENTRY

FILED BUTLER CO.
COURT OF APPEALS
DEC 28 2020
MARY L SWAIN
CLERK OF COURTS

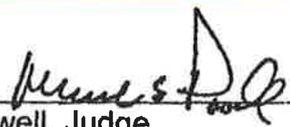
Upon consideration of the appeal and briefs before this court, and the Opinion issued the same date of this Judgment Entry, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, dismissed as moot as there is no longer an existing case or controversy for this court to resolve on appeal.

It is further ordered that a mandate be sent to the Butler County Area III Court for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed to the appellant.

Robert A. Hendrickson, Presiding Judge

Stephen W. Powell, Judge



Mike Powell, Judge

I CERTIFY THE WITHIN TO BE A
TRUE COPY OF THE ORIGINAL FILED
DEC 28, 2020
MARY L. SWAIN
Butler County Clerk of Courts
Deputy

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

THE LANDINGS AT BECKETT RIDGE,	:	CASE NO. CA2020-04-050
Appellee,	:	OPINION 12/28/2020
	:	
- vs -		
	:	
ROSALIND HOLMES,	:	
Appellant.	:	

CIVIL APPEAL FROM BUTLER COUNTY AREA III COURT
Case No. CVG1901594

David D. Donnett, 1212 Sycamore Street, Suite 33, Cincinnati, Ohio 45202, for appellee

Rosalind Holmes, 2455 Fox Sedge Way, Apt. S, West Chester, Ohio 45069, pro se

M. POWELL, J.

{¶ 1} Appellant, Rosalind Holmes, appeals a decision of the Butler County Area III Court granting a complaint for forcible entry and detainer filed by appellee, The Landings at Beckett Ridge, LLC ("Landings").

{¶ 2} Holmes leased an apartment from Landings. She failed to pay the December 2019 rent. On December 7, 2019, Landings served Holmes with the statutory three-day

notice to leave the premises. When Holmes failed to vacate the apartment, Landings filed a complaint for forcible entry and detainer on December 15, 2019. The complaint only sought restitution of the premises. The matter was scheduled for a hearing on January 8, 2020.

{¶ 3} On December 26, 2019, Jenn Taylor, Landings' property manager, sent an email to Holmes, advising her that

> At this time, the December balance and January rent will need to be paid in full to cancel the eviction process. The total balance is $3,156.82[.] * * *
>
> Please keep in mind that eviction court is scheduled for January 8th. If the above balance is not paid before eviction court we will be unable to accept rent after that morning and will have to continue with the eviction process.
>
> Let us know if there are any questions you have and an intended date to pay rent.

{¶ 4} On January 7, 2020, Holmes successfully moved to continue the eviction hearing to January 15, 2020, due to health issues. On January 14, 2020, Holmes tendered a $3,500 cashier's check for the unpaid rent balance; Landings refused to accept the check.

{¶ 5} On January 15, 2020, the eviction hearing proceeded before a magistrate. Holmes' sole defense was that she had tendered her unpaid rent to Landings the day before and that it was refused. Taylor advised the magistrate that no rent was accepted following the service of the three-day notice to leave. She further advised the magistrate that she had sent an email to Holmes "on the 23rd of the month explaining how much was due before January 8th, the original court date[,] and asked that it be paid before then and * * * after that date we would not be accepting rent." Taylor confirmed that Landings did not receive rent payment from Holmes before January 8, 2020. The magistrate found that Holmes was properly served with the notice to leave the premises, she had failed to timely pay the rent due, and Landings was entitled to restitution of the premises. The magistrate ordered

Holmes to vacate the apartment by January 24, 2020.

{¶ 6} Holmes filed objections to the magistrate's decision. Holmes argued for the first time that Landings' eviction proceedings and refusal to accept the rent payment were retaliatory in violation of R.C. 5321.02(A). Holmes claimed that Landings was retaliating against her because she had sent a letter to the U.S. Department of Commerce, Office of the Inspector General, in November 2019 complaining that Landings "had placed an illegal surveillance in [her] apartment" and requesting an investigation. Holmes further claimed she sent the letter after Landings failed to address her complaints about the "illegal surveillance." Holmes did not seek a stay on the writ of restitution and did not post a bond.

{¶ 7} A hearing on Holmes' objections was held on February 14, 2020. Holmes pressed her retaliation claim. Counsel for Landings advised the trial court that Landings was not served with a copy of Holmes' objections and that it had never heard about Holmes' complaint to the department of commerce. Counsel argued that Holmes' objections were moot because the writ of restitution had been executed and Holmes had vacated the premises.

{¶ 8} Landings and Holmes both filed posthearing memoranda. Landings reiterated the arguments raised during the objections hearing. Holmes argued that Landings improperly failed to submit the December 26, 2019 email at the eviction hearing, waived the three-day notice to leave the premises when it sent the email agreeing to accept late payment of the rent in lieu of proceeding with the eviction, and breached the email/contract when it refused to accept Holmes' $3,500 check on January 14, 2020.

{¶ 9} By decision and entry filed on March 4, 2020, the trial court found the case to be moot as Holmes had vacated the apartment:

> The parties do not dispute that Holmes has already vacated the premises pursuant to the magistrate's decision. It is well settled law that when a tenant vacates the premises pursuant to an

> eviction action, any further proceedings are moot. * * * Accordingly, because Holmes is no longer living on the premises, there is no relief that this court can provide her. Her objections are hereby OVERRULED, and the Magistrate's Decision will stand as an order of the court.

{¶ 10} Holmes now appeals, pro se, the trial court's judgment, raising four assignments of error which will be considered out of order.

{¶ 11} Assignment of Error No. 2:

{¶ 12} THE TRIAL COURT ERRED BY ISSUING A RULING THAT THE CASE WAS MOOT.

{¶ 13} Holmes argues the trial court erred in ruling that the case was moot because two exceptions to the mootness doctrine apply, namely, the issue is capable of repetition yet evading review and the case involves a matter of public or great general interest. An appellate court reviews a trial court's determination that a matter is moot under a de novo review. *Gold Key Realty v. Collins*, 2d Dist. Greene No. 2013 CA 57, 2014-Ohio-4705, ¶ 22.

{¶ 14} "A forcible entry and detainer action is intended to serve as an expedited mechanism by which an aggrieved landlord may recover possession of real property." *Miele v. Ribovich*, 90 Ohio St.3d 439, 441, 2000-Ohio-193. A forcible entry and detainer action decides only the right to immediate possession of property and nothing else. *Seventh Urban, Inc. v. Univ. Circle Property Dev., Inc.*, 67 Ohio St.2d 19, 25 (1981), fn. 11.

{¶ 15} Once a landlord has been restored to the property, the forcible entry and detainer becomes moot because, having been restored to the premises, there is no further relief that may be granted to the landlord. *Showe Mgt. Corp. v. Hazelbaker*, 12th Dist. Fayette No. CA2006-01-004, 2006-Ohio-6356, ¶ 7. Because Holmes has vacated the apartment and Landings retook possession of the apartment, the forcible entry and detainer action is now moot. Nonetheless, an appellate court may decide an otherwise moot case

where the issues are capable of repetition, yet will continue to evade review, or where the case involves a matter of public or great general interest. *Id.*; *Rithy Properties, Inc. v. Cheesman*, 10th Dist. Franklin No. 15AP-641, 2016-Ohio-1602, ¶ 20.[1]

{¶ 16} The "capable of repetition, yet evading review" exception "applies only in exceptional circumstances in which the following two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231, 2000-Ohio-142.

{¶ 17} While the "procedures set forth in R.C. Chapter 1923 ensure that forcible entry and detainer actions proceed expeditiously in the trial court, * * * R.C. 1923.14(A) provides a defendant with the means to suspend the execution of a judgment of restitution" by obtaining a stay of execution and filing any required bond. *Rithy Properties*, 2016-Ohio-1602 at ¶ 23. Hence, "a forcible entry and detainer action is not too short in duration to be fully litigated through appeal." *Id.*; *Blank v. Allenbaugh*, 11th Dist. Ashtabula No. 2018-A-0022, 2018-Ohio-2582; *AKP Properties, L.L.C. v. Rutledge*, 5th Dist. Stark No. 2018CA00058, 2018-Ohio-5309. Moreover, there is no reasonable expectation that Holmes will be subject to a forcible entry and detainer action again as she concedes she "will be unlikely to rent another apartment from [Landings]." Accordingly, we conclude that the "capable of repetition, yet evading review" exception to the mootness doctrine does not apply to this case.

{¶ 18} The "public or great general interest" exception "should be used with caution

1. The proper terminology in the second exception to the mootness doctrine above is "public or great general interest," not the phrase "great public or general interest" used in *Franchise Developers, Inc. v. Cincinnati*, 30 Ohio St.3d 28 (1987). *In re Appeal of Suspension of Huffer from Circleville High School*, 47 Ohio St.3d 12, 14 (1989), fn. 5.

and only on rare occasions." *Rithy Properties* at ¶ 24. "Generally, the invocation of this exception remains the province of the highest court in the state, rather than the intermediate appellate courts, whose decisions do not have binding effect over the entire state." *Id.*

{¶ 19} Holmes asserts that Landings' retaliation against her for reporting the "illegal and unwarranted surveillance placed in [her] rental unit to allow [Landings], the F.B.I. and others to harass and spy on [her]" presents issues of public and great general interest. In our view, however, Holmes' argument is specific to the circumstances of her case and does not present questions of great public importance to justify overcoming the mootness doctrine. *See Gold Key Realty*, 2014-Ohio-4705; *Rithy Properties*, 2016-Ohio-1602 (finding that the importance of the issue failed to meet the high threshold necessary to fit within this exception to the mootness doctrine). Accordingly, we conclude that the "public or great general interest" exception to the mootness doctrine does not apply to this case.

{¶ 20} Holmes' second assignment of error is overruled.

{¶ 21} Assignment of Error No. 1:

{¶ 22} THE JUDGMENT OF THE TRIAL COURT FAILED TO ACKNOWLEDGE FRAUDULENT CONCEALMENT COMMITTED BY APPELLEES.

{¶ 23} Assignment of Error No. 3:

{¶ 24} THE JUDGMENT OF THE TRIAL COURT FAILS TO ACKNOWLEDGE LANDLORD BREACH OF CONTRACT AND WAIVER OF SERVICE.

{¶ 25} Assignment of error No. 4:

{¶ 26} THE JUDGMENT OF THE TRIAL COURT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 27} In her first assignment of error, Holmes challenges the trial court's judgment, arguing that Landings fraudulently failed to disclose the December 26, 2019 "email agreement" and Holmes' illegal surveillance complaints during the eviction hearing.

{¶ 28} In her third assignment of error, Holmes challenges the trial court's judgment, arguing that it failed to acknowledge that (1) the December 26, 2019 email was a contract which Landings breached by refusing to accept Holmes' $3,500 check, and (2) the email constitutes a waiver of the three-day notice to leave the premises.

{¶ 29} In her fourth assignment of error, Holmes argues that the judgment granting restitution of the premises to Landings is against the manifest weight of the evidence because (1) Landings failed to provide the December 26, 2019 email and Holmes' illegal surveillance complaints at the eviction hearing, (2) Holmes' lease agreement included a very vague and ambiguous buyout provision, and (3) the final account statement Holmes received from Landings was further evidence of Landings' retaliation given Landings' breach of contract when it refused payment of the rent on January 14, 2020.

{¶ 30} As stated above, once a landlord has been restored to the property, the forcible entry and detainer action becomes moot because, having been restored to the premises, there is no further relief that can be granted. *Hazelbak*, 2006-Ohio-6356 at ¶ 7. The *only* method by which a defendant appealing a judgment of forcible entry and detainer may prevent the cause from becoming moot is stated in R.C. 1923.14. *Front St. Bldg. Co., L.L.C. v. Davis*, 2d Dist. Montgomery No. 27042, 2016-Ohio-7412, ¶ 18. "The statute provides a means by which the defendant may maintain, or even recover, possession of the disputed premises during the course of his appeal by filing a timely notice of appeal, seeking a stay of execution, and posting a supersedeas bond." *Id.*; *Colonial American Dev. Co. v. Griffith*, 48 Ohio St.3d 72 (1990). If the defendant fails to avail himself of this remedy, all issues relating to the action are rendered moot by his eviction from the premises. *Cherry v. Morgan*, 2d Dist. Clark Nos. 2012 CA 11 and 2012 CA 21, 2012-Ohio-3594, ¶ 5.

{¶ 31} Holmes failed to seek a stay of execution in the trial court and post a supersedeas bond following the filing of her appeal, and none of the exceptions to mootness

apply herein. Accordingly, the instant appeal is moot. Since Holmes' appeal is moot, we do not reach the merits of her first, third, and fourth assignments of error.

{¶ 32} We recognize that Holmes was acting pro se in the trial court and is acting pro se in this appeal. However, litigants who proceed pro se are held to the same standard as those who are represented by counsel. *Chambers v. Setzer*, 12th Dist. Clermont No. CA2015-10-078, 2016-Ohio-3219, ¶ 10. "Pro se litigants are not to be accorded greater rights and must accept the results of their own mistakes and errors, including those related to correct legal procedure." *Cox v. Zimmerman*, 12th Dist. Clermont No. CA2011-03-022, 2012-Ohio-226, ¶ 21.

{¶ 33} Appeal dismissed.

HENDRICKSON, P.J. and S. POWELL, J., concur.

Appendix C

Butler County
Area III Court

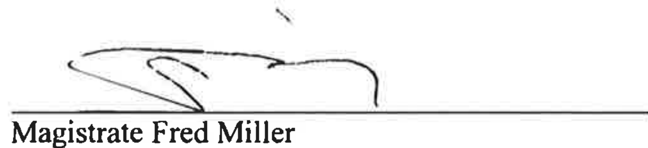
AUG 23 2021

FILED

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

THE LANDINGS AT BECKETT RIDGE:		**Case No. CVG1901594**
Plaintiff,	:	
vs.	:	**DECISION OF MAGISTRATE**
ROSALIND HOLMES.	:	
Defendant.	:	

Upon due consideration of defendant's Civ.R. 60(B)(3), (5) claim to Vacate the Judgment of March 4, 2020, the court hereby recommends that the Motion be OVERRULED. Not only is the motion not timely,[1] but it appears to relitigate the same issues that Holmes raised on her objections before the trial court and in her appeal to the 12th District Court of Appeals. CA2020-04-050, 2020-Ohio-6900. That appeal was dismissed because this matter was moot. Despite Holmes's current arguments, this matter remains moot because she vacated the premises.



Magistrate Fred Miller

cc: Dave Donnett, Esq.
Rosalind Holmes

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[1] A Civ.R. 60(B)(3) claim must be filed within one year of the judgment that is sought to be vacated. Here, that judgment was issued on March 4, 2020, and the Motion to Vacate was filed on July 9, 2021, well in excess of one year of the trial court's final judgment.

_X_ A copy of the Decision of Magistrate in the above-captioned matter was mailed to Plaintiff and Defendant this _23rd_ day of _August_, 2021.

B. Thornsburg
Deputy Clerk

NOTICE IS HEREBY GIVEN THAT UNLESS OBJECTIONS, IN WRITING, STATING THE REASON THEREFOR (OR TO THE ATTORNEY FOR SAID PARTY IF APPLICABLE) ARE FILED WITH THE COURT, WITH A COPY TO OPPOSING PARTY, WITHIN FOURTEEN (14) DAYS OF THE FILING OF THE REPORT, AN ORDER WILL BE MADE AS RECOMMENDED ABOVE. ANY OBJECTION TO A FINDING OF FACT SHALL BE SUPPORTED BY A TRANSCRIPT OF ALL THE EVIDENCE SUBMITTED TO THE MAGISTRATE RELEVANT TO THAT FACT OR, IF A TRANSCRIPT IS UNAVAILABLE, YOUR AFFIDAVIT OF THAT EVIDENCE SPECIFYING THE ERRORS MADE BY THE MAGISTRATE.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THAT DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3).

Butler County
Area III Court

SEP 27 2021

FILED

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

THE LANDINGS AT BECKETT RIDGE: **Case No. CVG1901594**

Plaintiff, :

vs. :

ROSALIND HOLMES. :

Defendant. :

DECISION AND ENTRY OVERRULING MOTION FOR RECONSIDERATION (FINAL APPEALABLE ORDER)

On September 21, 2021, this court overruled Rosalind Holmes's Civ.R. 60(B) Motion to Vacate Judgment. This was designated a final, appealable order. On September 23, 2021, Ms. Holmes filed an Emergency Motion for Reconsideration and a request for stay pending appeal.

As has been explained before to Ms. Holmes by this court, the civil rules do not contemplate a Motion for Reconsideration of a final judgment. Any such motion and judgment stemming from a reconsideration is a nullity and has no legal effect. *Pitts v. Ohio Dept. of Transportation*, 67 Ohio St.2d 378, 382, 423 N.E.2d 1105 (1981)(second syllabus); *State v. Taggart*, 12th Dist., 2021-Ohio-1350, ¶12.

The court therefore OVERRULES Ms. Holmes's Emergency Motion for Reconsideration. The court further declines to stay its order pending appeal.

Judge Courtney Caparella-Kraemer

cc: Dave Donnett, Esq.
Rosalind Holmes

_X_ A copy of the Decision and Entry in the above-captioned matter was mailed to Plaintiff and Defendant this 27 day of September, 2021.

Deputy Clerk

Appendix D

FILED
2022 APR 18 PM 2:27
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

THE LANDINGS AT BECKETT RIDGE, :

Appellee, : CASE NO. CA2021-09-118

: **JUDGMENT ENTRY**

- vs - :

FILED BUTLER CO.
COURT OF APPEALS
APR 18 2022
MARY L. SWAIN
CLERK OF COURTS

ROSALIND HOLMES, :

Appellant. :

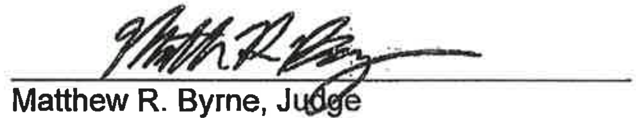
The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Butler County Area III Court for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

Stephen W. Powell, Presiding Judge

Robert A. Hendrickson, Judge



Matthew R. Byrne, Judge

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

THE LANDINGS AT BECKETT RIDGE,	:	
Appellee,	:	CASE NO. CA2021-09-118
	:	OPINION 4/18/2022
- vs -	:	
ROSALIND HOLMES,	:	
Appellant.	:	

CIVIL APPEAL FROM BUTLER COUNTY AREA III COURT
Case No. CVG 1901594

David D. Donnett, for appellee.

Rosalind Holmes, pro se.

S. POWELL, P.J.

{¶ 1} Appellant, Rosalind Holmes, appeals the decision of the Butler County Area III Court denying her Civ.R. 60(B) motion for relief from the trial court's judgment granting a complaint for forcible entry and detainer filed by appellee, The Landings at Beckett Ridge, LLC ("Landings"). For the reasons outlined below, we affirm the trial court's decision.[1]

{¶ 2} Several years ago, Holmes leased an apartment from Landings located at

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1. Pursuant to Loc.R. (6)(A), we sua sponte remove this appeal from the accelerated calendar for the purpose of issuing this opinion.

4899 Destination Circuit in West Chester, Butler County, Ohio. Holmes failed to pay Landings rent due for the month of December 2019. Because of this, on December 7, 2019, Landings served Holmes with the statutory three-day notice to leave the premises. Shortly thereafter, when Holmes failed to vacate the premises, Landings filed a complaint for forcible entry and detainer seeking restitution of the premises. The trial court scheduled the matter for an eviction hearing to take place on January 8, 2020.

{¶ 3} On December 26, 2019, Jenn Taylor, Landings' property manager, sent an e-mail to Holmes advising Holmes as follows:

> At this time, the December balance and January rent will need to be paid in full to cancel the eviction process. The total balance is $3,156.82 * * *.
>
> Please keep in mind that eviction court is scheduled for January 8th. If the above balance is not paid before eviction court we will be unable to accept rent after that morning and will have to continue with the eviction process.
>
> Let us know if there are any questions you have and an intended date to pay rent.

{¶ 4} On January 7, 2020, Holmes moved to continue the eviction hearing scheduled to take place the next day, January 8, 2020. The trial court granted Holmes' motion and rescheduled the eviction hearing to take place the following week, on January 15, 2020. The day before the rescheduled eviction hearing was to take place, January 14, 2020, Holmes tendered a $3,500 cashier's check to Landings for the unpaid rent balance. Per the terms of the e-mail Taylor sent to Holmes on December 26, 2019 set forth above, Landings refused to accept the cashier's check from Holmes.

{¶ 5} On January 15, 2020, the rescheduled eviction hearing took place before a trial court magistrate. During this hearing, Landings' property manager, Taylor, testified and advised the magistrate that she had sent the above e-mail to Holmes on December 26, 2019 "explaining how much was due before January 8th, the original court date[,] and asked

that it be paid before then and * * * after that date we would not be accepting rent." Taylor also testified and confirmed for the magistrate that Landings did not receive the necessary rent payment from Holmes before the January 8, 2020 deadline set forth in the December 26, 2019 e-mail.

{¶ 6} Upon hearing from both parties, the magistrate issued a decision finding Holmes was properly served with the notice to leave the premises. The magistrate also found Holmes had failed to timely pay the rent due to Landings and that Landings was entitled to restitution of the premises as requested in its complaint. Holmes filed objections to the magistrate's decision. To support her objections, Holmes argued that Landings' eviction proceedings and refusal to accept her $3,500 cashier's check was done in retaliation for her sending a letter to the U.S. Department of Commerce, Office of the Inspector General, complaining that Landings "had placed an illegal surveillance in [her] apartment" and requesting an investigation.

{¶ 7} On February 14, 2020, the trial court held a hearing on Holmes' objections to the magistrate's decision. During this hearing, Landings argued that Holmes' objections were now moot because Holmes had since vacated the premises. Holmes did not dispute that she had, in fact, vacated the premises. Approximately three weeks later, on March 4, 2020, the trial court issued a decision finding the case moot given the fact that Holmes had already vacated the premises. In so holding, the trial court stated:

> The parties do not dispute that Holmes has already vacated the premises pursuant to the magistrate's decision. It is well settled law that when a tenant vacates the premises pursuant to an eviction action, any further proceedings are moot. * * * Accordingly, because Holmes is no longer living on the premises, there is no relief that this court can provide her. Her objections are hereby OVERRULED, and the Magistrate's Decision will stand as an order of the court.

Holmes appealed the trial court's decision to this court, raising four assignments of error for

review. This included one assignment of error, i.e., assignment of error number four, wherein Holmes argued the trial court's decision granting restitution of the premises to Landings was against the manifest weight of the evidence.

{¶ 8} On December 28, 2020, this court issued a decision dismissing Holmes' appeal as moot. *Landings at Beckett Ridge v. Holmes*, 12th Dist. Butler No. CA2020-04-050, 2020-Ohio-6900. In reaching this decision, this court stated:

> Once a landlord has been restored to the property, the forcible entry and detainer becomes moot because, having been restored to the premises, there is no further relief that may be granted to the landlord. * * * Because Holmes has vacated the apartment and Landings retook possession of the apartment, the forcible entry and detainer action is now moot.

(Internal citations deleted.) *Id.* at ¶ 15. This court also stated that, since Holmes' appeal was moot, we would not reach the merits of Holmes' fourth assignment of error challenging the trial court's decision being against the manifest weight of the evidence. *Id.* at ¶ 31 ("[s]ince Holmes' appeal is moot, we do not reach the merits of her first, third, and fourth assignments of error").

{¶ 9} On July 9, 2021, Holmes filed a Civ.R. 60(B) motion for relief from the trial court's decision issued over a year earlier, on March 4, 2020. Holmes brought this motion pursuant to Civ.R. 60(B)(3) and (5). Approximately six weeks later, on August 23, 2021, a trial court magistrate issued a decision recommending the trial court deny Holmes' Civ.R. 60(B) motion in its entirety. In so recommending, the magistrate stated:

> Upon due consideration of defendant's Civ.R. 60(B)(3), (5) motion to Vacate the Judgment of March 4, 2020, the court hereby recommends that the Motion be OVERRULED. Not only is the motion not timely, but it appears to relitigate the same issues that Holmes raised on her objections before the trial court and in her appeal to the 12th District Court of Appeals. CA2020-04-050, 2020-Ohio-6900. That appeal was dismissed because this matter was moot.

{¶ 10} On August 26, 2021, Holmes filed an objection to the magistrate's decision.

As part of her objection, Holmes argued the magistrate erred by finding her Civ.R. 60(B) motion was untimely filed "because of the global health crisis created by the COVID-19 pandemic in which Americans were cautioned against leaving their homes, traveling, entering public facilities on an as needed basis, etc." The following month, on September 21, 2021, the trial court denied Holmes' objection to the magistrate's decision. In so holding, the trial court stated:

> The court has reviewed the entire record in this case, including Holmes's arguments before the Magistrate and pursuant to her objections. The court hereby OVERRULES her objections for all the reasons provided by the Magistrate in his August 23 Decision.

{¶ 11} The trial court also stated:

> Further, the court does not find that the COVID pandemic has prevented Holmes from obtaining documents and from timely filing a 60(B) motion. The court takes judicial notice that Holmes has actively filed numerous Complaints and motions and has actively participated throughout the pandemic, not only in this case, but in other cases in this court.

{¶ 12} On September 22, 2021, Holmes filed a notice of appeal from the trial court's decision.[2] Holmes' appeal now properly before this court, Holmes raises two assignments of error for this court's review.

{¶ 13} Assignment of Error No. 1:

{¶ 14} THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT.

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2. We note that, since filing her notice of appeal, Holmes has filed numerous additional motions with this court. This includes Holmes filing two "emergency" motions requesting this court issue a stay and/or temporary restraining order pending appeal, two motions requesting this court reconsider our decision denying her second "emergency" motion for a stay and/or temporary restraining order pending appeal, a motion requesting this court issue an "emergency decision" on her two motions for reconsideration of this court's decision denying her second "emergency" motion for a stay and/or temporary restraining order pending appeal, and two "notifications" informing this court that "there is no just reason" for this court to "delay in issuing an order" on her two "emergency" motions for reconsideration, one of which Holmes "respectfully request[ed]" this court to issue an order on her "emergency" motions for reconsideration "NOW."

{¶ 15} In her first assignment of error, Holmes argues the trial court erred by denying her Civ.R. 60(B) motion for relief from judgment. We disagree.

{¶ 16} "Civ.R. 60(B) represents a balance between 'the legal principle that there should be finality in every case, so that once a judgment is entered it should not be disturbed, and the requirements of fairness and justice, that given the proper circumstances, some final judgments should be reopened.'" *Mallik v. Jeff Wyler Fairfield, Inc.*, 12th Dist. Butler No. CA2000-06-106, 2000 Ohio App. LEXIS 5238, *13 (Nov. 13, 2000), quoting *Advance Mortgage Corp. v. Novak*, 53 Ohio App.2d 289, 291 (8th Dist.1977). "[A] court must carefully consider the two conflicting principles of finality and perfection when reviewing a motion for relief from judgment." *Wedemeyer v. USS FDR (CV-42) Reunion Assoc.*, 3d Dist. Allen No. 1-10-46, 2010-Ohio-6266, ¶ 12, citing *Strack v. Pelton*, 70 Ohio St.3d 172, 175 (1994). "But, as has been established, it is finality over perfection in the hierarchy of values." *U.S. Bank, N.A. v. Muma*, 12th Dist. Butler No. CA2020-05-060, 2021-Ohio-629, ¶ 21, citing *Tillimon v. Coutcher*, 6th Dist. Lucas No. L-19-1156, 2020-Ohio-3215, ¶ 31 ("although the trial court tipped the balance toward perfection, we must follow binding precedent and tip the balance toward finality instead"). This is because it is finality, not perfection, that "'requires that there be some end to every lawsuit, thus producing certainty in the law and public confidence in the system's ability to resolve disputes.'" *Viox v. Metcalfe*, 12th Dist. Clermont No. CA97-03-026, 1998 Ohio App. LEXIS 800, *12-13 (Mar. 2, 1998), quoting *Knapp v. Knapp*, 24 Ohio St.3d 141, 144-145 (1986).

{¶ 17} "To prevail on a Civ.R. 60(B) motion, the moving party must demonstrate that (1) he [or she] has a meritorious defense or claim to present if relief is granted, (2) he [or she] is entitled to relief under one of the grounds stated in Civ.R. 60(B), and (3) the motion is made within a reasonable time." *Total Quality Logistics, LLC v. ATA Logistics, Inc.*, 12th Dist. Clermont No. CA2019-09-071, 2020-Ohio-1553, ¶ 7, citing *GTE Automatic Electric,*

Inc. v. ARC Industries, Inc., 47 Ohio St.2d 146 (1976), paragraph two of the syllabus. Because all three criteria must be satisfied for the trial court to grant relief, the moving party's failure to meet any one of these three factors is fatal. *Scrimizzi v. Scrimizzi*, 12th Dist. Warren No. CA2018-11-131, 2019-Ohio-2793, ¶ 51 ("[f]ailure to meet any one of these three factors is fatal, for all three must be satisfied in order to gain relief"), citing *First Fin. Bank, N.A. v. Grimes*, 12th Dist. Butler No. CA2010-10-268, 2011-Ohio-3907, ¶ 14. "The decision to grant or deny a Civ.R. 60(B) motion lies within the trial court's discretion, and the decision will be reversed only for an abuse of discretion." *Reynolds v. Turull*, 12th Dist. Butler No. CA2018-10-197, 2019-Ohio-2863, ¶ 10. "An abuse of discretion connotes more than an error of law or judgment; it implies the trial court acted unreasonably, arbitrarily, or unconscionably." *Middletown App., Ltd. v. Singer*, 12th Dist. Butler Nos. CA2018-08-165 and CA2018-11-224, 2019-Ohio-2378, ¶ 12, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 18} After a full and thorough review of the record, we find no abuse of discretion in the trial court's decision denying Holmes' Civ.R. 60(B) motion for relief from judgment. This is because, despite Holmes' claims, the trial court's decision is not unreasonable, arbitrary, or unconscionable. In so holding, we agree with the trial court's decision finding Holmes' Civ.R. 60(B) motion was untimely filed. We also agree with the trial court's decision finding Holmes has not demonstrated that she has a meritorious defense or claim to present if relief is granted or that she is entitled to relief under any one of the grounds stated in Civ.R. 60(B). We reach this decision because, as the record indicates, Holmes has already vacated the premises.[3] This is significant because, as this court previously advised Holmes

3. Based on the address Holmes' provided to this court, Holmes does not live at the apartment she leased from Landings located at 4899 Destination Circuit in West Chester, Butler County, Ohio. Holmes instead lives in Tennessee.

in *Holmes*, "once a landlord has been restored to the property, the forcible entry and detainer action becomes moot because, having been restored to the premises, there is no further relief that can be granted." *Id.*, 2020-Ohio-6900 at ¶ 30, citing *Showe Mgt. Corp. v. Hazelbaker*, 12th Dist. Fayette No. CA2006-01-004, 2006-Ohio-6356, ¶ 7. Therefore, finding no error in the trial court's decision denying Holmes' Civ.R. 60(B) motion for relief from judgment, Holmes' first assignment of error lacks merit and is overruled.

{¶ 19} Assignment of Error No. 2:

{¶ 20} THE JUDGMENT OF THE TRIAL COURT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 21} In her second assignment of error, Holmes argues the trial court's decision granting restitution of the premises to Landings was against the manifest weight of the evidence. However, as this court previously explained in *Holmes*, the forcible entry and detainer action is now moot given the fact that Holmes has already vacated the premises and Landings retook possession. *Id.*, 2020-Ohio-6900 at ¶ 15, 31. Therefore, for the same reasons this court already stated in *Holmes*, Holmes second assignment of error alleging the trial court's decision granting restitution of the premises to Landings was against the manifest weight of the evidence is moot.

{¶ 22} Judgment affirmed.

HENDRICKSON and BYRNE, JJ., concur.

Appendix E

Supreme Court of Ohio Clerk of Court - Filed August 16, 2022 - Case No. 2022-0662

The Supreme Court of Ohio

The Landings at Beckett Ridge

v.

Rosalind Holmes

Case No. 2022-0662

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Butler County Court of Appeals; No. CA2021-09-118)

Maureen O'Connor
Chief Justice

Appendix F

Butler County
Area III Court

MAR 05 2021

FILED

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

ROSALIND HOLMES	:	**Case No. CVF2001041**
Plaintiff,	:	
vs.	:	**DECISION OF MAGISTRATE**
LAKEFRONT AT WEST CHESTER	:	
Defendant.	:	

This matter came on for a trial on March 1, 2021, pursuant to an Amended Complaint filed by Rosalind Holmes. Present in court were Rosalind Holmes, unrepresented, and Lakefront at West Chester ["Lakefront"], represented by Amy Higgins.

BACKGROUND

Holmes is a tenant at Lakefront. She has asserted several causes of action against it: failure to keep the premises in a fit and habitable condition, in violation of R.C. 5321.04(A)(2); common law trespass; statutory trespass, in violation of R.C. 5321.04(A)(8); breach of implied warranty of habitability; and landlord retaliation, in violation of R.C. 5321.02(A).

Holmes moved into an apartment owned by Lakefront in May 2020. Within a month, she noticed a roach infestation, so she notified management about it. Ultimately, she deposited her rent with the court because of her dissatisfaction with management's response. This court conducted a hearing on that issue in Case Number RE 2000007 on December 30, 2020, and, on January 5, 2021, this court found, among other things, that all issues regarding the rent infestation had been appropriately addressed by Lakefront. This court ordered all rent deposits to

be returned to Lakefront. Holmes did not object to or otherwise appeal that Decision. A copy of that Decision is attached hereto.

At the outset of the hearing in this case, Lakefront requested that the cause of action regarding the roach infestation be dismissed, because it had already been decided by this court in the rent escrow case. Holmes did not object to this request. The court agreed that it need not hear any testimony regarding roach infestation and warranty of habitability because those issues had already been decided and there were no objections or appeal from that decision.

TRESPASS

Regarding the trespass claims, Holmes testified that on numerous occasions, she would find strange things that led her to believe that someone from Lakefront had surreptiously entered her apartment without her permission. Thus, when she went to lock her door on the morning of October 28, 2020, she found that her key did not work. She went to the office, which rekeyed her lock for her, and then her key did work. She believed that she could infer from this that Lakefront had somehow entered her home.

There was testimony from the property manager, Jessica Betts, that only staff had access to the keys, that there was a strict policy of not letting an unauthorized person have the keys, and that nobody from Lakefront had entered Holmes's apartment without her permission. Betts said that periodically a key will not work in a lock because a change in the weather may cause a pin to slightly shift position. In her five years' experience, this sort of thing happened 25-30 times.

As further proof of a trespass, Holmes testified that someone had emptied out her makeup kit in her bedroom. She provided a photograph of the empty box. She also said that one day her vacuum cleaner was missing, but then it was returned at some later date. Upon examining the contents of the cleaner, she saw dirt and debris that did not belong to her. She provided a

photograph of those contents. Again, she inferred that someone from Lakefront had snuck into her apartment, took her makeup, and also took her cleaner, used it, and then secretly returned it. Betts denied that anyone from Lakefront took her vacuum; they have their own cleaning equipment to be used as needed.

Holmes also believed that the FBI had obtained search warrants to enter her home, and that Lakefront had somehow assisted it in doing so. She testified that she had had similar issues of unwarranted intrusion in two previous apartments where she had lived. Both Banks and Jacqueline Keller, the regional manager of PLK, the management company, denied having any such conversations with the FBI or any other governmental agency, nor were they aware of any employee who may have assisted the FBI.

Holmes has claimed that Lakefront both trespassed on her property and that it aided the FBI in trespassing. But she admitted that she never saw anyone from Lakefront on her property at any times when they were not otherwise invited. She could only assume that they were there because of the missing makeup, missing and used vacuum cleaner, and non-working lock on her door. She emphasized Banks's admission that Banks does not guard the apartment keys at all times, thereby letting Holmes surmise that someone may have surreptiously taken the keys, entered her apartment, and then returned the keys. But that is all conjecture. The burden of proving a trespass rests with Holmes, and without more, this court cannot find that she has met that burden of proof. The court finds that Holmes did not prove a common-law trespass or a violation of R.C. 5321.04(A)(8), which forbids a landlord from entering a tenant's premises without at least twenty-four hours' notice.

FIT AND HABITABLE CONDITION

R.C. 5321.04(A)(2) requires a landlord to keep the premises "in a fit and habitable condition." The implied warranty of habitability imposes similar requirements. See *Lloyd v. Roosevelt Properties, Ltd.*, 8th Dist., 2018-Ohio-3163. As noted above, the court has already decided that Lakefront did not violate this statute or its common law duty. Lakefront promptly and responsibly addressed any infestation, and Holmes did not raise any issues of further infestation that may have arisen since the December 30, 2020 hearing. The court finds that Holmes has failed to prove any new infestation that has been disregarded by Lakefront, and the court finds that Lakefront did properly address any old infestation.

RETALIATION

Because Holmes was frustrated with the perceived lack of response to the roach problem, she gave notice to Lakefront on August 3, 2020 that she would be vacating the premises in 30 days, on September 4. Lakefront acknowledged receipt of the notice. Def's ex. A. On September 5, when Holmes had not moved out, Banks notified her that she would need to leave, because, in reliance on the notice, Lakefront had rented the apartment to someone else. Other than that conversation, there was no evidence of any steps taken by Lakefront to evict Holmes. In fact, Lakefront changed its mind and allowed her to remain in her apartment. She is still there today. It was this conversation that forms the basis of Holmes's claim of retaliation.

Holmes claims that Lakefront has violated R.C. 5321.02(A)(2), which provides that "a landlord may not retaliate against a tenant by. . .bringing or threatening to bring an action for possession of the tenant's premises because. . .[t]he tenant has complained to the landlord of any violation of section 5321.04 of the Revised Code." But, under the circumstances of this case, the

court cannot find that Banks's comments to Holmes about needing to move out constitute a violation of the statute.

There was never any eviction action brought against Holmes. And Banks's statement to Holmes was not a threat to bring an eviction action because of any complaints regarding an infestation. Rather, it was Holmes herself who had given notice to Lakefront that she intended to vacate by September 4. In reliance on that statement, Lakefront had rented the apartment to someone else. Lakefront needed the vacancy so the new tenant could move in. Banks was merely reminding Holmes of this, not retaliating against her for her earlier complaints. And it turns out that Lakefront did not force Holmes out anyway. Even though it had rented the apartment to another, Lakefront allowed Holmes to remain there, where she still is today. The court therefore finds that Lakefront did not violate R.C 5321.02(A)(2).[1]

DAMAGES

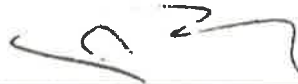
Finally, even had Holmes proved any of the allegations in her Amended Complaint, she provided no evidence or testimony regarding any damages that she may have suffered as a result of such conduct by Lakefront. R.C. 5321.02(B) limits recovery for a retaliation action to "actual damages" suffered by the tenant. A statutory trespass by a landlord will allow the tenant to recover "actual damages." R.C. 5321.04(B). Common law also requires proof of damages for a trespass and for a breach of warranty of habitability. *Fantozzi v. Henderson*, 8th Dist., 2006-Ohio-5590, ¶15 (trespass); *Lloyd v. Roosevelt Properties, Ltd.*, 8th Dist., 2018-Ohio-3163, ¶31(implied warranty of habitability). Holmes has provided no proof of any "actual damages" pursuant to those statutes or the common law.

[1] The statute also states that a landlord cannot retaliate by increasing a tenant's rent or by decreasing services due to the tenant, but Holmes provided no evidence or testimony about those types of retaliation.

The failure of a landlord to provide safe and habitable premises pursuant to R.C. 5321.04(A) allows a tenant to deposit her rent with the court, obtain an order requiring the landlord to remedy the condition, or terminate the lease agreement. R.C. 5321.07(B). Holmes did deposit her rent with the court, but, as already ruled by the court in RE200007, Holmes did not prove her entitlement to any of those remedies. The court ordered the return of the rent to Lakefront. Thus, even had there been a violation of the statute, Holmes has not proved entitlement to any damages.

CONCLUSION

Taking into account all the evidence and testimony in this case, the court must find that Holmes has failed to prove by a preponderance of the evidence any of the allegations contained in her Amended Complaint. Accordingly, it is the recommendation of the court that the Amended Complaint be DISMISSED. Plaintiff to pay court costs.



Magistrate Fred Miller

cc: Rosalind Holmes
Amy Higgins, Esq.

X A copy of the Decision of Magistrate in the above-captioned matter was mailed to Plaintiff and Defendant this 5th day of March, 2021.

Deputy Clerk

NOTICE IS HEREBY GIVEN THAT UNLESS OBJECTIONS, IN WRITING, STATING THE REASON THEREFOR (OR TO THE ATTORNEY FOR SAID PARTY IF APPLICABLE) ARE FILED WITH THE COURT, WITH A COPY TO OPPOSING PARTY, WITHIN FOURTEEN (14) DAYS OF THE FILING OF THE REPORT, AN ORDER WILL BE MADE AS RECOMMENDED ABOVE. ANY OBJECTION TO A FINDING OF FACT SHALL BE SUPPORTED BY A TRANSCRIPT OF ALL THE EVIDENCE SUBMITTED TO THE MAGISTRATE RELEVANT TO THAT FACT OR, IF A TRANSCRIPT IS UNAVAILABLE, YOUR AFFIDAVIT OF THAT EVIDENCE SPECIFYING THE ERRORS MADE BY THE MAGISTRATE.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THAT DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3).

Appendix G

Butler County
Area III Court

APR 27 2021

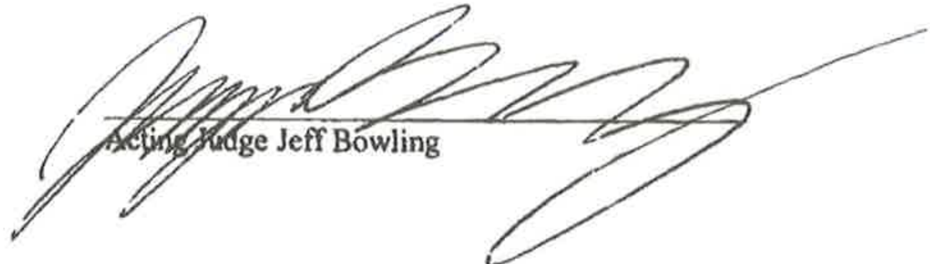
FILED

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

ROSALIND HOLMES	:	**Case No. CVF2001041**
Plaintiff,	:	
vs.	:	
LAKEFRONT AT WEST CHESTER	:	**ENTRY OVERRULING OBJECTIONS**
		(FINAL APPEALABLE ORDER)
Defendant.	:	

This matter came on pursuant to objections filed by Rosalind Holmes on March 17, 2021 to the March 5, 2021 Decision of the Magistrate. In that Decision the magistrate recommended that Holmes's Amended Complaint against Lakefront of West Chester be dismissed. The court conducted a hearing on those objections on April 16, 2021.

This court has reviewed the transcript of proceedings provided by Holmes and has also considered the written objections and response provided by Holmes and counsel for Lakefront, as well as the oral arguments of both Holmes and counsel for Lakefront. After thoroughly and independently considering the entire record in this case, along with Holmes's arguments, the court hereby OVERRULES her objections and adopts the Magistrate's Decision as an order of the court for all the reasons contained in that Decision. The Amended Complaint is hereby DISMISSED at plaintiff's costs.



Acting Judge Jeff Bowling

cc: Rosalind Holmes
Amy Higgins, Esq.

X A copy of the Entry Overruling Objections in the above-captioned matter was mailed to Plaintiff and Defendant this 27th day of April, 2021.

B. Thornsburg
Deputy Clerk

Appendix H

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

FILED
2021 DEC 27 PM 3: 04
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

ROSALIND HOLMES,

Appellant,

vs.

LAKEFRONT AT WEST CHESTER,

Appellee.

FILED BUTLER CO.
COURT OF APPEALS
DEC 27 2021
MARY L. SWAIN
CLERK OF COURTS

CASE NO. CA2021-05-046
REGULAR CALENDAR

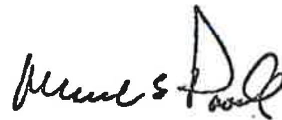
ENTRY DENYING EMERGENCY MOTION TO SUPPLEMENT THE RECORD AND FOR THIS COURT TO TAKE JUDICIAL NOTICE

The above cause is before the court pursuant to a document styled "emergency motion to supplement the record and for this court to take judicial notice, motion to waive fees and cost" filed by appellant, Rosalind Holmes, on December 17, 2021. This appeal was submitted to the court for decision on October 14, 2021.

The parties have filed their briefs and this matter has been submitted to the court for decision. Appellant will not be permitted to supplement the record at this point in the proceeding. The court will take judicial notice of other proceedings filed in this court if appropriate.

With the exception of the court's reservation of the ability to take judicial notice, the above motion is DENIED.

IT IS SO ORDERED.



Mike Powell, Judge

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

FILED
2022 JAN -4 PM 1:38
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

LAKEFRONT OF WEST CHESTER, LLC,

Appellee,

vs.

ROSALIND HOLMES,

Appellant.

FILED BUTLER CO.
COURT OF APPEALS
JAN - 4 2022
MARY L. SWAIN
CLERK OF COURTS

CASE NO. CA2021-09-108
REGULAR CALENDAR

ENTRY DENYING EMERGENCY MOTION TO RECONSIDER GRANTING MOTION TO SUPPLEMENT THE RECORD

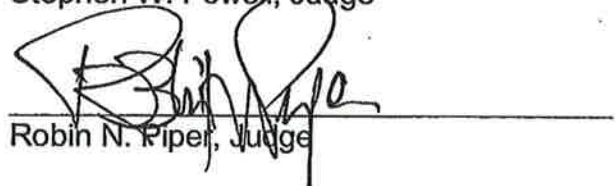
The above cause is before the court pursuant to a pleading styled "emergency motion to reconsider granting appellant's motion to supplement the appeal records and emergency motion to take judicial notice of the transcript of proceedings" filed by appellant, Rosalind Holmes, on December 9, 2021.

On December 8, 2021, this court filed an entry denying appellant's motion to supplement the record with a copy of a transcript of proceedings that occurred in the Butler County Area III Court on July 7, 2021. The motion was denied for the reason that appellant had failed to timely complete the record on appeal.

The motion to reconsider the denial of appellant's motion to supplement the record is DENIED. Appellant failed to timely file the transcript as part of the record on appeal.

IT IS SO ORDERED.

Stephen W. Powell, Judge



Robin N. Piper, Judge

Appendix I

FILED
2022 JAN 19 PM 12:50
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

FILED BUTLER CO.
COURT OF APPEALS
JAN 19 2022
MARY L. SWAIN
CLERK OF COURTS

ROSALIND HOLMES,

Appellant, : CASE NO. CA2021-05-046

: JUDGMENT ENTRY

- vs - :

LAKEFRONT AT WEST CHESTER, :

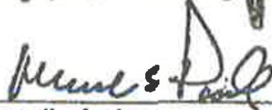
Appellee. :

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Butler County Area III Court for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

Robin N. Piper, Presiding Judge



Mike Powell, Judge

Matthew R. Byrne, Judge

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

ROSALIND HOLMES,	:	
Appellant,	:	CASE NO. CA2021-05-046
	:	OPINION 1/18/2022
- vs -		
	:	
LAKEFRONT AT WEST CHESTER,	:	
Appellee.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT AREA III
Case No. CVF2001041

Rosalind Holmes, pro se.

Greenberger & Brewer LLP, and Amy L. Higgins, for appellee.

BYRNE, J.

{¶1} Rosalind Holmes appeals a decision of the Butler County Area III Court that dismissed her claims against her landlord, Lakefront at West Chester, LLC. For the reasons described below, we affirm the area court's decision.

I. Facts and Procedural History

{¶2} In November 2020, Holmes filed a pro se complaint in the area court against Lakefront at West Chester, LLC ("Lakefront"). In December 2020, she filed a first amended

complaint. Holmes alleged that she rented an apartment from Lakefront and found a roach infestation upon moving in. She further alleged that she requested that Lakefront investigate her mailbox lock "suddenly being changed." Finally, she alleged that there was an "ongoing conspiracy" and "warrantless surveillance" being conducted against her by "the Federal Bureau of Investigation and others," including warrantless surveillance under the Foreign Intelligence Surveillance Act and Executive Order 12333. She claimed to have informed a Lakefront employee about this conspiracy. However, the Lakefront employee dismissed Holmes' concerns and failed to investigate. Holmes alleged that Lakefront was allowing people to enter her apartment "while [she] is sleeping, taking a shower etc. and while she is gone." The complaint also described several specific instances during which Holmes believed someone entered her apartment, including to spit in her bread and to steal her food.

{¶3} Holmes alleged the following causes of action: (1) failure to keep the premises in a fit and habitable condition (in violation of R.C. 5321.04[A][2]), (2) common law trespass, (3) breach of the implied warranty of habitability, and (4) landlord retaliation (in violation of R.C. 5321.02).

{¶4} Holmes had been depositing her rent with the area court in lieu of paying rent to Lakefront due to the roach infestation issue. Prior to trial, the area court held a hearing on the issue of the infestation and found that Lakefront had appropriately addressed the issue. Accordingly, the area court ordered all rent deposits to be released to Lakefront. Holmes did not object to the magistrate's decision.

{¶5} The case proceeded to a trial in March 2021. Initially, the magistrate noted that due to the prior hearing, Holmes' claims for failure to keep the premises in a fit and habitable condition and breach of the implied warranty of habitability were previously resolved and the court would hear no evidence on those claims. Holmes agreed and stated

that trespass and landlord retaliation were the only claims for which she intended to present evidence.

II. Trial Testimony

A. Rosalind Holmes' Testimony

{¶6} Holmes testified that in October 2020, as she was leaving her apartment, she found that her door key did not work, and she could not lock her door. She contacted Lakefront and the assistant property manager gave her a new key. Because her door key did not work upon her exiting the apartment, Holmes believed that a Lakefront employee had changed her lock while she was sleeping.

{¶7} Holmes testified that items were stolen from her apartment. This occurred either while she was sleeping or while she was gone from the apartment. She claimed that someone entered her apartment in October and November 2020, and dumped her makeup out of her makeup box. Holmes also testified that someone had taken her "bathroom cleaners" and that her vacuum cleaner disappeared from her apartment and later reappeared. Holmes testified that she took her vacuum cleaner to a repair shop, and the repair shop discovered debris in the vacuum that she believed was not hers, because her home was very clean.

{¶8} Holmes introduced three photographs into evidence. One depicted the makeup box, one depicted the vacuum cleaner with dust and debris emerging from the roller, and one was a picture of dust and debris. Presumably this was the same dust and debris from the vacuum cleaner. Holmes also introduced several emails that consisted of her communications with Lakefront employees concerning these issues.

B. Jacqueline Keller's Testimony

{¶9} Holmes next called Jacqueline Keller. Keller was the regional manager of PLK Communities ("PLK"), which is the property management company that manages

Lakefront. Keller recalled talking with Holmes about Holmes' belief that PLK was colluding with the FBI or a government entity. Keller stated that she had never received a warrant concerning searching Holmes' apartment from any government agency. Keller testified that she had never been approached by anyone working for the government asking questions about Holmes.

{¶10} Keller testified that the only persons with access to the key to Holmes' apartment were the members of the property management team, and that the keys were held in a lockbox in an office protected by a security alarm. Keller denied giving anyone access to Holmes' key and stated that the only time a PLK/Lakefront employee ever entered Holmes' apartment was pursuant to a work order submitted by Holmes.

C. Jessica Banks' Testimony

{¶11} Holmes next called Jessica Banks, the Lakefront property manager. Banks testified that she had never received a search warrant from any government entity regarding Holmes' apartment. Furthermore, no Lakefront employee had ever asked her to provide them with access to Holmes' apartment. She denied receiving any information about Holmes from any outside party.

{¶12} Banks testified that Holmes provided Lakefront with notice that she was vacating her apartment by September 4, 2020. Banks then put Holmes on the notice-to-vacate list and rented her apartment to another future tenant. When Holmes failed to vacate the apartment on September 4, Banks vaguely recalled calling Holmes and telling her she needed to leave the apartment. However, after Banks consulted with her regional manager, the decision was made to allow Holmes to stay in the apartment.

{¶13} Banks testified that she recalled there being an issue with Holmes' door key. She received an email from Holmes about her door lock. She was not in the office that day but asked her staff to take care of it. Her staff put in a work order and maintenance workers

found that a pin was out of position. Banks assumed that the maintenance workers rekeyed the lock. Holmes' new key was then left with the assistant property manager in the leasing office. Banks also testified that there was an issue with Holmes' mailbox lock, but that this had to do with a screw coming loose and maintenance was able to fix the issue just by tightening the screw. Thus, the mailbox lock was not rekeyed.

{¶14} Concerning what happened with Holmes' door lock, Banks testified that on a quickset bolt, occasionally the locking pins would slip. She stated that this could be due to changes in the weather. She testified this kind of occurrence was not unusual. Lakefront had 296 units and Banks had been a property manager at other apartment complexes over the prior five years. She estimated that she had seen locking pins slip in this manner 25 to 30 times.

{¶15} Banks testified that no one from Lakefront went into Holmes' unit or gave a key to anyone else to enter Holmes' unit. Furthermore, she testified that no one from Lakefront used Holmes' vacuum cleaner or cleaning supplies, and that Lakefront had its own vacuum cleaner and cleaning supplies.

III. Magistrate's and Area Judge's Decisions

{¶16} Following the hearing, the magistrate issued a decision recommending that Holmes' amended complaint be dismissed. Regarding the trespass claim, the magistrate found that Holmes failed to meet her burden to prove a common law trespass or that a violation of R.C. 5321.04(A)(8) occurred. The magistrate noted that Holmes had admitted that she never saw anyone from Lakefront in her apartment at any times when they were not invited, and that she could only assume that they entered the premises without her permission. The magistrate concluded that Holmes offered only conjecture that someone entered her apartment. The magistrate noted Banks' testimony that no one at Lakefront would have given anyone else access to Holmes' apartment. The magistrate also noted

Keller's and Bank's denials of having been involved in or assisted in any efforts to gain access to Holmes' apartment by the FBI.

{¶17} Regarding Holmes' claim for retaliation, the magistrate found that the only putative evidence of "retaliation" that was presented at the trial was testimony that Banks informed Holmes that she needed to leave the apartment. But Banks made this statement in the context of Holmes having told Lakefront she was vacating the premises by September 4 and Lakefront having re-rented the unit in reliance upon that notice. Other than this single conversation, Holmes presented no evidence of retaliation or any other improper attempt to evict Holmes. The magistrate noted that Lakefront in fact decided to allow Holmes to stay in the apartment even though Holmes had previously indicated she would move out, and that she was still living in the apartment at the time of trial. The magistrate found that Holmes had not met her burden to prove retaliation.

{¶18} The magistrate also briefly addressed those claims that it had already resolved and that Holmes agreed were not before the court at the trial. The magistrate reiterated that those claims were without merit.

{¶19} Finally, the magistrate noted that Holmes failed to present any evidence of damages resulting from any of Lakefront's actions.

{¶20} Holmes timely filed objections to the magistrate's decision. In April 2021, the area court judge overruled Holmes' objections and adopted the magistrate's decision as its own, thereby dismissing Holmes' amended complaint, including all her claims.

{¶21} Holmes appeals, raising two assignments of error.

IV. Law and Analysis

{¶22} Assignment of Error No. 1:

{¶23} THE TRIAL COURT ABUSED ITS DISCRETION IN VIOLATION OF OHIO RULE OF EVIDENCE 602.

{¶24} Holmes contends that the area court abused its discretion by considering portions of Banks' testimony. She argues that this testimony was inadmissible pursuant to Evid.R. 602 because it was not based on Banks' personal knowledge. Lakefront argues that Holmes failed to object to the testimony, and, even if she had, the testimony was admissible.

A. Standard of Review

{¶25} Decisions regarding the admission of evidence are within the sound discretion of the trial court and may not be reversed absent an abuse of discretion. *Proctor v. NJR Properties, L.L.C.*, 175 Ohio App.3d 378, 2008-Ohio-745, ¶ 14 (12th Dist.), citing *O'Brien v. Angley*, 63 Ohio St.2d 159, 163 (1980). An abuse of discretion implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

B. Analysis

{¶26} Holmes challenges Banks' testimony concerning Holmes' apartment door being rekeyed and the issues with the mailbox lock. Holmes argues that this testimony was not based on Banks' first-hand knowledge and that it was merely an assumption. However, Holmes did not object to this testimony at the time of trial. "The failure to object to evidence at the trial constitutes a waiver of any challenge* * *." *Wilhoite v. Kast*, 12th Dist. Warren No. CA2001-01-001, 2002 WL 4524, *9 (Dec. 31, 2001).

{¶27} Not only did Holmes not object to Banks' testimony at trial, she also did not challenge the testimony in her objections to the magistrate's decision. The first time that Holmes ever mentioned Evid.R. 602 was in her reply memorandum in support of her objections to the magistrate's decision. Moreover, Banks was Holmes' witness, and it was Holmes who first elicited the testimony she now challenges when she asked Banks whether she recalled there being an issue with the door key. We find that Holmes waived her Evid.R.

602 argument for purposes of appellate review, with the exception for a review for plain error. *Wilhoite* at *9; *In re Swader*, 12th Dist. Warren No. CA2000-04-036, 2001 WL 121084, *6-7 (Feb. 5, 2001), citing Evid.R. 103(A)(1); *State v. Crawford*, 60 Ohio App.3d 61, 62 (6th Dist.1989). Plain error in the civil context is "extremely rare" and this court must find that the error involves "exceptional circumstances" where the error "rises to the level of challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122 (1997).

{¶28} Nothing about the admission of Bank's testimony indicates the "exceptional circumstances" where this court would find an error challenging the legitimacy of the judicial process. This is because even if the challenged testimony was in fact inadmissible and even if Holmes had not waived her argument challenging that testimony, the admission of that testimony did not change the outcome in this case.[1]

{¶29} The primary basis for the court's decision on the trespass claim was that Holmes failed to meet her burden of proof to demonstrate a trespass occurred. Indeed, the only evidence offered by Holmes with respect to trespass was her entirely speculative testimony about Lakefront entering her apartment or assisting an unknown governmental agency in entering her apartment. The only other "evidence" of trespass submitted by Holmes were three emails in which Holmes communicated with Lakefront concerning the lock or infestation issues, and three photographs depicting an empty makeup box, a vacuum cleaner clogged with some dust or debris, and a picture of some dust or debris. None of this evidence proved Holmes' trespass claim.

{¶30} The court did not need to rely on, much less consider, Banks' testimony

---

1. Any putative error here would also qualify as harmless error. An error is harmless in the civil context if it "does not affect [the] substantial rights of the complaining party, or the court's action is not inconsistent with substantial justice." *O'Brien*, 63 Ohio St.2d at 164, citing Civ.R. 61. Accord *In re P.R.P.*, 12th Dist. Butler No. CA2017-02-026, 2018-Ohio-216, ¶ 39-41.

concerning what happened with the locks to find that Holmes failed to meet her burden of proof. Accordingly, Holmes has not demonstrated the "exceptional circumstances" necessary to demonstrate an error that challenges the legitimacy of the judicial process. Therefore, she has not shown plain error and we overrule Holmes' first assignment of error.

{¶31} Assignment of Error No. 2:

{¶32} THE JUDGMENT OF THE TRIAL COURT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶33} Holmes argues that the trial court's judgment in favor of Lakefront was not supported by the weight of the evidence.

C. Standard of Review

{¶34} "The standard of review for a manifest weight challenge in a civil case is the same as that applied to a criminal case." *Skyward Learning Servs., Inc. v. Gray*, 12th Dist. Butler No. CA2019-08-140, 2020-Ohio-1182, ¶ 10; *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 17. When considering a challenge to the manifest weight of the evidence, this court weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, the finder of fact clearly lost its way and created a manifest miscarriage of justice warranting reversal and a new trial ordered. *Hacker v. House*, 12th Dist. Butler No. CA2014-11-230, 2015-Ohio-4741, ¶ 21, citing *Eastley* at ¶ 20; *Carson v. Duff*, 12th Dist. Fayette Nos. CA2017-03-005 and CA2017-03-007, 2017-Ohio-8199, ¶ 11.

D. Analysis

{¶35} Holmes' argument in support of this assignment of error is difficult to understand. What can be discerned is that she is arguing that *Lakefront* failed to present credible evidence that it did not trespass on her property and that *Lakefront* did not prove that it did not retaliate against her based on telling her she needed to leave the apartment.

These arguments fundamentally misunderstand the applicable burden of proof.[2] At trial the burden was on *Holmes* to prove a trespass and retaliation, not on Lakefront to disprove a trespass and retaliation. As described in response to the first assignment of error, Holmes failed to submit any evidence of a trespass other than her own unfounded and uncorroborated speculation. Holmes also offered no evidence to establish that any retaliation occurred. To the contrary, the evidence indicated that Lakefront allowed her to remain in the apartment despite her notice to vacate.

{¶36} To the extent Holmes vaguely references issues directed toward habitability in her appellate brief, those issues are not properly before us because Holmes did not object to the magistrate's decision finding that Holmes failed to prove her habitability claims. Holmes specifically agreed with the magistrate that those claims had already been ruled upon and she registered no objection to the contrary.

{¶37} The area court did not lose its way in finding for Lakefront and dismissing Holmes' amended complaint. We overrule Holmes' second assignment of error.

{¶38} Judgment affirmed.

PIPER, P.J., and M. POWELL, J., concur.

---

2. Holmes' arguments in both the first and second assignment of error suggest that she believes that Lakefront had the burden of proof in this case. Holmes is mistaken. But while Holmes is mistaken, litigants who proceed pro se are held to the same standard as those who are represented by counsel. *Stiles v. Hayes*, 12th Dist. Madison No. CA2015-01-007, 2015-Ohio-4141, ¶ 18. As a result, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that she remains subject to the same rules and procedures to which represented litigants are bound. *Id.* "Pro se litigants are not to be accorded greater rights and must accept the results of their own mistakes and errors, including those related to correct legal procedure." *Cox v. Zimmerman*, 12th Dist. Clermont No. CA2011-03-022, 2012-Ohio-226, ¶ 21.

Appendix J

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

ROSALIND HOLMES,

Appellant,

vs.

LAKEFRONT AT WEST CHESTER,

Appellee.

CASE NO. CA2021-05-046
REGULAR CALENDAR

ENTRY DENYING APPLICATION FOR RECONSIDERATION

FILED BUTLER CO.
COURT OF APPEALS
APR 12 2022
MARY L. SWAIN
CLERK OF COURTS

FILED
2022 APR 12 PM 1:3
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

The above cause is before the court pursuant to an application for reconsideration filed by appellant, Rosalind Holmes, on March 14, 2022. In an opinion filed on January 18, 2022, this court affirmed a decision by the Butler County Area III Court that dismissed appellant's claims for trespass and retaliation against her landlord, Lakefront at West Chester.

When this court reviews an application for reconsideration it determines whether the application calls the attention of the court to an obvious error in its decision, or raises an issue for consideration which was either not considered at all or not fully considered by the court when it should have been. *BAC Home Loans Servicing, LP v. Kolenich*, 12th Dist. Butler No. CA2012-01-001, 2013-Ohio-155. An application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court. *State v. Owens*, 112 Ohio App.3d 334 (11th Dist. 1996).

Appellant raised two assignments of error in her appeal. First, appellant argued that the trial court erred by considering testimony about changing the lock on her apartment mailbox and rekeying the door lock that was inadmissible pursuant to Evid.R. 602 (lack of personal knowledge). This court found that appellant had not objected to this testimony at trial, and had not established plain error because the challenged testimony did not affect the outcome of the case.

In her second assignment of error, appellant appeared to argue that Lakefront had not met its burden of proof to demonstrate that it had not retaliated against her. This court's opinion pointed out that appellant's argument demonstrated a fundamental misunderstanding of the burden of proof because the burden was on appellant to prove her case.

In her application for reconsideration, appellant argues that she did not waive the Evid.R. 602 argument that she raised on appeal; that Lakefront violated R.C. 5321.15 (regarding landlord self-help) when it changed the locks; and that it was reasonable for her to believe that a Lakefront employee entered her apartment and changed the locks without authorization. Appellant argues that she presented evidence of retaliation because "Lakefront authorized the change to appellant's mailbox lock without providing her prior notice, explanation or obtaining her consent."

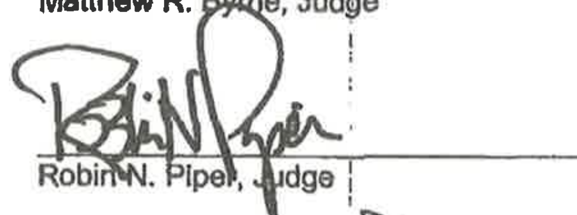
Appellant's arguments fail to demonstrate an obvious error in the court's decision or raise an issue for consideration which was either not considered at all or not fully considered. Holmes fails to articulate, and it is not otherwise clear, how a change to her mailbox lock demonstrates retaliation. Appellant also claims that Lakefront retaliated against her by calling her and telling her she needed to move out,

but the Area III Court found that this was in the context of appellant having previously told Lakefront that she was leaving, and after Lakefront had re-rented her apartment to another tenant.

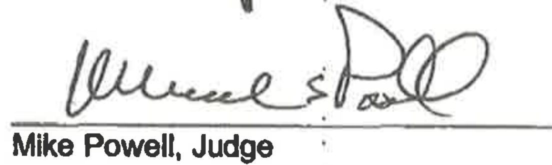
Based upon the foregoing, the application for reconsideration is DENIED.

IT IS SO ORDERED.

Matthew R. Byrne, Judge



Robin N. Piper, Judge



Mike Powell, Judge

Appendix K

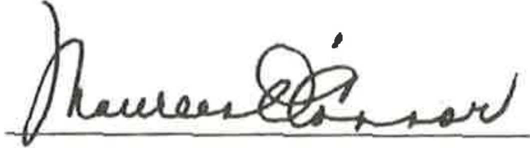
Supreme Court of Ohio Clerk of Court - Filed August 30, 2022 - Case No. 2022-0793

The Supreme Court of Ohio

Lakefront of West Chester, LLC	Case No. 2022-0793
v.	ENTRY
Rosalind Holmes	

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Butler County Court of Appeals; No. CA2021-09-108)



Maureen O'Connor
Chief Justice

Appendix L

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LAKEFRONT AT WEST CHESTER, LLC,
Plaintiff,

vs.

ROSALIND HOLMES,
Defendant.

Case No. 1:21-cv-444
Dlott, J.
Litkovitz, M.J.

REPORT AND RECOMMENDATION

Defendant Rosalind Holmes filed a pro se motion to remove a state court civil action to the United States District Court. (Doc. 1-2; Doc. 8). This matter is before the Court on Ms. Holmes's motion "for Removal to Federal Court" (Doc. 1-2; Doc. 8), plaintiff Lakefront at West Chester, LLC ("Lakefront")'s motion to remand this matter to the Butler County, Ohio Area III Court on the grounds that this federal court lacks subject matter jurisdiction over the state court case (Doc. 2), and Ms. Holmes's "motion in opposition of remand" (Doc. 12). This matter is also before the Court on plaintiff's motions to file under seal (Doc. 3), to appoint counsel (Docs. 4, 11), and to authorize electronic filing privileges (Doc. 9) and on Lakefront's motion for bond under Ohio Rev. Code § 1923.08 (Doc. 14).

Ms. Holmes is a party-defendant in a state court eviction action in the Butler County, Ohio Area III Court. Lakefront filed a complaint for eviction and money damages against Ms. Holmes on June 16, 2021. (Doc. 8 at PAGEID 125-129). The complaint alleges that Ms. Holmes was served with a written notice of termination of tenancy on March 22, 2021 to vacate by May 20, 2021. Ms. Holmes failed to vacate the premises and was served with a notice to vacate for holding over the term on June 5, 2021. That tenancy expired on June 8, 2021, prompting the filing of the forcible entry and detainer action by Lakefront. (*Id.*)

On June 30, 2021, Ms. Holmes filed her motion for removal in this federal court. (Doc. 1-2). Ms. Holmes alleges removal of the state court forcible entry and detainer action to this federal court is appropriate based on her "affirmative defense" of "Housing Discrimination under 42 U.S.C. 3601(a)(b) & -- 42 U.S.C. 3601," which she states arises under the federal question jurisdiction of the Court. (Doc. 8 at PAGEID 110).

This Court lacks subject matter jurisdiction over this removed state court eviction action. Removal is governed by 28 U.S.C. § 1441 which provides in relevant part: "[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). Thus, "[o]nly state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). The defendant carries the burden of showing that removal is proper and that the federal court has original jurisdiction to hear the case. *See Vill. of Oakwood v. State Bank and Tr. Co.*, 539 F.3d 373, 377 (6th Cir. 2008) (citing *Ahearn v. Charter Twp. of Bloomfield*, 100 F.3d 451, 453-54 (6th Cir. 1996)). The removal statute is to be strictly construed and where jurisdiction is in doubt, the matter should be remanded to the state court. *See Brierly v. Alusuisse Flexible Packaging, Inc.*, 184 F.3d 527, 534 (6th Cir. 1999).

The Court cannot discern a basis for federal question jurisdiction in this matter. District courts have original federal question jurisdiction over cases "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. In determining whether an action has been properly removed to federal court, the Court must examine the face of the state court plaintiff's

well-pleaded complaint. Under the well-pleaded complaint rule, district courts have federal question removal jurisdiction over "only those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 27-28 (1983). In other words, a case arises under federal law when an issue of federal law appears on the face of the plaintiff's well-pleaded complaint. *Caterpillar*, 482 U.S. at 392; *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987). The plaintiff is the master of the claim and may avoid federal jurisdiction by exclusive reliance on state law. *See Caterpillar*, 482 U.S. at 392. *See also Berera v. Mesa Med. Grp., PLLC*, 779 F.3d 352, 357 (6th Cir. 2015) ("Under the well-pleaded complaint rule, the plaintiff 'is master to decide what law he will rely upon.'") (quoting *Loftis v. United Parcel Serv., Inc.*, 342 F.3d 509, 515 (6th Cir. 2003)). In addition, "it is now settled law that a case may *not* be removed to federal court on the basis of a federal defense . . . even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue." *Caterpillar*, 482 U.S. at 393 (emphasis in the original) (citing *Franchise Tax Bd.*, 463 U.S. at 12). *See also Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003); *Metro. Life*, 481 U.S. at 63; *Chase Manhattan Mortg. Corp.* v. Smith, 507 F.3d 910, 914-15 (6th Cir. 2007).

Ms. Holmes has failed to establish this Court has original federal question jurisdiction over this case. The state court complaint does not show this case arises under the Constitution or laws of the United States. Ms. Holmes appears to contend that Lakefront violated her civil rights in connection with the state court eviction proceeding. However, even if Ms. Holmes asserts a

federal defense to the state court eviction action, the existence of a defense based upon federal law is insufficient to support removal jurisdiction. *Franchise Tax Bd.*, 463 U.S. at 8-12; *Chase Manhattan Mortg. Corp.*, 507 F.3d at 914-15. Therefore, Ms. Holmes has failed to meet her burden of showing federal question jurisdiction in this matter.

In her response in opposition to Lakefront's motion to remand, Ms. Holmes alleges that the "U.S. District Court has jurisdiction over Lakefront's artfully plead (sic) state law answer and counterclaim because it arises out of incidents and or occurrences described in Rosalind Holmes' Title VIII housing discrimination complaint." (Doc. 12 at PAGEID 187). Ms. Holmes contends:

> Since Lakefront's eviction proceedings arise from the same incidents or occurrences as described in Rosalind Holmes' Title VIII housing discrimination complaint they are properly classified as an answer and counterclaim. In both eviction pleadings, Lakefront improperly failed plead any defenses to or mention Rosalind Holmes' May 7, 2021, Title VIII housing discrimination complaint filed against them. Therefore, Plaintiffs have attempted to avoid federal jurisdiction by filing independent eviction actions without ever pleading any defenses to or mentioning Rosalind Holmes' related complaint of Title VIII housing discrimination. Moreover, Lakefront's improperly drafted independent eviction actions are answers and counterclaims artfully crafted to evade federal jurisdiction. "A plaintiff cannot avoid federal court simply by omitting a necessary federal question in the complaint; in such a case the necessary federal question will be deemed to be alleged in the complaint." 15 Moore's Federal Practice 103.43.

(Doc. 12 at PAGEID 189).

Ms. Holmes is correct that there are exceptions to the well-pleaded complaint rule, including the artful-pleading doctrine:

> Under the artful-pleading doctrine, "plaintiffs may not avoid removal jurisdiction by artfully casting their essentially federal law claims as state-law claims." . . . Where it appears that the plaintiff may have carefully crafted her complaint to circumvent federal jurisdiction, "we consider whether the facts alleged in the complaint actually implicate a federal cause of action."

Berera, 779 F.3d at 358 (quoting *Mikulski v. Centerior Energy Corp.*, 501 F.3d 555, 560, 561 (6th Cir. 2007)). However, Lakefront's state court complaint is not camouflaged to avoid stating a federal claim. The state court complaint alleges that Ms. Holmes failed to vacate the premises after the termination of her tenancy, which does not implicate any federal claim. Rather, it is Ms. Holmes who is attempting to raise a federal defense of housing discrimination in response to the eviction action. The artful-pleading doctrine simply does not apply in this situation.

Ms. Holmes also contends that Lakefront was required to bring its eviction action as a compulsory counterclaim in response to her state court housing discrimination complaint, *see Holmes v. Lakefront at West Chester*, No. CV 2021 05 0639 (Butler County Court of Common Pleas May 7, 2021),[1] which was filed on May 7, 2021.[2] Even if Ms. Holmes were correct, this would not permit Ms. Holmes to remove the eviction counterclaim to federal court. The federal removal statute provides: "[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). Under the plain terms of the statute, the right to remove is limited to "the defendant or defendants." *Id.* This means that a plaintiff

[1] Ms. Holmes's complaint alleges she was discriminated against on the basis of her race, African American, and retaliated against for engaging in protected activities. The complaint alleges that Ms. Holmes discovered water bugs in her apartment; that her mailbox lock had been changed without her knowledge or consent; that someone had been opening and closing her front door without her consent and she had been experiencing similar harassment at every apartment community in which she had lived; that Lakefront had engaged in a conspiracy with the Federal Bureau of Investigation, the City of Cincinnati, the State of Ohio, and others to retaliate against her for filing a federal discrimination lawsuit and an attorney misconduct complaint; that someone broke into her apartment and stole legal paperwork and files; and that "the FBI, City of Cincinnati, State of Ohio and others including Lakefront and PLK have engaged in warrantless surveillance of plaintiff's (sic) and entry," among other claims. (*Id.*, complaint ¶ 17).

[2] "Federal courts may take judicial notice of proceedings in other courts of record." *Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 738 (6th Cir. 1980) (quoting *Granader v. Pub. Bank*, 417 F.2d 75, 82 83 (6th Cir. 1969)). *See also Nat'l Union Fire Ins. Co. v. VP Bldgs., Inc.*, 606 F.3d 835, 839 n.2 (6th Cir. 2010); *Lyons v. Stovall*, 188 F.3d 327, 332 n.3 (6th Cir. 1999).

who files suit in state court is precluded from removing a case to federal court, even if that person is later named as a counterclaim defendant. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108 (1941). *See also Home Depot U. S. A., Inc. v. Jackson*, 139 S. Ct. 1743, 1748 (2019) ("§ 1441(a) does not permit removal by any counterclaim defendant, including parties brought into the lawsuit for the first time by the counterclaim."). Because Ms. Holmes is the plaintiff in the state court civil rights action, she would not be authorized to remove the case from state to federal court even if Lakefront filed its eviction action against Ms. Holmes as a counterclaim.

In addition, Ms. Holmes may not remove the state court action based on the Court's diversity jurisdiction under 28 U.S.C. § 1332. Removal based on diversity of citizenship is proper only where the defendants are not citizens of the forum state. The removal statute provides that a civil action "may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b)(2). Even if there is complete diversity among the parties, the presence of a properly joined and served resident defendant bars removal. *Chase Manhattan Mortg. Corp.*, 507 F.3d at 914; *Fed. Nat'l Mortg. Ass'n v. LeCrone*, 868 F.2d 190, 194 (6th Cir. 1989). Because Ms. Holmes is an Ohio resident, removal on the basis of diversity jurisdiction is barred under 28 U.S.C. § 1441(b).

Accordingly, the Court lacks subject matter jurisdiction over this action.

IT IS THEREFORE RECOMMENDED THAT:

1. Ms. Holmes's motion to remove a state court civil action to the United States District Court (Doc. 1-2; Doc. 8) and "motion in opposition of remand" (Doc. 12) be **DENIED**.

2. Lakefront's motion to remand this matter to the Butler County, Ohio Area III Court (Doc. 2) be **GRANTED**.

3. Plaintiff's motions to file under seal (Doc. 3), to appoint counsel (Docs. 4, 11), and to authorize electronic filing privileges (Doc. 9) and Lakefront's motion for bond under Ohio Rev. Code § 1923.08 (Doc. 14) be **DENIED** as moot.

4. This matter be **DISMISSED** from the docket of the Court for lack of subject matter jurisdiction.

5. This matter be **REMANDED** to the state court. *See* 28 U.S.C. § 1447(c).

Date: 7/16/2021

Karen L. Litkovitz
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LAKEFRONT AT WEST CHESTER, LLC,
Plaintiff,

vs.

ROSALIND HOLMES,
Defendants.

Case No. 1:21-cv-444
Dlott, J.
Litkovitz, M.J.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn,* 474 U.S. 140 (1985); *United States v. Walters,* 638 F.2d 947 (6th Cir. 1981).

Appendix M

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Lakefront at West Chester, LLC.,	:	
	:	
Plaintiff,	:	
	:	Case Number: 1:21cv444
vs.	:	
	:	Judge Susan J. Dlott
Rosalind Holmes,	:	
	:	
Defendant.	:	

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to Karen L. Litkovits, United States Magistrate Judge . Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on July 19, 2021 Report and Recommendations (Doc. 16). Subsequently, the defendant filed objections and amended objections to such Report and Recommendations (Docs. 21 and 24).

The Court has reviewed the comprehensive findings of the Magistrate Judge pursuant to Federal Rule of Civil Procedure 72(b)(3) and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

1. Accordingly, Ms. Holmes's motion to remove a state court civil action to the United States District Court (Doc. 1-2; Doc. 8) and "motion in opposition of remand" (Doc. 12) are **DENIED.**

2. Lakefront's motion to remand this matter to the Butler County, Ohio Area III Court

(Doc. 2) is **GRANTED**.

3. Holmes's motions to file under seal (Doc. 3), to appoint counsel (Docs. 4, 11), to authorize electronic filing privileges (Doc. 9), and to withdraw notice of removal (Doc. 17), as well as her amended motion for removal to federal court (Doc. 19) are **DENIED** as moot.

4. Lakefront's motion for bond under Ohio Rev. Code § 1923.08 (Doc. 14) and motion to strike (Doc. 22) are **DENIED** as moot.

5. This matter is **DISMISSED** from the docket of the Court for lack of subject matter jurisdiction.

6. This matter is **REMANDED** to the state court. *See* 28 U.S.C. § 1447(c).

IT IS SO ORDERED.

Susan J. Dlott
United States District Court

Appendix N

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

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Filed: August 17, 2021

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Ms. Rosalind Holmes
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Re: Case No. 21-3731, *Lakefront at Westchester, LLC v. Rosalind Holmes*
Originating Case No. 1:21-cv-00444

Dear Ms. Holmes and Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Virginia Lee Padgett
Case Manager
Direct Dial No. 513-564-7032

cc: Mr. Richard W. Nagel

Enclosure

No mandate to issue

No. 21-3731

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 17, 2021
DEBORAH S. HUNT, Clerk

LAKEFRONT AT WEST CHESTER, LLC,)
)
Plaintiff-Appellee,)
)
v.) ORDER
)
ROSALIND HOLMES,)
)
Defendant-Appellant.)

Before: SUTTON, Chief Judge; GIBBONS and DONALD, Circuit Judges.

Defendant Rosalind Holmes appeals a district court order remanding the underlying action to state court based on lack of subject matter jurisdiction. Holmes moves, as she does in appeal No. 21-3175, for an emergency stay of the August 18, 2021, eviction proceeding against her, and requests related injunctive relief. She also moves to seal her motion to stay, as it refers to her confidential medical records; however, she has already filed her motion in redacted form.

We have appellate jurisdiction over "final decisions of the district courts." 28 U.S.C. § 1291; *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 425 (6th Cir. 2021). "A final decision is one that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Rowland*, 4 F.4th at 425 (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)). "A remand order based on the lack of subject matter jurisdiction is not a final judgment for the purposes of 28 U.S.C. § 1291." *Am. Mar. Officers v. Marine Eng'rs Beneficial Ass'n, Dist. No. 1*, 503 F.3d 532, 535 (6th Cir. 2007); *see Baldridge v. Ky.-Ohio Transp., Inc.*, 983 F.2d

1341, 1343 (6th Cir. 1993). Despite Holmes's repeated assertions that her housing discrimination defense suffices to establish a federal question in this eviction proceeding, the district court properly remanded the matter to the state court for lack of subject-matter jurisdiction. *See Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002).

Accordingly, the appeal is **DISMISSED**, *sua sponte*, for lack of jurisdiction. The motions to stay and to seal are **DENIED AS MOOT**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix O

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

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Filed: August 17, 2021

Ms. Kathleen Marie Anderson
Barnes & Thornburg
600 One Summit Square
Fort Wayne, IN 46802

Ms. Rosalind Holmes
4557 Wyndtree Drive
Apartment 145
West Chester, OH 45069

Re: Case No. 21-3715, *Rosalind Holmes v. USA, et al*
Originating Case No. : 1:20-cv-00825

Dear Sir or Madam,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/C. Anthony Milton
Case Manager
Direct Dial No. 513-564-7026

cc: Mr. Richard W. Nagel

Enclosure

No mandate to issue

No. 21-3715

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 17, 2021
DEBORAH S. HUNT, Clerk

ROSALIND HOLMES,)
)
Plaintiff-Appellant,)
)
v.) ORDER
)
UNITED STATES OF AMERICA, et al.,)
)
Defendants-Appellees.)

Before: SUTTON, Chief Judge; GIBBONS and DONALD, Circuit Judges.

Following the voluntary dismissal of her final remaining claim, Plaintiff Rosalind Holmes appeals, for the third time, a district court order dismissing twenty-three of her twenty-four claims against Defendants and, for the second time, a magistrate judge's order denying her motions for appointment of counsel and to seal in this action arising from alleged violations of the United States Constitution, federal statutes, and Ohio state law. Holmes moves to stay an alleged upcoming August 18, 2021, eviction proceeding against her pending this court's review of her appeal on the merits and requests related injunctive relief. Although the eviction proceeding stems from a discrete action filed in county court, she claims that, because the case involves a substantial federal question, the United States District Court can exercise its inherent powers to remedy the issue. She also moves to seal her motion to stay, as it refers to her confidential medical records; however, she has already filed her motion in redacted form.

This court has appellate jurisdiction over "final decisions of the district courts." 28 U.S.C. § 1291; *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 425 (6th Cir. 2021). "A final decision is one that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Rowland*, 4 F.4th at 425 (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)). With certain narrow exceptions not applicable here, "the finality requirement establishes a one-case, one-appeal rule." *Page Plus of Atlanta, Inc. v. Owl Wireless, LLC*, 733 F.3d 658, 659 (6th Cir. 2013). "This rule 'guards against piecemeal appeals that permit litigants to second-guess the district court at each turn, harming the district court's ability to control the litigation in front of it and consuming finite appellate court resources along the way.'" *Rowland*, 4 F.4th at 425 (quoting *Page Plus*, 733 F.3d at 659).

We have twice held that a voluntary dismissal without prejudice under Federal Rule of Civil Procedure 41 does not create a final order under 28 U.S.C. § 1291. *See Page Plus*, 733 F.3d at 659–60; *Rowland*, 4 F.4th at 425–26. We reasoned that we lack jurisdiction over an appeal following a voluntary dismissal under Rule 41 where a litigant seeks to "circumvent the requirements of Rule 54(b)" because "[s]uch attempts at obtaining an effectively interlocutory appeal contravene the purpose of the finality requirement." *Rowland*, 4 F.4th at 424, 426. Further, when a claim is dismissed without prejudice and, thus, "may 'come back on a second appeal,' it is appropriate to conclude that 'the decision cannot be considered final.'" *Id.* at 428 (quoting *Page Plus*, 733 F.3d at 661).

Notably, Congress created two "safety valves" in the event that the finality requirement "bar[s] appeals where the benefits of an immediate appeal from a non-final order outweigh the costs": Federal Rule of Civil Procedure 54(b), which "permits a district court to enter final judgment 'as to one or more, but fewer than all, claims or parties' when 'there is no just reason

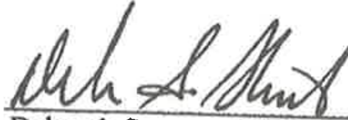
for delay'"; and 28 U.S.C. § 1292(b), which "permits a district court to certify an order involving a central, controlling question of law for immediate appeal when such an appeal 'may materially advance the ultimate termination of the litigation.'" *Page Plus*, 733 F.3d at 659–60 (first quoting Fed. R. Civ. P. 54(b); then quoting 28 U.S.C. § 1292(b)). But neither safety valve applies here. In addition, we have acknowledged in passing that "appellate jurisdiction might possibly still exist where . . . the parties voluntarily dismiss all remaining claims without prejudice before appealing the claims actually resolved below." *Rowland*, 4 F.4th at 427 (citing *Page Plus*, 733 F.3d at 661). In other words, "finality might be established" in extenuating circumstances. *Id.*

But these qualifications create a possibility of finality, not a guarantee. And we see no extenuating circumstances here. Here, as in *Rowland*, Holmes dismissed her remaining claim "for the purpose of pursuing what would otherwise be an interlocutory appeal on other issues." *Id.* at 426. Following two unsuccessful appeals of the district court's partial dismissal order and its denial of her motion for a final appealable order under Rule 54(b), Holmes has now voluntarily dismissed her final—and presumably only viable—claim in an attempt to once again appeal the district court's dismissal of her other twenty-three claims. However, because her dismissal is without prejudice, she is not precluded from re-filing her claim against Georgia Pacific. Any other approach would facilitate an end run around Rule 54 in most cases, including this one. *Id.* at 427; *Page Plus*, 733 F.3d at 661–62.

We also lack jurisdiction to review Holmes's appeal from the magistrate judge's order denying her motions for appointment of counsel and to seal. Any review of the magistrate judge's order must first be sought in the district court. *Ambrose v. Welch*, 729 F.2d 1084, 1085 (6th Cir. 1984) (per curiam).

Accordingly, the appeal is **DISMISSED**, *sua sponte*, for lack of jurisdiction. The motions to stay and to seal are **DENIED AS MOOT**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk