

IN THE MARION MUNICIPAL COURT FOR MARION COUNTY, OHIO

BENJAMIN D. CHUBB, ET AL., :

PLAINTIFFS, : CASE NO. 99 CVG 01635

VS

JANET BUENO-CRESPO,

DEFENDANT
MARION, OHIO

MUNICIPAL COURT
FILED
DEC 13 1999
JUDGMENT ENTRY

On December 10, 1999, this cause came on to be heard for trial. Plaintiff, Benjamin D. Chubb, was present and was represented by Attorney Brent A. Rowland, and the Defendant was present and was represented by Attorney Mitchell A. Libster. Thereupon, stipulations were entered into before the Court and the case was submitted to the Court.

For the reasons stated in the accompanying Memorandum of Opinion, it is the Judgment and Order of the Court that Plaintiffs, Benjamin D. Chubb and Stacey J. Chubb, are entitled to judgment for restitution of the premises at 411-1/2 Mary Street, Marion, Ohio.

It is the further Judgment and Order of the Court that Plaintiffs, Benjamin D. Chubb and Stacey J. Chubb, are entitled to judgment against Defendant, Janet Bueno-Crespo, in the amount of \$665.00.

It is the further Order of the Court that the set-out date in this action shall be December 27, 1999.

Court costs are to be paid by the Defendant.

William R. Finnegan
JUDGE WILLIAM R. FINNEGAN

cc: Brent A. Rowland, Attorney for Plaintiff
Mitchell A. Libster, Attorney for Defendant

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PLAINTIFFS MUNICIPAL COURT CASE NO. 99 CVG 01635

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MEMORANDUM OF OPINION

On December 10, 1999, this cause came on for trial to the Court. Plaintiff, Benjamin D. Chubb, was present and was represented by Attorney Brent A. Rowland, and the Defendant was present and was represented by Attorney Mitchell A. Libster. Thereupon, the Parties entered into certain stipulations.

The Plaintiff and the Defendant stipulated that the rental charge by the Plaintiffs to the Defendant for the premises located at 411-1/2 Mary Street, Marion, Ohio, was \$350.00 per month, due the 1st day of the month. The Parties also stipulated that rent has been delinquent from November 1, 1999, that the proper 3-day notice was properly served on November 12, 1999, and that the Defendant is still in the premises.

The Defendant moved to quash Service of Process in this action. The Court took said Motion under advisement, and also took the entire case under advisement.

Turning to the issue of whether Service of Process was proper upon the Defendant in this action, the Court notes that the Defendant is maintaining that Service of Process made in this case, by posting the Summons at the premises, in conjunction with

ordinary mail, certificate of mailing service from the Court, pursuant to present Ohio Revised Code Section 1923.06(C) and (D)(2)(c), is unconstitutional, in that it does not comply with the Service of Summons requirements of Ohio Civil Rules 4 through 4.6. The Defendant also claims that Ohio Revised Code Section 1923.06 is unconstitutional as violating the "one-subject" rule relating to legislation.

In considering the issue of whether the present version of Ohio Revised Code Section 1923.06(C)(D)(2)(c) and (F)(2) are constitutional, the Court notes that it has previously considered this issue in the case of Anderson v Champer, unreported Case No. 99CVG00424 (Marion Muni. Ct., May 13, 1999). A copy of the Memorandum of Opinion from this case is attached and incorporated herein. In the Anderson case, this Court held that the provisions relating to summons by certified mail, found in Civil Rule 4.1(A), are clearly inapplicable to actions in Forcible Entry and Detainer, since said provisions frustrate the summary nature of actions in Forcible Entry and Detainer. In the Anderson case, this Court considered the decision cited by the Defendant of Talley v. Warner, 99 Ohio Misc. 2d 42 (Cleveland Muni. Ct. 1999), but respectfully declined to follow the reasoning in the Talley case. This Court has also reviewed the unreported decisions cited by the Defendant, Boyle v. Hernandez, unreported Case No. CVG-99-11252 (Toledo Muni. Ct. 1999); and McKown v. Johnson, unreported Case No. CVG-99-7561 (Akron Muni. Ct. 1999). Neither of those decisions apparently either considered the Anderson decision of this Court, nor answered

the reasoning in this Court that the United States Postal Service is authorized to, and often does, hold Certified Mail for as long as 15 days, nor the fact that there is no provision in Civil Rule 4.1(A) instructing the Clerk to require the United States Postal Service to return the Certified Mail to the Court within three days. In short, there is nothing found in the cases cited by the Defendant that would cause this Court to change its opinion on this issue in regard to its holding in Anderson that certified mail service under Civil Rule 4.1(A) is clearly inapplicable to actions in Forcible Entry and Detainer. As such, the certified mail provisions of Civil Rule 4.1(A) are not applicable to actions in Forcible Entry and Detainer. See Civil Rule 1(C)(3).

Turning to the issue of whether or not Ohio Revised Code Section 1923.06 violates the Single Subject Rule contained in Section 15(D), Article II of the Constitution of Ohio, the Court notes that the Defendant bases her argument on the claim that when Ohio Revised Code Section 1923.06 was amended by Amended Substitute Senate Bill No. 83, which was effective March 30, 1999, said legislation also addressed other unrelated subjects, and therefore violated the Single Subject Rule of the Constitution of Ohio.

The Court finds this argument of the Defendant to be moot. Subsequent to March 30, 1999, the Ohio Legislature once again amended Ohio R. C. Section 1923.06, in Amended Substitute Senate Bill No. 30, which was effective September 29, 1999. Section 2 of this legislation repealed the version of Ohio R. C. Section 1923.06 which was created under the earlier legislation. Any argument that

the Single Subject Rule was violated in the earlier legislation was therefore rendered moot by its repeal effective September 29, 1999. The Court notes that the Complaint in this action was filed November 24, 1999, which was under the present form of Ohio R. C. 1923.06.

This Court finds that Service of Process in this action should not be quashed, and was constitutional.

Turning to the other issues of this Case, the Court finds that the Plaintiff is entitled to judgment for restitution of the premises of 411-1/2 Mary Street, Marion, Ohio.

The Court further finds that the Plaintiff is entitled to a money judgment in the amount of \$665.00, which represents pro-rated rent through December 27, 1999, which will be the set-out date.

William R. Finnegan
JUDGE WILLIAM R. FINNEGAN

cc: Brent A. Rowland, Attorney for Plaintiff
Mitchell A. Libster, Attorney for Defendant