

**IN THE MUNICIPAL COURT OF AKRON  
SUMMIT COUNTY, OHIO**

**Will Mims**

**PLAINTIFF**

vs

**Sherry DuBose  
and  
Evon DuBose**

**DEFENDANT**

)  
) **CASE NO. 04 cvg. 0779**  
)  
) **MAGISTRATE'S DECISION**  
) **WITH FINDINGS OF FACT**  
) **AND CONCLUSIONS OF LAW**  
)

SEP 8 2 30 PM '04  
AKRON MUNICIPAL COURT

This case was set for hearing before the Magistrate on September 8, 2004. The Magistrate held a telephone conference with Atty. James Brightbill, counsel for plaintiff, and Atty. Joann Sahl, counsel for defendants prior to the scheduled hearing time. The Magistrate issued her ruling. Counsel and their respective clients previously appeared for hearing on September 2, 2004, and the matter was continued,

On August 2, 2004, Plaintiff, Will Mims, filed a forcible entry and detainer action, including first and second causes of action.

On August 31, 2004, defendants filed a motion to dismiss. Subsequently, during the hearing on September 2, 2004, defendant made an oral motion seeking the disqualification of Atty. Brightbill, as plaintiff's counsel.

DuBose contends this court lacks jurisdiction to hear the forcible entry and detainer action. Mims disagrees. Additionally, DuBose intends to challenge the service of three day eviction notice. The notice was served by Mims' counsel, Atty. James Brightbill. DuBose submits that it is a conflict. Atty. Brightbill offered that substitute counsel can be secured to address the conflict issue,

Mims and (Sherry) DuBose are subject to the jurisdiction of the Summit County Domestic Relations Court by virtue of a civil protection order (Case No. 2004-04-1376, Sherry DuBose v Will Mims). A Consent Agreement and Domestic Violence Civil Protection Order was filed on April 5, 2004. The Order remains in effect until April 13, 2009, in addition to other terms, DuBose was granted possession of the property subject to this litigation.

Having considered the statements of counsel, and motions of defendant, the Magistrate finds defendant's arguments have merit. The parties are subject to the jurisdiction of the Domestic Relations Court. The Domestic Relations Court had an evidentiary hearing, and issued Orders regarding the subject property, pursuant to the Order filed April 5, 2004. In that the court's Order and jurisdiction were invoked prior to this Court, the Magistrate finds that the matter should be handled in the Domestic Relations Court and that the Court is without jurisdiction.

As to the issue of Atty. Brightbill's conflict, the Magistrate finds that since the court is without jurisdiction the issue is moot.

It is the decision of the Magistrate that judgment is rendered in favor of defendants, Sherry DuBose and Evon DuBose. Plaintiffs complaint is dismissed. Costs to plaintiff, Will Mims.

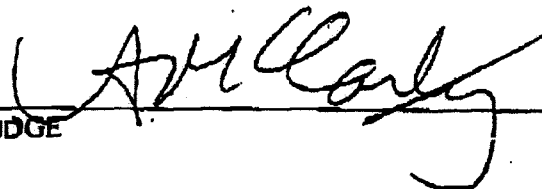
  
Belinda J Hinton, MAGISTRATE

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**JUDGMENT ENTRY**

The decision of the Magistrate is approved. It is the judgment of the Court that a writ of restitution **MAY NOT** issue. Costs to be paid by the **plaintiff** (defendant).

September 8, 2004

  
JUDGE

A party shall not assign as error on appeal the court's adoption of any findings of fact or conclusion of law in that decision unless the party timely and specifically objects to that finding or conclusion as required by Civil Rule 53(E)(3).

cc: Atty. James Brightbill (for plaintiff)  
Atty. Joann Sahl (for defendants)

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SEP 8 2 30 PM '04  
AKRON DISTRICT COURT  
CLERK