

IN THE FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS, OHIO

Columbus Metropolitan Housing Authority
(Plaintiffs)

vs.

Dorothy Curry

Case Number: M 1999 CVG 035067

Columbus Metropolitan Housing Authority
(Plaintiffs)

vs.

Martinea V. Allen

Case Number: M 1999 CVG 033239

Magistrate Mark A. Hummer

MAGISTRATE'S PRE-TRIAL ORDER

These causes came on for hearing before Magistrate Hummer. Attorney Fred Thomas represents plaintiff. Attorney Donna Mayer represents defendants. Defendant was served with the summons and complaint by both ordinary mail service and posting of the premises pursuant to R.C. 1923.06(G)(2). Defendant has moved the court to quash service on the basis that R.C. 1923.06 is unconstitutional.

Defendant challenges the constitutionality of the newly amended R.C. 1923.06 which became effective in March 1999 on two grounds: 1) the statute violates the Modern Courts Amendment, Article IV, Section 5(B) of the Ohio Constitution and the separation of powers doctrine in Article II, Section 32 of the Ohio Constitution and 2) the statute violates the one subject provision

of Article II, Section 15(D), of the Ohio Constitution. For the following reasons, defendant's motion to quash service is denied¹.

The Modern Courts Amendment, Article 5, Section B of the Ohio Constitution, states in pertinent part:

(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. * * * All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Defendant argues that the statute and the rule are in conflict, the civil rules control matters of court procedure in civil cases and, therefore, the legislature had no authority to incorporate special service provisions into the forcible entry and detainer statute. Rockey v. 84 Lumber Co. (1993), 66 Ohio St. 3d 221. R.C. 1923.06 and Civ. R. 4.1 - 4.6 clearly cover the same subject matter, but a constitutional Modern Courts Amendment analysis is necessary only if the statute and the rule are truly in conflict. After review of the statute, the rule and the related case law, the magistrate concludes that in the context of forcible entry and detainer law there is no conflict between the service provisions of R.C. 1923.06 and Civ.R. 4.1- 4.6.

Civ. R. 1(C)states in relevant part: " Exceptions. These rules, *to the extent that they would by their nature be clearly inapplicable, shall not apply* to procedure * * * (3) in forcible entry and detainer * * * ". The Supreme Court has quoted the following language, from the Staff Notes to

¹For the purposes of this report, discussion is limited to the first cause of action relating to possession of the premises. With respect to second causes of action relating to money damages, the words of R.C. 1923.06 conflict with Civil Rules 4.1-4.6. This creates a potential constitutional defect in the statute because of its conflict with the Ohio Constitution's Modern Courts Amendment. As a pre-emptive response to this apparent conflict, the Hamilton County Municipal Court of its own initiative declared R.C. 1923.06 unconstitutional as it relates to second causes of action and adopted a policy that prevents second causes of action from being heard unless service is obtained in accordance with Civil Rules 4 through 4.6 (Exh. H). But see also R.C. 1923.081, which authorizes courts to try both possession and damages claims in the same hearing absent good cause for not doing so. Considerations of judicial economy, the possible inapplicability of the Civil Rules to both R.C. 1923.081 and R.C. 1923.06, and deference to the intentions of the framers of the legislation all would argue in favor of the constitutionality of R.C. 1923.06 as it relates to causes of action other than possession.

the 1971 amendment to Civ. Rule 1(C), with approval: “(T)he civil rules will be applicable to special statutory proceedings adversary in nature unless there is a good and sufficient reason not to apply the rules.” Ramsdell v. Ohio Civil Rights Commission (1990), 56 Ohio St.3d 24, 27. Following Ramsdell, this court’s inquiry should focus on whether there is good and sufficient reason not to apply the Civil Rules in the context of service of process in eviction cases. More specifically, the Ohio Supreme Court has directed that analysis should start not with the rule or rules at issue, nor even on the specific statutory provision at issue, but rather with a look at the entire statutory scheme of the special proceeding.² “[T]he civil rules should be held to be clearly inapplicable only when their use will alter the basic statutory purpose for which the specific procedure was originally provided in the special statutory action.” Price v Westinghouse (1982), 70 Ohio St.2d 131, 133 (quoting State, ex rel. Millington, v. Weir (1978), 60 Ohio App. 2d 349).

The Ohio Supreme Court has considered other rules of Civil Procedure and found them to be inapplicable to forcible entry and detainer actions. In holding Rules 53 and 54 inapplicable to such actions, the court said the “drafters of the Rules of Civil Procedure were careful to avoid encrusting this special remedy with time-consuming procedures tending to destroy its efficacy.” Housing Authority v. Jackson (1981), 67 Ohio St.2d 129, 131. Almost a decade later, in finding the automatic stay provisions of Civil Rule 53 inapplicable to a forcible entry and detainer action, the Supreme Court cited Jackson with approval in saying its refusal to apply the rule was “based on the potential for delay of what is intended to be a summary proceeding.” Colonial American Development Co. v. Griffith (1990), 48 Ohio St.3d 72, 73. The court also noted the summary nature of forcible entry and detainer proceedings in finding Civ. R 52 inapplicable. State, ex rel GMS

²For an extended discussion of Civil Rule 1(C)’s application to forcible entry and detainer actions and miscellaneous judicial proceedings, see *1 Klein Darling, Ohio Civil Practice* (1997), Sections 1-19 to 1-96.

Management Co. v. Callahan (1989), 45 Ohio St.3d 51.

At the appellate level, defendant cites the Tenth District Court of Appeals for the proposition that when a statute provides a procedure to be followed, such procedure must be in accord with the Civil Rules. Real Estate Services, Inc. v. Leigh (June 2, 1977), No. 77AP-130. The court in Leigh, however, based its decision in part on the fact that the then-existing R.C. 1923.06 included language that mirrored the language of the Civil Rules. Had the language of the statute been different, perhaps the analysis of the court would have been different. More recently, the Tenth District provided a very different clue to its thinking in the area of the interaction between forcible entry and detainer law and the Civil Rules. The court said Civil Rule 6(A), a time computation rule that potentially could impact service of notices to leave premises pursuant to R.C. 1923.04, is “not applicable to eviction proceedings.” Wodzisz v. Bayes (March 25, 1997), Franklin App. No. 96APE07-891, *unreported*.

Defendant cites three cases from other Ohio municipal courts that have found the statute unconstitutional. Boyle v. Hernandez (Sept. 3, 1999), Toledo Municipal Court No. CVG-99-11252, *unreported*; Talley v. Warner (Cleveland Municipal Court, 1999), 99 Ohio Misc.2d 42; McKown v. Johnson (Nov. 1, 1999), Akron Municipal Court No. 99CVG-7561, *unreported*. More persuasive, however, is Anderson v. Champer (May 13, 1999), Marion Municipal Court No. 99CVG-424, *unreported*, which found R.C. 1923.06 constitutional [copy attached]. The court cited the appropriate Supreme Court language of Jackson and related cases and found the Civil Rules regarding service of process to be inapplicable to forcible entry and detainer proceedings. The reasoning of Champer is consistent with the only Supreme Court decisions that have dealt with the connection of any of the Civil Rules to the forcible entry and detainer statutes. Speedy access to the courts has always been an essential feature of a forcible entry and detainer action. The new method

of service at issue, which couples ordinary mail service with posting of the subject premises, was incorporated into Chapter 1923 to give the landlord an arguably faster and more efficient form of service. On its face, that reason is valid. Deference to the intentions of the drafters is, therefore, proper. Within the context of forcible entry and detainer actions, Civ. R. 4.1- 4.6 are by their nature inapplicable. The decisions of the Ohio Supreme Court, the Franklin County Court of Appeals' holding regarding the applicability of Civ. R. 6(A), and the reasoning of Champer support the same conclusion. Because the service rules are inapplicable to forcible entry and detainer proceedings, there is no conflict between the statute and the rules. Therefore, the statute as applied to forcible entry and detainer actions was not enacted in violation of the Modern Courts Amendment.

Although defendant's motion did not raise the issue of whether the service meets federal Fourteenth Amendment due process requirements, plaintiff addressed the subject in its Memorandum Contra. To meet Fourteenth Amendment due process requirements, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co. (1950), 339 U.S. 306. Mere posting of a notice in a forcible entry and detainer action on an apartment door does not constitute due process, but notice by mail in conjunction with posting "would surely go a long way toward providing the constitutionally required assurance *** Particularly where the subject matter of the action also happens to be the mailing address of the defendant, and where personal service is ineffectual, notice by mail may reasonably be relied upon to provide interested persons with actual notice of judicial proceedings." Greene v. Lindsey (1982), 456 U.S. 444. Under the Mullane and Greene analyses, R.C. 1923.06 satisfies the Fourteenth Amendment due process requirements of notice reasonably calculated to reach interested parties.

Defendant also challenges the statute that became effective March 30, Sub. S.B. 83, as violative of the single subject rule contained in Art. II, Sect. 15(D) of the Ohio Constitution. Because Sub. S.B. 30 replaced Sub. S.B. 83 effective September 29, defendant's challenge is addressed in the context of the later statute. The act addresses two areas of law, forcible entry and detainer actions as well as certain execution sales. In both subject areas, the issue of notice is a focal point of the legislation. The Constitutional provision is "not directed at plurality but disunity in subject matter." State ex rel. Ohio Academy of Trial Lawyers v. Sheward (1999), 86 Ohio St.3d 451, citing State ex rel. Dix v. Celeste (1984), 11 Ohio St.3d 141. "A manifestly gross and fraudulent violation of this [one-subject] rule will cause an enactment to be invalidated." Dix, 141. Sub. S.B. 30 contains neither the disunity discussed in Sheward nor the fraudulence discussed in Dix. Defendant's argument, that the statute violates Ohio Constitution Art. II, Sect. 15, lacks merit.

Defendant's motion is denied. Case set for hearing on *February 2, 2000 at 9:00 a.m.* in *Courtroom 11-A.*

Date



Magistrate Mark A. Hummer

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