

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

3115 DURRELL APARTMENTS,	:	APPEAL NO.	C-250144
	:	TRIAL NOS.	A-2300960
Plaintiff-Appellee,	:		A-2300961
vs.	:		
CLYDE AUSTIN,	:	<i>JUDGMENT ENTRY</i>	
Defendant-Appellant.	:		

KINSLEY, Presiding Judge.

This court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Representing himself, defendant-appellant Clyde Austin appeals the judgment of the Hamilton County Court of Common Pleas, following a jury trial, in favor of plaintiff-appellee 3115 Durrell Apartments ("Durrell") on its two claims of eviction and Austin's counterclaim for retaliatory eviction.

Durrell originally sued Austin for nonpayment of rent and eviction in the Hamilton County Municipal Court in the case numbered 22/CV/14621. Austin filed an answer and jury demand, as well as counterclaims for negligence, retaliatory eviction, gross negligence, and invasion of privacy. Austin later amended his answer to include counterclaims for defamation, negligent infliction of emotional distress, intentional infliction of emotional distress, fraud, and abuse of process.

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In the municipal court case numbered 22/CV/19040, Durrell again sued Austin for nonpayment of rent and eviction a few months later, claiming that he was a holdover tenant. Austin answered and moved to dismiss the complaint. The two eviction complaints were then consolidated, and the matter was transferred to the Hamilton County Court of Common Pleas.

Upon transfer, the case numbered 22/CV/19040 became A-2300960, and the case numbered 22/CV/14621 became A-2300961. The common pleas cases were consolidated on September 29, 2023.

The trial court set the matter for a jury trial. Austin then filed two motions to dismiss, asserting in the separate filings that he could not be a holdover tenant because Durrell had given him permission to remain on the premises and that Durrell's complaint failed to state a claim upon which relief could be granted. The day the jury trial was scheduled to take place, Austin filed two separate requests that the trial court take judicial notice of the alleged stipulations from November 2022, and certain journal entries from the municipal court, respectively. Durrell also filed a motion in limine to exclude medical records from the trial.

The record contains no indication of how the trial court ruled on these motions, if at all. Nor does the record contain transcripts of the jury trial.

On March 4, 2025, the jury returned a verdict in Durrell's favor on its residential-eviction and holdover-tenancy claims and on Austin's retaliatory-eviction counterclaim. It awarded Durrell \$1143.00 in damages on the residential-eviction claim and \$0 in damages on the holdover-tenancy claim.

On March 6, 2025, the trial court entered a writ of restitution and final judgment in Durrell's favor as to the eviction claims and retaliatory-eviction

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counterclaim.¹ The record contains no indication as to how or whether Austin's remaining counterclaims were adjudicated.

On appeal, Austin raises four assignments of error. The first three maintain that the trial court erred in dismissing his various counterclaims. In the fourth, he contends that the trial court committed procedural and evidentiary errors, including (1) denying his pretrial motions without a hearing, (2) granting Durrell's motion in limine, (3) denying his jury demand, and (4) excluding critical evidence that prejudiced Austin's ability to present his case.

As to the first three assignments of error, these issues are not before the court, as the record does not reflect that the trial court actually dismissed Austin's counterclaims.² Other than his retaliatory-eviction counterclaim, no final appealable order is currently before us as to Austin's remaining counterclaims. Austin remains free to appeal these unresolved counterclaims once the trial court issues its final judgment on those claims. We accordingly dismiss Austin's first three assignments of error, as we lack jurisdiction to resolve them.

We deny Austin's fourth assignment of error. Under this assignment, Austin first argues that his pretrial motions were improperly denied without a hearing. Although there are no journal entries in the record reflecting the denial of Austin's judicial-notice motions and motions to dismiss, it is presumed that all pretrial motions not ruled on are in fact denied. *State ex rel. Scott v. Streetsboro*, 2016-Ohio-3308, ¶ 14. A trial court is not required to conduct a hearing on a motion to dismiss; it properly "hears" a dismissal motion by reviewing the motion and the complaint. *Jones v.*

¹ The trial court's judgment entry contained Civ.R. 54(B) language: "This is a final appealable order and there is no just cause for delay."

² The jury rendered a verdict on Austin's retaliatory-eviction counterclaim, but the record before us contains no judgment reflecting that the trial court disposed of Austin's remaining counterclaims.

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Mahoning Cty. Clerk of Court, 2019-Ohio-1097, ¶ 16 (7th Dist.). Accordingly, the trial court did not err in presumptively denying Austin’s motions without a hearing.

Austin next contends that the trial court should not have granted Durrell’s motion in limine. No order is before us to this effect. It may be the case that the trial court orally granted the motion before trial, but there is no transcript in the record explaining the trial court’s rationale or the scope of its order. In the absence of a transcript, we presume the regularity of the proceedings, including the regularity of any limitation the trial court may have placed on the presentation of evidence. *See Treasurer v. Scott*, 2022-Ohio-1467, ¶ 16 (1st Dist.), citing *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980). We reach the same conclusion as to Austin’s contention that he was unable to present critical evidence in support of his case.

This leaves Austin’s argument that the trial court erred by denying his jury demand. Austin received a jury trial as to both eviction claims and his retaliatory-eviction counterclaim. The record contains three verdict forms—one for each claim—signed by all eight members of the jury. Therefore, this argument also fails, at least as to the three claims tried to the jury. Austin remains free to assert his right to a jury trial as to the unresolved counterclaims in any subsequent appeal. His fourth assignment of error is accordingly overruled.

Having dismissed Austin’s first three assignments of error and overruled the fourth, we affirm the judgment of the trial court.

The court further orders that (1) a copy of this Judgment constitutes the mandate, (2) the mandate be sent to the trial court for execution under App.R. 27, and (3) costs shall be taxed under App.R. 24.

CROUSE and **BOCK, JJ.**, concur.

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To the clerk:

Enter upon the journal of the court on 2/6/2026 per order of the court.

By: 
Administrative Judge