

[Cite as *Brown v. Avey*, 2009-Ohio-4785.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

DOROTHY BROWN

:

Plaintiff-Appellee

:
C.A. CASE NO.
22991

v.

: T.C.
NO. 2008 CVI 00399

PATRICIA AVEY

:

Defendant-Appellant

:

(Civil appeal from County
Court Area #2)

:

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OPINION

Rendered on the 11th day of September, 2009.

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MICHAEL A. SHEETS, Atty. Reg. No. 0052043, 1343 Woodman Drive, Suite A,
Dayton, Ohio 45432
Attorney for Plaintiff-Appellee

PATRICIA AVEY, 394 Orinoco Street, Dayton, Ohio 45431
Defendant-Appellant

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DINKELACKER, J. (by assignment)

{¶ 1} Patricia Avey, pro se, appeals from a judgment of the Montgomery County Court, Area 2, Small Claims Division, which awarded \$300, plus interest, and court costs to Dorothy Brown for repairs to Brown's fence.

{¶ 2} On March 18, 2008, Brown filed a small claims action against Avey, seeking \$300, plus interest, for damage to her chain link fence caused by a television tower that fell from Avey's yard. A trial was held on September 2, 2008, during which Brown and Avey each presented photographs and other exhibits. A week later, the trial court ruled in Brown's favor. The judgment read:

{¶ 3} "The Court has carefully considered the testimony and credibility of the witnesses in reaching its decision. The plaintiff sues for the repair of her fence which was damage[d] by a fallen TV tower owned by defendant. Defendant defends by asserting that she would prefer to fix the fence herself although it had remained unrepaired from December 1, 2006 to March 13, 2008.

{¶ 4} "Judgment for plaintiff as prayed for in the Complaint plus court costs with statutory interest from the date of filing."

{¶ 5} Avey appeals from the trial court's judgment, asserting that the trial court "failed to base its decision upon all evidence presented." In essence, Avey claims that the judgment is against the manifest weight of the evidence. A judgment will not be reversed as being against the manifest weight of the evidence if it is "supported by some competent, credible evidence going to all the essential elements of the case." *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279; *Fitzpatrick v. Zimmerman*, Montgomery App. No. 21727, 2007-Ohio-3807, at ¶8.

{¶ 6} In support of her argument, Avey emphasizes that she presented evidence that she was qualified to repair the fence by herself, that the damage consisted of a small dent on the top rail of the fence that was approximately six inches in length and had an approximately three degrees deviation from the stay line, and that she could have obtained replacement parts from a hardware store for less than \$20. Avey also argues that the portion of the chain link fence at issue was on her property, and that Brown had no right to enter her property to make repairs without her permission.

{¶ 7} Brown responds that Avey provided no certification that she was trained to repair fences, that Avey's argument is merely that she could have repaired the fence for less money, and that the court apparently was not persuaded that the fence sat on Avey's property. Brown also seeks dismissal of Avey's appeal due to Avey's failure to provide a trial transcript, as required by App.R. 9.

{¶ 8} We find Brown's App.R. 9 argument to be dispositive. If an appellant "intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the weight of the evidence," the appellant must include in the record "a transcript of all evidence relevant to such findings or conclusions." App.R.9(B). See, also, *Wilson v. Street*, Montgomery App. No. 22768, 2009-Ohio-2328, at ¶12. Avey has not complied with this rule. Although the parties' trial exhibits are part of the record, Avey has not provided us with a transcript of the trial. Consequently, she has failed to create a proper record for our review. In the absence of a transcript, we cannot determine whether the trial court's judgment was supported by some competent, credible evidence, and the record before us cannot support the error that she claims. *Id.* Under these circumstances, we must presume the regularity of the trial court proceedings. See *Wilson* at ¶12.

{¶ 9} The assignment of error is overruled.

{¶ 10} The judgment of the trial court will be affirmed.

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BROGAN, J. and GRADY, J., concur.

(Hon. Patrick T. Dinkelacker, First District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

- Michael A. Sheets
- Patricia Avey
- Hon. James D. Piergies