

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

NANCY THOMPSON	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23292
v.	:	T.C. NO. 08 CVI 5881
	:	
FRED ALLEN	:	(Civil appeal from
	:	Municipal Court)
Defendant-Appellant	:	

OPINION

Rendered on the 19th day of March, 2010.

NANCY THOMPSON, 454 Quitman Street, Dayton, Ohio 45410
Plaintiff-Appellee

DERRICK A. STRAHORN, Atty. Reg. No. 0034483 and JULIA C. KOLBER, Atty. Reg.
No. 0078855, 6233 N. Main Street, Dayton, Ohio 45415
Attorneys for Defendant-Appellant

FROELICH, J.

{¶ 1} Fred Allen appeals from a judgment of the Dayton Municipal Court, Civil Division, which ordered him to pay \$2,000 to Nancy Thompson.

{¶ 2} In June 2008, Thompson and her fiance, John Healy, lived at 73 Vine Street in a property owned by Allen pursuant to a “verbal lease.” They had invited another man,

Marty Richards, to live with them. Following a domestic dispute between Thompson and Healy, Thompson and Richards obtained protection orders, and Thompson moved in with a neighbor. Healy also lived elsewhere after this incident. In July 2008, without going through the legal process of evicting Thompson and Healy, Allen disposed of the belongings that Thompson and Healy had left in the house.

{¶ 3} On July 28, 2008, Thompson filed a complaint against Allen in the small claims court, seeking \$3,000 for the property she had left in the house that Allen had disposed of or taken into his own possession. After conducting a hearing on the claim at which several witnesses testified, the magistrate awarded \$2,000 to Thompson. Allen filed objections to the magistrate's decision, claiming that he had not been permitted to present all of his witnesses. The trial court overruled the objections and adopted the magistrate's award of \$2,000.

{¶ 4} Allen raises two assignments of error on appeal.

{¶ 5} Allen's first assignment of error states:

{¶ 6} "THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A FINDING THAT APPELLEE HAD NOT ABANDONED THE PREMISES."

{¶ 7} Allen contends that the trial court's finding that he owed Thompson \$2,000 for property he had confiscated or disposed of was supported by insufficient evidence or was against the manifest weight of the evidence.

{¶ 8} "[T]he issues of 'sufficiency of evidence' and 'manifest weight' have been essentially merged in civil cases, leaving appellate courts with the option of conducting a 'civil' manifest-weight analysis, in which the court reviews the trial court's rationale and the

evidence the trial court has cited in support of its decision.” *Gevedon v. Ivey*, 172 Ohio App.3d 567, 2007-Ohio-2970, at ¶60; *Wolfe v. Walsh*, Montgomery App. No. 21653, 2008-Ohio-185, at ¶18. Thus, the appropriate standard of review is whether competent, credible evidence exists to support the trial court’s decision. *Gevedon* at ¶60.

{¶ 9} At the hearing, Thompson testified that, in June 2008, she left her residence after an incident of domestic violence with her fiance, Healy, on the advice of a police officer, who suggested that she obtain a civil protection order. By the time she returned to the house, the locks had been changed. She climbed through a window to get some of her clothes. Thereafter, Thompson stayed at a neighbor’s house in a backyard tent. On July 15, 2008, she saw three men, including Allen, “throwing [her] belongings out on the curb.” Although she tried to intervene with a police officer, the officer would not help Thompson because Richards (the second roommate) had obtained a protection order against her. Thompson itemized the property that she lost as clothing, three televisions, a computer desk, a bed, dishes, tools, lamps, tables, and household items such as small appliances.

{¶ 10} Two neighbors corroborated Thompson’s account that Allen had disposed of valuables from her house. They testified that Allen hauled the items out to the curb and tried to sell tools door-to-door in the neighborhood. Healy also testified that, from a distance, he had seen Allen and other men move “everything that we [he and Thompson] owned out to the curb,” including \$4,000 in tools that he had used in his construction business.

{¶ 11} Allen and Richards, who was a long-time friend of Allen, testified that

Thompson had “ample time” to get her things out of the residence before Allen disposed of them and that they had given her everything she wanted. Allen claimed that Thompson had given him permission to do whatever he wanted with the items that remained in the house, which he characterized as “trash.” He also claimed that, when Thompson called the police about the items that he (Allen) was taking to the curb, the police officer prevented him from putting the items back in the house and told Allen and the other men to put the items on the sidewalk.

{¶ 12} Allen acknowledged that he was familiar with eviction proceedings and that he had not obtained a court order evicting Thompson from the premises before disposing of her property. When the magistrate asked why he had not done so, Allen stated that he had been concerned for Thompson’s dogs, because he did not want them to be euthanized, and he reiterated that Thompson had had ample opportunity to take the things she wanted from the house.

{¶ 13} The trial court concluded that Thompson had not abandoned her property at the time Allen disposed of it and that Allen had had no legal right to dispose of the property. There was competent, credible evidence presented at the hearing to support the trial court’s conclusion.

{¶ 14} The first assignment of error is overruled.

{¶ 15} Allen’s second assignment of error states:

{¶ 16} “THE TRIAL COURT ERRED WHEN IT FOUND APPELLEE ENTITLED TO THE SUM OF \$2,000 FOR ITEMS REMOVED FROM THE RENTAL PREMISES.”

{¶ 17} Allen contends that Thompson did not substantiate her claim for

damages. He claims that she “guessed” as to the value of the items, without discussing the age, value, or condition of the items, such that he could not refute the assigned value.

{¶ 18} In general, the measure of damages is the value of the converted property at the time it was converted. *Fisher v. Barker*, Montgomery App. No. 20514, 2005-Ohio-1039, at ¶10, citing *Rucker v. Alston*, Montgomery App. No. 19959, 2004-Ohio-2428, at ¶19. Just compensation is the fair market value, or the price at which a willing seller and a willing buyer would settle in a voluntary sale. *Green v. Genovese*, Summit App. No. 23472, 2008-Ohio-1911, at ¶12, citing *Cincinnati v. Banks* (2001), 143 Ohio App.3d 272, 279.

{¶ 19} A person must be qualified as an expert in order to testify as to the value of property, but an exception exists for owners of real and personal property. *Tokles & Son v. Midwestern Indemn. Co.* (1992), 65 Ohio St.3d 621, 625-626; *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 347. “The owner’s testimony and opinion as to the value of the property is allowed not solely because he has title to that property, but because ‘he, aided by experience, has some particular means of forming an intelligent and correct judgment as to the value of the property in question beyond that which is possessed by people generally.’” *Squires v. Luckey Farmers Inc.*, Ottawa App. No. OT-03-046, 2004-Ohio-4919, citing *Tokles & Son* at 627. Thus, the witness-owner must usually show that he is familiar with the property and has current sufficient knowledge of the value of the property. *Id.*

{¶ 20} At the hearing, the magistrate asked Thompson what she thought the fair market value of the items removed from her home had been, and Thompson

said “approximately two thousand dollars.” Included in this total were a computer desk, a bed, dishes, clothes, miscellaneous tools, lamps, a grill, three “George Foreman’s,” three televisions, and medical supplies that belonged to her mother.

{¶ 21} Thompson was qualified to testify as to the value of her personal property. While her testimony could have been more specific as to the age and condition of the items Allen took from her house, she did provide a detailed list of the items. Although the Rules of Evidence do not apply in small claims court, Allen did not object to Thompson’s testimony regarding value or ask any questions regarding the value. Thompson’s opinion that the property was worth \$2,000 was, given the number and types of items, not overtly unreasonable, and it was the trial court’s responsibility to determine whether this amount was justified. The trial court did not abuse its discretion in awarding Thompson \$2,000.

{¶ 22} The second assignment of error is overruled.

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

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DONOVAN, P.J. and BROGAN, J., concur.

Copies mailed to:

Nancy Thompson
Derrick A. Strahorn
Julia C. Kolber
Hon. Daniel G. Gehres