

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

BRICKSTONE PROPERTIES, LLC,	:	APPEAL NO. C-160185
Plaintiff-Appellee,	:	TRIAL NO. A-1501169
vs.	:	<i>JUDGMENT ENTRY.</i>
ALICIA EPPS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Alicia Epps appeals from the judgment of the Hamilton County Court of Common Pleas in favor of Epps’s former landlord, Brickstone Properties, LLC. We affirm the trial court’s judgment, as modified.

This case, with an unusual procedural history, began when Brickstone filed a complaint for eviction and money damages against Epps in the Hamilton County Municipal Court. Because Epps filed a counterclaim, subsequently amended, that requested damages exceeding the jurisdictional limit of the municipal court, the case was bifurcated, and all but the eviction cause of action was transferred to the court of common pleas. After a bench trial in the court of common pleas, the trial court dismissed Epps’s counterclaims with prejudice pursuant to Civ.R. 41(B)(2). The trial court, however, also found that Epps had been improperly evicted and only awarded Brickstone damages in

the amount of \$74.00, which it calculated by adding the outstanding rent owed by Epps and then subtracting her security deposit.

In this appeal, Epps raises seven assignments of errors. Initially, we note that Epps failed to file a transcript of the trial. As the appellant, Epps had the burden to ensure that the record contains all that is necessary for this court to determine the appeal. *See* App.R. 9(B)(1) and (B)(4); *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 400 N.E.2d 384 (1980). When the alleged error is that the trial court's finding or conclusion is unsupported by the evidence or is contrary to the weight of the evidence, and the appellant fails to provide the relevant parts of the transcript to resolve the assigned error, this court presumes the correctness of the trial court's decision. *See Knapp* at 199, cited in *WWW.HEADHUNTING.ORG, LLC v. Logicalis, Inc.*, 1st Dist. Hamilton No. C-050512, 2006-Ohio-2619, ¶ 21. Accordingly we overrule Epps's first, second, third, fifth and sixth assignments of error to the extent that the errors are based on the trial court's alleged erroneous assessment of the evidence presented at trial.

Epps's fifth assignment of error additionally challenges the trial court's judgment based on the court's alleged dismissal of her counterclaims under Civ.R. 50. While Epps is correct that Civ.R. 50 does not apply in bench trials, and that the trial court's original judgment entry indicated that the court was dismissing her counterclaims pursuant to Civ.R. 50, on January 6, 2016, the court issued a nunc pro tunc entry specifically correcting the original judgment to reflect that Epps's counterclaims actually had been dismissed under Civ.R. 41(B)(2). Thus, the error assigned is not demonstrated in the record and the fifth assignment of error is overruled.

In her fourth assignment of error, Epps argues that the trial court erred by denying her January 2015 motion for a default judgment. But the record reflects that Brickstone filed a timely "reply" to her counterclaims, as required by the civil rules. *See* Civ.R. 7(A).

Thus, the trial court did not error in denying her motion for a default judgment. Accordingly, we overrule the fourth assignment of error.

We overrule Epps's seventh assignment of error, alleging that the trial court erred by failing to dismiss the eviction cause of action, because the eviction cause of action was not before the common pleas court.

Upon review of the trial court's judgment, however, we notice a mathematical error. Accordingly, we modify the trial court's judgment to reflect an award of damages to Brickstone in the amount of \$56, and we affirm the trial court's judgment as modified.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DEWINE and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on September 2, 2016
per order of the court _____.
Presiding Judge