

IN THE  FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS, OHIO 

Herbert Humphrey
Plaintiff,
vs.
Brenda Heine
Defendant.

Case No. M9201CVG-004176

FILED
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MUNICIPAL COURT
W.H. J. DAWSON, CLERK

REFEREE'S REPORT

This matter came for hearing before Referee Kathleen E. Graham on February 14, 1992. Plaintiff was represented by Attorney Dean S. Talaganis. Defendant was represented by Attorney Joseph Maskovyak, The Legal Aid Society of Columbus.

Defendant made a preliminary motion to dismiss the complaint for lack of jurisdiction. The parties stipulated to the fact that defendant filed a complaint in the Franklin County Common Pleas Court, Domestic Relations Division asserting a common law marriage to plaintiff. That complaint was filed on January 9, 1992, which was prior to the filing of the present action. Subsequent to the hearing, the parties filed copies of the pleadings in the pending domestic relations action.

It is undisputed that the real estate at issue is titled in plaintiff's name. However, defendant argued that the Domestic Relations Division has exclusive jurisdiction to determine issues which effect title to and possession of real estate which may be a marital asset.

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Moreover, defendant argued that the jurisdiction of the Common Pleas Court was involved first. Common pleas courts and municipal courts have concurrent jurisdiction to hear forcible entry and detainer cases. Richwood Homes, Inc. v. Brown (1981) 3 Ohio App. 3d 204. It is a general rule that the court whose power was invoked by the filing of a proper pleading has the right to adjudicate the rights of the parties. Miller v Court of Common Pleas of Cuyahoga County (1944) 143 Ohio St. 68. The common pleas court has jurisdiction to determine all domestic relations issues, including the existence of a common law marriage. R.C. 3105.11. The claim that defendant is the common law wife of plaintiff raises several issues which cannot be litigated by the municipal court, including her title interest, if any in the real estate which is the subject of the present case.

It is clear that this court should not hear the eviction case at this time. A question remains whether the case should be transferred to common pleas court because the defense raises issues which cannot be litigated by municipal court, Richwood Homes, supra. or whether the case should be dismissed because the jurisdiction of the common pleas court was invoked first. This referee concludes that the proper course for this court to follow is to dismiss the present action.

The parties have stipulated that defendant has

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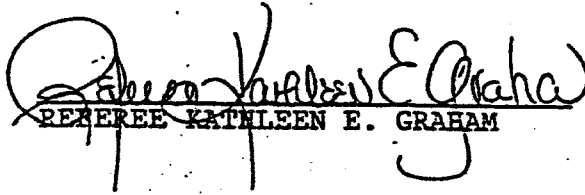
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filed a motion to vacate in the domestic relations court. (Joint Exhibit A). That motion deals with who will have the present right to possession. An eviction action brought pursuant to R.C. Chapter 1923 presents the same issues as those raised in the motion to vacate - who will have the present right to possession.

A dismissal of the present case will not prejudice the plaintiff and deny him an adequate remedy, since the remedy is available through the Domestic Relations courts in the motion to vacate. Once there is a final order of the Domestic Relations Court, the plaintiff may either pursue the eviction action in the Common Pleas Court or refile in the Municipal Court. Talbott v Talbott (Nov. 13, 1987), Franklin App. No. 86AP-248, unreported.

RECOMMENDATION

That the complaint be dismissed for lack of jurisdiction. Costs to plaintiff.


~~REFeree KATHLEEN E. GRAHAM~~

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