

IN THE MUNICIPAL COURT OF MIAMI COUNTY, OHIO

LEE TRIMBLE	:	CASE NO. 89-CVGT-589
PLAINTIFF	:	
-vs-	:	JUDGE ALAN BRAUN
ALECIA JONES, et al	:	
DEFENDANT	:	<u>ENTRY</u>
: : : : : : : : : : :		

This case is hereby dismissed without prejudice as found in the opinion filed finding that this court is without jurisdiction.

ALAN J. BRAUN

JUDGE ALAN BRAUN

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IN THE MUNICIPAL COURT OF MIAMI COUNTY, OHIO

LEE TRIMBLE : CASE NO. 89-CVGT-589
PLAINTIFF : JUDGE ALAN BRAUN
-VS- :
ALECIA JONES, et al :
DEFENDANT : OPINION
: : : : : : : : : : : : : : :

Alecia Jones filed a complaint in the Miami County Common Pleas Court, General Division, on April 27, 1989 against Lee Trimble. Personal service was obtained on Mr. Trimble on or about April 27, 1989. Ms. Jones's complaint alleged that she was a tenant at 723 West Franklin Street, Troy, Ohio under a written lease agreement and that Lee Trimble was the landlord of said premises. Ms. Jones further alleged that Mr. Trimble terminated water service to the rental and sought damages and injunctive relief from the court due to the termination of water service.

Mr. Trimble filed a complaint for forcible entry and detainer on May 11, 1989 in the Miami County Municipal Court and alleged that Ms. Jones abandoned the rental at 723 West Franklin Street and sought restitution of the premises and damages. Although Mr. Trimble's complaint was inartfully drawn, it appears he was seeking the above remedies based on the allegation of abandonment.

On May 17, 1989 Ms. Jones filed a two-part motion requesting a more definite statement, pursuant to Civil Rule 12 (E), and in the alternative, moving the court to dismiss Mr. Trimble's complaint. In Ms. Jones's motion for dismissal, she stated that the municipal court lacked jurisdiction over the subject matter of Mr. Trimble's claim because the common pleas court had concurrent jurisdiction in an action dealing with possession of the residential premises and both filing and service of process was completed first in the common pleas court. A hearing was held on Ms. Jones's motion on June 2, 1989. Mr. Trimble appeared pro se and Rosemary Murphy, attorney for Alecia Jones, appeared and presented a certified copy of Ms. Jones's complaint filed in common pleas court and a certified copy of the return of service of summons on Mr. Trimble. Service was completed in the common pleas case fourteen days before Mr. Trimble's complaint was filed in municipal court.

Municipal courts and courts of common pleas have concurrent jurisdiction in forcible entry and detainer. Regarding the jurisdiction of courts in forcible entry and detainer actions, Ohio Revised Code Section 1923.01 states that within a judge's proper area of jurisdiction, "any judge of a county or municipal court or a court of common pleas may inquire about persons who make unlawful and forcible entry into lands or tenements and detain them..."

Case law has addressed whether a court of common pleas has jurisdiction over a forcible entry and detainer action. The Ohio Supreme Court in Seventh Urban, Inc. v. University Circle, 67 Ohio St. 2d 19, 24 (1981), stated that "courts of common pleas have original jurisdiction over forcible entry and detainer, albeit such original jurisdiction is concurrent with that of municipal courts." The plaintiff in the above case filed a forcible entry and detainer action in municipal court. When the defendant filed an answer and counterclaim exceeding the jurisdictional limits of the municipal court, the proceedings were certified to the court of common pleas. It is thus apparent from the statute and case law that both courts, common pleas and municipal courts, have subject matter jurisdiction in forcible entry and detainer actions.

In the case at hand, Ms. Jones's complaint in common pleas court involves utility termination of the residential premises located at 723 West Franklin Street, Troy, Ohio in which injunctive relief and damages are sought. Ms. Jones's case involves the use and enjoyment and possession of certain real property. Mr. Trimble's action in this court in forcible entry and detainer involves possession of that same real estate. Both cases involve possession and involve the same parties. In fact, it appears that both cases arose out of the same transaction or occurrence and thus each action would be a compulsory counterclaim in the other action under Civil Rule 13(A).

Courts have clearly established that when two courts have concurrent subject matter jurisdiction over the same issues only one court can decide those issues. This is a logical and proper way for courts to proceed. The Ohio Supreme Court held in Dwyer v. Garlough, 31 OS 158 (1877), "as between two courts of concurrent and co-extensive jurisdiction, the one whose power is first invoked by the institution of proper proceedings, and the service of the required process, acquires the right to adjudicate upon the whole issue, and to settle the rights of the parties to the exclusion of all other tribunals." The above rule rests upon comity and necessity between judicial tribunals and has been long established in Ohio. See Ex Parte Bushnell, 8 OS 599 (1858).

The court of common pleas shall proceed with the case at hand. The issues pending before that court include utility termination, use and habitability and injunctive relief. The municipal court is proceeding under the same facts and circumstances and conflicting results could occur if both courts proceed with actions dealing with the possession of the same real estate.

An appellate court has held that the filing of a related action in a court of common pleas can nullify the jurisdiction of a municipal court to hear an action in forcible entry and detainer. In Stratton et al, v. Robery, 700 Ohio App. 2d (1980) the vendor of a land installment contract filed a complaint in

the court of common pleas demanding forfeiture of the land contract. Subsequently, an action for forcible entry and detainer was filed in municipal court. The municipal court granted judgment to the vendor for restitution of the premises. The court of appeals reversed and held that the filing of the forfeiture action vested the court of common pleas with exclusive jurisdiction over the entire subject matter. The municipal court was thus without jurisdiction to hear the subsequent action for forcible entry and detainer.

In State, ex rel. Balson v. Harnishfeger, 55 Ohio St. 2d 38 (1978) the Ohio Supreme Court decided the issue of which of two courts of concurrent jurisdiction has jurisdiction over an action when a complaint has been filed in each court. The court ruled that "service of process, is ... a condition precedent to vesting of jurisdiction in determining which of two courts has the exclusive right to adjudicate the whole case." Id. at 39-40. Ms. Jones initiated her action following Civil Rule 3 by the filing of a complaint with the court of common pleas and obtaining service on Mr. Trimble within one year of the filing of complaint. The Civil Rules provide an orderly method of vesting jurisdiction by requiring two conditions: (1) the commencement of proceedings and (2) the service of process.

In the present case, filing and service of process was completed in the common pleas court before the present action was

even filed in this municipal court. By virtue of the court of common pleas acquiring both subject matter jurisdiction and in personam jurisdiction, the Miami County Municipal Court does not have the jurisdiction to adjudicate Mr. Trimble's complaint. Thus, the Miami County Common Pleas Court is vested with the right to adjudicate the whole issue and settle the rights of the parties and this case in the municipal court should be dismissed.

ALAN J. BRAUN

JUDGE ALAN BRAUN

FILED

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JANE B. GOSSEL
CLERK OF COURT

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