

FILED

2020 APR 16 AM 8:16

CLERK OF
ELYRIA MUNICIPAL COURT

BY: WJ

STATE OF OHIO, LORAIN COUNTY, ss., - THE ELYRIA MUNICIPAL COURT

MAGISTRATE'S DECISION

COLONIAL OAKS COMMUNITY CORP.,
Plaintiff(s)

VS

CASE NO. 2018CVG03281

PAM KILBY, et al.,
Defendants

Pursuant to Rule 53, this matter was referred to the Magistrate for hearing and decision by general order of reference. Plaintiff appeared at hearing. Defendant did not appear, but was not served.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff seeks a writ of execution in proceedings that were apparently already concluded by the application for a writ of restitution and the full execution of that writ.

To grant Plaintiff's motion would offend fundamental notions of fairness and basic principles of due process that guarantee adequate notice and a meaningful opportunity to be heard. Every party has a duty to monitor the progress of her case, especially after an appearance. Defendant indeed appeared in this case more than once in person and by filings. However, her obligation to monitor this case's progress ended when the case was concluded. Nothing in the history of this case remotely intimates that these statutory proceedings under R.C. §1923.13(B) might follow. Instead, the complaint, the agreement and the order for a writ of restitution follow R.C. §1923.13(A). That writ was issued and executed, with a return filed. The case was thus aptly marked concluded. Seven months later, Plaintiff suddenly began proceedings for a writ of execution under R.C. §1923.13(B). Only ordinary mail notice was given to the Defendant of the motion. The court's notice by ordinary mail was not surprisingly returned. In the interim, Defendant had no duty to update her address or monitor the progress of her case because the case was over. Such a lengthy delay patently prejudiced the Defendant. At the very least, due process thus required that Plaintiff obtain service of process of the motion comparable to that with the filing of a new action.

In any case, Plaintiff's claim is already moot. At the time of the execution of the writ of restitution, the land was legally restored to Plaintiff. Plaintiff expressly declined the opportunity to remove the manufactured home from the lot or even remove any other personal property abandoned therein, to say nothing of advising the bailiff or the Court that Plaintiff may elect to proceed under R.C. §1923.13(B). Plaintiff assumed dominion and control over both the land and any personal property. With possession fully restored, further proceedings under Chapter 1923 are now moot.

subprocedures
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WJ

SCANNED

Even if adequate notice had issued to Defendant under minimum standards of due process or further proceedings were not moot, Plaintiff disregarded the sequence of steps dictated by R.C. Chapter 1923 to be taken to successfully obtain a writ of execution under Chapter 1923 pertaining to abandoned manufactured homes.

Finally, based on evidence recently introduced in other court proceedings involving the same manufactured home park, doubt now lies whether the entity *as named* as Plaintiff at the time of filing of this action and even now has a right of possession and was ever a proper party to this case. If so, the judgment may be void *ab initio*. The Court need not reach that issue at this time.

The dismissal of the motion should be without prejudice as this decision is merely procedural. However, a new action in forcible entry and detainer would not seem to be available against this same defendant under the criteria for the exercise of jurisdiction under R.C. §1923.02.

RECOMMENDATION

MOTION FOR A WRIT OF EXECUTION SHOULD BE DENIED.

CASE SHOULD REMAIN CONCLUDED.


Magistrate

A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

Copy to PLAINTIFF ONLY

SCANNED

Elyria Municipal Court
601 Broad Street, Elyria, OH 44035
Judge Gary C. Bennett ~ Judge Robert C. White
Clerk Eric J. Rothgery, J.D.

FILED

2020 DEC -9 AM 9:44

CLERK OF
ELYRIA MUNICIPAL COURT

BY: WR

Civil Journal Entry

Case Number: 2018CVG03281

COLONIAL OAKS PROPERTY, LLC
SUCESSOR IN INTEREST TO COLONIAL
OAKS COMMUNITY, CORP, COMMONLY
KNOWN AS COLONIAL OAKS

Plaintiff

VS


PAM KILBY

Defendant

Magistrate's decision reviewed, adopted, and incorporated by reference herein. Clerk to journalize the Magistrate's Decision along with this order.

Motion for a writ of execution is hereby denied.

Case is to remain concluded.



JUDGE

CLERK TO SERVE ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR
WITH NOTICE OF JUDGMENT AND DATE OF ENTRY UPON THE JOURNAL.

Copy to Parties

cc: Patetz
Kilby
12-9-2020
WR

Cvje.doc