

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

SAI CHIVUKULA, et al.,	:	
	:	
Plaintiffs-Appellees,	:	CASE NO. CA2009-07-187
	:	
- vs -	:	<u>OPINION</u>
	:	4/12/2010
	:	
CYNTHIA WILLIAMS,	:	
	:	
Defendant-Appellant.	:	

CIVIL APPEAL FROM BUTLER COUNTY AREA II COURT
Case No. CVG08-00628

Sai Chivukula & Suvarna Nadendl, 5307 Columbia Road, #C, Columbia, MD 21044,
plaintiffs-appellees, pro se

Cynthia Williams, P.O. Box 481, West Chester, Ohio 45071, defendant-appellant, pro
se

POWELL, J.

{¶1} Defendant-appellant, Cynthia Williams, appeals pro se a decision of the
Butler County Area II Court awarding damages to plaintiffs-appellees, Sai Chivukula
and Suvarna Nadendla, as a result of her breach of a residential lease.¹ We affirm
the decision of the trial court.

1. The record indicates that appellees have failed to file a merit brief in this case.

{¶2} On May 4, 2007, appellant entered into a written residential lease with appellees whereby appellant agreed to rent a house located at 5844 Kensington Trail in Liberty Township for a period of twelve months commencing June 1, 2007. The lease provided for a monthly rental rate of \$1,500, and a five percent late fee in the event that rent was not paid on or before the first day of each month.

{¶3} On June 2, 2008, the parties elected to renew the lease for an additional two-month term ending August 2, 2008. The monthly rent and late fee provisions remained identical to those set forth in the previous lease. The lease also required appellant to provide appellees with "one month" advance notice upon terminating the lease. In the event that appellant elected to remain in possession of the house after the expiration of the two-month term, a month to month tenancy was created by default.

{¶4} On July 29, 2008, appellees filed a two-count complaint against appellant for forcible entry and detainer and damages as a result of appellant's failure to pay rent for the months of May, June and July 2008. The parties appeared pro se at the September 12, 2008 hearing on the first count of the complaint. At the conclusion of the hearing, appellees were granted a writ of possession and appellant was ordered to vacate the premises by September 17, 2008. According to appellees, appellant failed to relinquish possession of the premises by that date. As a result, a writ of restitution was issued by the trial court on October 14, 2008, specifying a set out date of October 17, 2008.

{¶5} A trial on appellees' additional claim for damages was held on November 14, 2008. Appellant and appellee, Sai Chivukula, again appeared pro se. In its February 27, 2009 decision, the trial court magistrate awarded appellees a total of \$9,595.50 in damages for the following: 1) unpaid rent and late fees from May 1,

2008 through October 17, 2008; 2) an outstanding water bill; and 3) expenses incurred by appellees to clean the premises and replace door locks. Appellant filed objections to the magistrate's decision, which were overruled by the trial court in its June 11, 2009 decision adopting the magistrate's recommendations.

{¶16} Appellant appeals the trial court's June 2009 decision, and although she has not set forth separate assignments of error in her brief, this court will construe four assignments of error from the arguments presented by appellant: 1) the trial court's judgment was contrary to law; 2) the trial court improperly admitted evidence presented by appellees and improperly excluded evidence presented by appellant; 3) the trial court's judgment was not supported by sufficient evidence; and 4) the trial court's judgment was against the manifest weight of the evidence.² For purposes of discussion, and because they are interrelated, we will address the assignments of error in a consolidated fashion.

{¶17} In ruling on objections to a magistrate's decision, Civ.R. 53(D)(4)(d) requires a trial court to undertake an independent review of the objected matters to ascertain whether the magistrate properly determined the factual issues and appropriately applied the law. *Koeppen v. Swank*, Butler App. No. CA2008-09-234, 2009-Ohio-3675, ¶26. A trial court's decision to modify, affirm or reverse a magistrate's decision lies within its sound discretion and should not be reversed on appeal absent an abuse thereof. *Setzekorn v. Kost USA, Inc.*, Warren App. No. CA2008-02-017, 2009-Ohio-1011, ¶9. An abuse of discretion is more than an error of law or judgment; it requires a finding that the trial court's attitude was

2. A pro se appellant is held to the same obligations and standards set forth in the appellate rules that apply to all litigants. *Kilroy v. B.H. Lakeshore Co.* (1996), 111 Ohio App.3d 357, 363. An appellant's brief must precisely set forth the specific assignments of error for appellate review, including any specific issues for review that relate to each assigned error. See App.R. 16(A); Loc.R. 11. Although appellant's brief fails in this respect, in the interest of justice, we will construe her arguments as assignments of error.

unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶18} On appeal, appellant appears to contend that the trial court's decision affirming the magistrate's determinations was not supported by sufficient evidence and was against the manifest weight of the evidence. Although separate standards of review apply in criminal cases, the standards for sufficiency and manifest weight have essentially merged in civil cases. *Wolfe v. Walsh*, Montgomery App. No. 21653, 2008-Ohio-185, ¶18. As a result, appellate courts may conduct 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." *Id.*, quoting *Gevedon v. Ivey*, 172 Ohio App.3d 567, 2007-Ohio-2970 at ¶60. The appropriate standard of review is whether competent, credible evidence exists to support the trial court's decision, and an appellate court must presume that the findings of the trier of fact are correct. *Id.*; *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶24. This presumption arises because the trial court had an opportunity "to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Wilson* at ¶24, quoting *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶19} At the outset, we observe that although appellant challenges on appeal the \$933 in damages awarded appellees for the unpaid water bill and the costs associated with replacing the door locks and cleaning the apartment, she did not raise these issues with the trial court in the context of her objections. Civ. R. 53(D)(3)(b)(ii) governs the filing of objections to a magistrate's decision and provides that "[a]n objection to a magistrate's decision shall be specific and state with particularity all grounds for objection." Except for a claim of plain error, a party is

prohibited from assigning as error on appeal the trial court's adoption of any finding of fact or legal conclusion, unless that party has objected to that finding or conclusion. Civ.R. 53(D)(3)(b)(iv). It is well-established that if a party fails to object to a conclusion of law or finding of fact issued by a magistrate, pursuant to Civ.R. 53, the party is precluded from raising the issue on appeal. *Cravens v. Cravens*, Warren App. No. CA2008-02-033, 2009-Ohio-1733, ¶30.

{¶10} Although we recognize that appellant filed her objections to the magistrate's decision pro se, as we previously noted, pro se litigants are bound by the same rules and procedures as members of the bar. *Id.* at fn. 1. "They are not to be accorded greater rights and are bound to accept the results of their own mistakes and errors, including those related to correct legal procedures." *Id.*, quoting *Cat-The Rental Store v. Sparto*, Clinton App. No. CA2001-08-024, 2002-Ohio-614, at 5. In failing to raise the issues to the trial court, or claim plain error here, appellant is precluded from challenging the issues on appeal.

{¶11} Appellant also contests the amount of unpaid rent and late fees awarded to appellees. At trial, appellees sought \$8,662.50 in rent and late fees for the months of May through September 2008, and prorated rent for the first 17 days in October. Copies of the parties' 2007 and 2008 lease agreements were produced at trial and Chivukula testified that he was present when a Butler County sheriff's deputy entered the house on October 17. Appellant disputed the claim that she owed rent through October 17, 2008, and testified that she vacated the property on August 1 and returned the keys to the house to appellees.³ However, appellant also testified that she did not inform appellees of her intent to vacate the premises.

3. The record includes a handwritten letter from appellant to the trial court dated November 21, 2008, which attaches a copy of a lease agreement purportedly executed by appellant in September of 2008. In the letter, appellant requested that the court consider the lease as evidence that she had vacated

{¶12} In its decision, the magistrate determined that Chivukula's testimony regarding the date appellant vacated the premises was more credible than the testimony presented by appellant. The magistrate noted that despite her contention that she moved out on August 1, appellant testified that she received mail at the premises into September. The magistrate also found it significant that although appellant was present at the September 12, 2008 hearing on appellees' claim for possession, she failed to inform the magistrate that she had moved out of the house.

{¶13} In adopting the magistrate's findings, the trial court indicated that it had independently reviewed the transcript, as well as the evidence presented to the magistrate, and found that appellees were entitled to rent and late fees from May 1 through October 17, 2008. The court found that appellant did not sufficiently prove that she vacated the premises by August 1, and did not demonstrate that she had notified appellees of her intent to do so. Given the "conflicting and confusing" testimony by appellant, the court agreed with the magistrate's determination that her testimony as to the date she vacated the premises was not as credible as Chivukula's testimony regarding the issue.

{¶14} Based on the foregoing, we find that there was competent, credible evidence in the record to support the trial court's determinations, and as a result, the court did not abuse its discretion in adopting the magistrate's decision in this matter. Appellant's assignments of error are therefore overruled.

{¶15} Judgment affirmed.

BRESSLER, P.J., and HENDRICKSON, J., concur.

the premises prior to October 17, 2008. However, it does not appear that the lease was produced at the November 14, 2008 hearing, and the document was not referenced in the magistrate or trial court's decisions. We therefore cannot consider this document, as it is outside the record on appeal. See App.R. 9(A).