

IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

FEB 4 10 53 AM '03
MAGISTRATE'S COURT
SUMMIT COUNTY, OHIO

ROGER BEGUE

Plaintiff

V.

BRENDA CALLOWAY & OCCUPANTS

Defendant

CASE NO. 03 CVG 00286

Magistrate: JAMES K. REED

MAGISTRATE'S DECISION WITH
FINDINGS OF FACT AND CONCLUSION
OF LAW

This cause came to be heard before Magistrate James K. Reed on January 31, 2003. Plaintiff was present. Defendant was also present and represented by attorney Gregory Sain. Based upon the testimony and evidence presented, the court finds the facts to be as follows.

The plaintiff, Roger Begue, testified that he owns the property located at 1110 E. Archwood Avenue in Akron, Ohio. Mr. Begue testified that in October of 2002 he rented said property to defendant pursuant to a Section 8 lease. (See defendant's exhibit B) Mr. Begue testified that defendant's total monthly rent was \$650.00 of which defendant paid \$350.00 and Akron Metropolitan Housing paid \$300.00. Mr. Begue further testified that although defendant paid her December 2002 rent, she failed to pay any rent for the month of January 2003. As such, Mr. Begue testified that on January 3, 2003, he served defendant with a three day notice to vacate by posting same on her front door. Thereafter, on January 9, 2003, Mr. Begue filed a forcible entry and detainer complaint against defendant seeking a writ of restitution.

On cross-examination, Mr. Begue admitted that his wife, Tracy Sublett, actually owned the rental property in question, although Mr. Begue claimed he had dower rights in the property by virtue of their marriage. (See defendant's exhibit C) Mr. Begue further testified that between January 6, 2003, and January 17, 2003, he was in Florida on business and authorized his wife to file the aforementioned eviction complaint and to sign his name to the complaint, which she did on January 9, 2003. In addition, Mr. Begue admitted that neither he or his wife were attorneys.

At that point in the proceedings counsel for defendant orally moved the Court to dismiss plaintiff's

eviction complaint for lack of jurisdiction. Specifically, defense counsel argued that plaintiff's complaint was not properly signed and should be stricken; that plaintiff did not possess any ownership interest in the rental property in question; that plaintiff was not a duly licensed attorney authorized to practice law in the State of Ohio; and that plaintiff's action in filing said eviction complaint constituted the unauthorized practice of law.

Initially, the Court notes that Ohio Civil Procedure Rule 11 provides that any party not represented by an attorney must personally sign a pleading certifying that the party has read the pleading and that same is true to the best of the party's knowledge, information and belief. If a pleading is not properly signed then the pleading may be stricken as a sham. In reality, the effect of a failure of a party or duly licensed attorney to properly sign a pleading is the same as if no pleading had been filed. In the instant case, based on the testimony and evidence presented, it is the opinion of the Magistrate that since plaintiff did not personally sign the eviction complaint, then the eviction complaint must be stricken as a sham and treated as if it had never been filed.

Secondly, the Court notes that Ohio Revised Code Section 4705.01 specifically provides that an individual cannot commence or conduct a court action on another's behalf unless that individual has been previously admitted to the bar by the Ohio Supreme Court in compliance with the Supreme's Court's pre-prescribed rules and regulations.

Thirdly, the Court notes that in *Cleveland Bar Association v. Picklo* (2002), 96 Ohio St. 3d 195, the Ohio Supreme Court recently held that an agent for a landlord, who is not duly licensed to practice law in the State of Ohio, may not file an eviction action on the landlord's behalf as such conduct constitutes the unauthorized practice of law. This holding is consistent with the Ohio Supreme Court's earlier holding in *Disciplinary Counsel v. Coleman* (2000), 88 Ohio St. 3d 155, in which the Supreme Court held that a power of attorney does not give an individual the right to prepare and file pleadings in court for another.

Finally, on August 29, 2002, this Court recently amended Local Court Rule #30 to provide as follows:

"A complaint in Forcible Entry and Detainer shall be filed in accordance with AMCR No. 11 and shall contain a reason for the eviction, a copy of the notice given under O.R.C. 1923.04 and a copy of the written instrument upon which the claim is founded. A plaintiff/owner must file a complaint personally or through a licensed attorney. When the plaintiff/owner is a corporation, the complaint must be signed by a licensed attorney. Noncompliance with this rule shall result in the dismissal of the complaint."

Based on the testimony and evidence presented, it is the opinion of the Magistrate that plaintiff has failed to comply with Local Court Rule #30 as plaintiff's eviction complaint was not filed individually by the owner of the rental property or by a duly licensed attorney.

In conclusion, it is the opinion of the Magistrate that plaintiff's complaint was not properly signed and must be stricken; that the plaintiff does not possess any ownership interest in the subject rental property; that the plaintiff is not a duly licensed attorney; that as the agent for the owner plaintiff cannot commence an eviction action on the owner's behalf; and that plaintiff's complaint fails to comply with the mandatory requirements of Local Court Rule #30.

As such, it is the opinion of the Magistrate that this Court lacks jurisdiction to hear plaintiff's eviction case; that defendant's oral motion to dismiss is sustained; and that plaintiff's eviction complaint must be dismissed at plaintiff's cost.

Wherefore, based upon the testimony and evidence presented it is the decision of the Magistrate that a writ of restitution NOT BE ALLOWED and that plaintiff's complaint be dismissed at plaintiff's cost.

James K Reed 1-31-03
MAGISTRATE JAMES K. REED

JUDGMENT ENTRY

The decision of the Magistrate is approved. It is the judgment of the Court that a writ of restitution MAY NOT ISSUE and that plaintiff's eviction complaint be dismissed. Costs to plaintiff.

[Signature]
JUDGE

cc: Roger Begue (plaintiff)
Gregory Sain (attorney for defendant)

FEB 11 10 57 AM '03
COURT CLERK