

[Cite as *Ott v. Reynolds*, 2004-Ohio-2733.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

TOM OTT AND AMY OTT :

Plaintiffs-Appellees: C.A. CASE NO. 20076

vs. : T.C. CASE NO. 03CV2989

CURTIS REYNOLDS dba : (Civil Appeal from  
CASTLE TERMITE & PEST CONTROL Municipal Court)  
Defendant-Appellant :

. . . . .

O P I N I O N

Rendered on the 28<sup>th</sup> day of May, 2004.

. . . . .

Tom and Amy Ott, 8968 Deep Forest Lane, Centerville, Ohio  
45458

Plaintiffs-Appellants, Pro Se

Rebecca Barthelemy-Smith, 4133 North Dixie Drive, Dayton,  
Ohio 45414, Atty. Reg. No. 0003474

Attorney for Defendant-Appellant

. . . . .

GRADY, J.

{¶1} On August 11, 2003, the trial court adopted a decision of its magistrate and entered a judgment in the amount of \$1,728.00 in favor of Plaintiffs, Tom and Amy Ott, on their claim for relief against Defendant, Curtis Reynolds. The Otts had claimed that Reynolds was negligent in preparing a termite infestation inspection report concerning a house the Otts wished to purchase and later did. The amount of the judgment is the cost of repairs the Otts said they were required to make as a proximate result

of Reynolds' alleged negligence. Reynolds has appealed from that judgment.

{¶2} Reynolds argues on appeal, as he did in the trial court, that his oral agreement with the Otts required him to provide only an estimate of the cost of treating any termite infestation, not to report the extent and cost of repair of any termite damage, and that he provided the estimate he promised. Reynolds' contentions challenge the weight and meaning of the evidence presented in the trial court's proceedings concerning the intentions of the parties with respect to what their respective rights and duties would be when they entered into their contract.

{¶3} App.R. 9(B) states that "[i]f the 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 shall include in the record a transcript of all evidence relevant to the findings or conclusion." The transcript is prepared by the person appointed by the court to transcribe its recorded proceedings. *Id.* If no record was made from which a transcript can be made, the appellant may prepare and file a statement of the evidence approved by the adverse party and the court. App.R. 9(C). Alternatively, the parties may prepare an agreed statement of the record for the trial court's approval. App.R. 9(D).

{¶4} The record indicates that on July 31, 2003, when he objected to the magistrate's decision, Reynolds requested

a transcript of the proceedings before the magistrate. However, the record contains no transcript of those proceedings or any substitute for a transcript. The summary of docket and journal entries prepared by the clerk bears an entry stating that, also on July 31, 2003, "Attorney Notified by Phone About Transcript." The meaning of that entry is unexplained.

{¶5} Absent a transcript or other record of the evidence before the magistrate, we cannot determine whether the trial court erred when it adopted the magistrate's decision. Therefore, we can only presume the validity of the trial court's proceedings and overrule the error assigned. *Knapp v. Edwards Laboratories* (1980), 60 Ohio St.2d 197.

{¶6} The assignment of error is overruled. The judgment of the trial court will be affirmed.

FAIN, P.J. and WOLFF, J., concur.

Copies mailed to:

Tom and Amy Ott  
Rebecca Barthelemy-Smith, Esq.  
Hon. Thomas M. Hanna