

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

CINDY KLINEDINST,	:	APPEAL NO. C-090381
Plaintiff-Appellant,	:	TRIAL NO. o8CV-27684
vs.	:	<i>JUDGMENT ENTRY.</i>
CLAYMON WOMACK,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Cindy Klinedinst filed a small-claims complaint in the Hamilton County Municipal Court against defendant-appellee Claymon Womack for \$1,200. Klinedinst alleged that Womack had performed a poor paint job on, and caused physical damage to, Klinedinst's 1984 Corvette. On Womack's motion, the case was transferred to the municipal court's regular docket, where it was referred to a magistrate. The magistrate held a hearing on April 6, 2009, and ruled in favor of Womack. Klinedinst filed an objection to the magistrate's decision that was overruled by the municipal court, which adopted the magistrate's decision as its judgment. Klinedinst, acting pro se, has appealed and asserts two assignments of error.

In her first assignment of error, Klinedinst argues that the trial court erred when it did not admit photographs of the allegedly poor paint job and physical

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

damage into evidence. The trial court ruled that the photographs could not be admitted because a proper foundation had not been laid and because the photographs had not been properly authenticated. Klinedinst, relying on “FRE 901-03” [sic], asserts that her witness, Jessica Hoover, both authenticated the photographs and established a proper foundation for them. For this reason, she concludes that the magistrate should have permitted the photographs to be entered into evidence.

In her second assignment of error, Klinedinst argues that “the trial court erred in ruling in favor of the defendant due to the status of the record of the case.” Klinedinst argues that the trial court committed reversible error because it could not properly decide the case without considering the unadmitted photographs. Essentially, Klinedinst asserts that the trial court decided the case based upon an incomplete record and without considering all the facts. Therefore, according to Klinedinst, the decision of the trial court should be reversed. Because Klinedinst’s assignments of error ultimately address the admissibility of the photographs, we address both assignments together.

We hold that the trial court did not commit reversible error and overrule both of Klinedinst’s assignments of error. The admission or rejection of photographs as evidence is within the sound discretion of the trial court.² Photographs may be entered into evidence “so long as they are properly identified, are relevant and competent and are accurate representations of the scene which they purport to portray.”³ After reviewing the entire trial transcript, we are convinced that Klinedinst simply did not lay a proper foundation for the photographs to be entered

² *State v. Hill* (1967), 12 Ohio St.2d 88, 90, 232 N.E.2d 394.

³ *Id.*, citing *State v. Woodards* (1966), 6 Ohio St.2d 14, 215 N.E.2d 568. See, generally, *Zerega Ave. Realty Corp. v. Hornbeck Offshore Transp., LLC* (C.A.2, 2009), 571 F.3d 206, 214.

into evidence. While testifying, she attempted to give the magistrate the photographs while describing the problems with the paint job. But she did not identify who had taken the photographs. And she did not state that she recognized and identified the object depicted in the photographs, nor did she testify that the photographs fairly and accurately represented that particular object. Also, based upon the trial transcript, and contrary to the assertion in Klinedinst's brief, her witness, Jessica Hoover, did not look at the photographs. Therefore, Hoover did not "testif[y] to the portrayal of the photos" as Klinedinst claims in her brief. Hoover simply testified about what she believed to be the problems with the paint job.

Because the photographs were properly excluded from evidence, there simply was not enough evidence for Klinedinst to prevail on her claim. Therefore, we overrule both assignments of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., HENDON and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on August 20, 2010

per order of the Court _____.
Presiding Judge