

LEXSEE 1995 OHIO APP. LEXIS 4520

STATE OF OHIO, EX REL., MARIE CHARRON-KROFTA, PETITIONER -vs-
JUDGE WILLIAM H. CORRIGAN, RESPONDENT

NO. 69434

COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY

1995 Ohio App. LEXIS 4520

October 12, 1995, DATE OF ANNOUNCEMENT OF DECISION

NOTICE:

[*1] THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.

PRIOR HISTORY: CHARACTER OF PROCEEDING: ORIGINAL ACTION WRIT OF PROHIBITION. MOTION NO. 66218.

DISPOSITION: JUDGMENT: WRIT DENIED.

COUNSEL: For Petitioner: GEORGE K. SJMAKIS (#029084), CLEVELAND, OH.

For Respondent: LISA M. HERBERT (#0001191), ASSISTANT LAW DIRECTOR, CLEVELAND, OH.

For Michael McLaughlin: S. ROBERT E. LAZZARO (#0055662), CLEVELAND, OH.

JUDGES: LEO M. SPELLACY, PRESIDING JUDGE, TERRENCE O'DONNELL, J. and DIANE KARPINSKI, J., CONCUR.

OPINION BY: LEO M. SPELLACY

OPINION

JOURNAL ENTRY AND OPINION

SPELLACY, P.J.:

Relator, Marie Charron-Krofta, is seeking a writ of prohibition to enjoin further action of respondent, the Honorable William Corrigan, in *McLaughlin v. Charron-Krofta*, Cleveland Mun. Ct. Case No. 95-CV-13992, a forcible entry and detainer action. This court granted relator's Application for an Alternative Writ on August 16, 1995, which prohibited the eviction of relator scheduled for August 17. Following a show cause hearing and the submission of briefs by the parties, for the reasons set forth below, we deny the permanent writ of prohibition and dissolve [*2] the alternative writ.

The following facts are derived from the parties' pleadings, briefs and exhibits. Relator operates a liquor

establishment in the city of Cleveland. In November, 1992, relator entered into a five-year commercial lease agreement, which commenced December 1, 1992, with Margaret Hricz, the lessor, who is not a party to this action. According to relator, a dispute arose in late 1994 as to the terms of the lease after relator made significant improvements to abutting premises with the lessor's approval in order to expand relator's business.

On July 12, 1995, relator filed a Complaint against the lessor and against Michael McLaughlin, the individual who witnessed the lease on behalf of the lessor, in the Court of Common Pleas for Cuyahoga County -- Case No. CV-292170. Relator sought a declaration as to the terms and conditions of the lease, a reinstatement of the lease with the declared terms, damages in excess of \$ 25,000.00, costs and reasonable attorney fees. Service was perfected upon Ms. Hricz on July 12 and upon Mr. McLaughlin on July 17, 1995.

On July 18, 1995, Mr. McLaughlin filed a Complaint in Forcible Entry and Detainer for the failure to pay rent against [*3] relator in Cleveland Municipal Court -- Case No. 95-CVG-13992. Mr. McLaughlin did not specify what the rent was or how much rent was owed. Summons was issued on July 19, but no return of service is noted on the docket. Relator moved to dismiss the complaint for lack of personal and subject matter jurisdiction, but on August 9, respondent entered judgment against relator.

Relator petitioned this court for a writ of prohibition.¹ In order to obtain a writ of prohibition, a petitioner must establish that (1) the respondent is about to exercise judicial or quasi-judicial power, (2) the exercise of such power is unauthorized by law, and (3) the refusal of the writ would result in injury for which there exists no adequate remedy in the ordinary course of law. *State, ex rel. McKee v. Cooper* (1974), 40 Ohio St. 2d 65, 320 N.E.2d 286, paragraph one of the syllabus. The existence of an adequate remedy is immaterial to the issuance of a writ of prohibition, however, if a court is completely without jurisdiction to proceed. *State ex rel. Sanquily v. Lucas County Court of Common Pleas* (1991), 60 Ohio St. 3d 78, 573 N.E.2d 606; *State ex rel. Tollis v. Cuyahoga County Court of Appeals* [*4] (1988), 40 Ohio St. 3d 145, 532 N.E.2d 727. A writ of prohibition may issue when a court clearly lacks jurisdiction to proceed with a matter regardless of whether the lower court has ruled on the question of its own jurisdiction. *Ohio Dept. of Adm. Serv. Office of Collective Bargaining v. State Emp. Relations Bd.* (1990), 54 Ohio St. 3d 48, 562 N.E.2d 125. Unless a lower court unambiguously lacks jurisdiction to proceed, a court having general jurisdiction of the subject matter has the authority to determine its own jurisdiction and an adequate remedy at law via appeal exists to challenge any adverse decision. *Goldstein v. Christiansen* (1994), 70 Ohio St. 3d 232, 638 N.E.2d 541; *State ex rel. Miller v. Common Pleas Court of Lake County* (1949), 151 Ohio St. 397, 86 N.E.2d 464, paragraph three of the syllabus; *State ex rel. Kusa v. O'Donnell* (July 12, 1990), Cuyahoga App. No. 60096, unreported.

¹ During the pendency of this action, the following occurred: August 30 -- the common pleas court dismissed relator's complaint for failure to state a claim; September 7 -- relator filed a notice of appeal, Cuyahoga App. No. 69527, from the common pleas court order of dismissal and relator filed a notice of appeal, Cuyahoga App. No. 69537, from the municipal court order of eviction. None of these subsequent events affected the decision in this case.

[*5] Relator contends she is entitled to a writ of prohibition because respondent patently and unambiguously lacked jurisdiction in the eviction action based upon the concurrent jurisdiction rule since the common pleas court first acquired jurisdiction over the parties and the transaction in dispute. The concurrent jurisdiction rule provides that "as between courts of concurrent jurisdiction, the one whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties. *John Weenink & Sons Co. v. Court of Common Pleas* (1948), 150 Ohio St. 349, 82 N.E.2d 730; see *State ex rel. Phillips v. Polcar* (1977), 50 Ohio St. 2d 279, 364 N.E.2d 33; *Miller v. Court of Common Pleas* (1944), 143 Ohio St. 68, 54 N.E.2d 130.

The Supreme Court of Ohio has generated two lines of authority regarding the application of the concurrent jurisdiction priority rule. *State ex rel. Sellers v. Gerken* (1995), 72 Ohio St. 3d 115, 117, 647 N.E.2d 807. In some cases, as a condition precedent to the operation of the rule, the court has required "that the claims [*6] or causes of

action be the same in both cases. If the second case is not for the same cause of action, nor between the same parties, the former suit will not prevent the latter." *State ex rel. Judson v. Spahr* (1987), 33 Ohio St. 3d 111, 113, 515 N.E.2d 911; see *State ex rel. Sellers v. Gerken* (1995), 72 Ohio St. 3d 115, 647 N.E.2d 807; *State ex rel. Maxwell v. Schneider* (1921), 103 Ohio St. 492, 134 N.E. 443; *State ex rel. Hitchcock v. Cuyahoga County Court of Common Pleas, Probate Div.* (1994), 97 Ohio App. 3d 600, 647 N.E.2d 208. Specifically, in cases which involved a controversy over the title to real property, the Supreme Court of Ohio has held that "the pendency of an action to quiet title to realty in a Court of Common Pleas is not a bar to a forcible entry and detainer action in a Municipal Court." *Haas v. Gerski* (1963), 175 Ohio St. 327, 194 N.E.2d 765, paragraph two of the syllabus; see *State ex rel. Carpenter v. Court* (1980), 61 Ohio St. 2d 208, 400 N.E.2d 391. In *Haas*, the Supreme Court decided the cause of action filed in the municipal court was not the same as the cause of action filed in the common pleas court since the municipal court [*7] action involved the right of present possession and the common pleas action involved the right of title. The court thus concluded that the concurrent jurisdiction priority rule was inapplicable.

This court, in its appellate capacity, also concluded in a case involving real property that the concurrent jurisdiction priority rule was not applicable. In *Cleveland v. A.J. Rose Mfg. Co.* (1993), 89 Ohio App. 3d 267, 624 N.E.2d 245, the first-filed suit in common pleas court sought to enjoin an eviction action, which was subsequently filed in the municipal court. This court applied the principles of *Haas and Carpenter* and held the concurrent jurisdiction priority rule inapplicable.

In a second line of authority emanating from the Supreme Court of Ohio, the court has applied the concurrent jurisdiction priority rule in cases where the two lawsuits were not identical but were sufficiently similar. *State ex rel. Racing Guild of Ohio v. Morgan* (1985), 17 Ohio St. 3d 54, 476 N.E.2d 1060 (injunction suits involving picketing at same premises); *State ex rel. Phillips v. Polcar* (1977), 50 Ohio St. 2d 279, 364 N.E.2d 33 (actions for damages and for rescission based on same real [*8] estate purchase agreement); *John Weenink & Sons Co. v. Court of Common Pleas* (1948), 150 Ohio St. 349, 82 N.E.2d 730 (actions for damages and for declaratory judgment based on same rodeo proceeds). The court permitted the application of the first filed principle since the two lawsuits in each case comprised a part of the same whole issue under consideration.

The issue before us in this prohibition action is whether the municipal court patently and unambiguously lacked jurisdiction to proceed in the eviction action based upon the concurrent jurisdiction rule? Based upon the two lines of authority which have evolved from the Supreme Court of Ohio regarding the concurrent jurisdiction priority rule, we find the issue of jurisdiction unclear in this case. We could conclude, pursuant to one line of authority from the Supreme Court of Ohio, that the causes of action herein are not identical so as to preclude the operation of the concurrent jurisdiction priority rule. We could conclude alternatively, pursuant to the second line of authority, that the causes of action herein are sufficiently similar and thus apply the priority rule. Or, as a third option, we could rely on *A.J. Rose* [*9] and extend it to create a solid forcible entry and detainer exception to the concurrent jurisdiction priority rule regardless of the similarity or dissimilarity of the causes of action. Finally, as a fourth option, we could apply the priority rule after concluding that the causes of action in a general sense are identical since they both include the right of possession. In light of these various available avenues, all of which provoked serious discourse among the members of this bench, it became obvious that the jurisdictional issue in this case was far from patent and unambiguous.

Moreover, service of process is also a condition precedent to the operation of the concurrent jurisdiction priority rule. *State ex rel. Balson v. Harnishfeger* (1978), 55 Ohio St. 2d 38, 377 N.E.2d 750. It is not clear from the record in this case whether or not the municipal court acquired personal jurisdiction over relator.

When the claimed lack of jurisdiction is not obvious, a court having general jurisdiction of the subject matter has the authority to determine its own jurisdiction and an adequate remedy at law via appeal exists to challenge any adverse decision. *Goldstein v. Christiansen* [*10] (1994), 70 Ohio St. 3d 232, 638 N.E.2d 541; *State ex rel. Pearson v. Moore* (1990), 48 Ohio St. 3d 37, 548 N.E.2d 945. The municipal court in this case has general jurisdiction over forcible entry and detainer actions, *R.C. 1923.01(A)*; 1901.181, and therefore has the authority to determine its own jurisdiction with respect to the concurrent jurisdiction priority issue. Relator has an adequate remedy by way of timely appeal from any

adverse judgment, and relator may request a stay of any eviction order. See *R.C. 1923.14; Colonial American Development Co. v. Griffith* (1990), 48 *Ohio St. 3d* 72, 549 *N.E.2d* 513; *State ex rel. P.O.B., Inc. v. Hair* (1986), 23 *Ohio St. 3d* 50, 491 *N.E.2d* 306. We emphasize, however, that we are making no ruling with respect to the jurisdiction issue that may be raised on appeal since our review here is limited to whether jurisdiction is unambiguously lacking and nothing more. See *State ex rel Sellers v. Gerken* (1995), 72 *Ohio St. 3d* 115, 118, 647 *N.E.2d* 807. In other words, relator is not precluded by *res judicata* from presenting this issue on appeal to this court sitting in its appellate capacity.

Accordingly, since we find no patent [*11] and unambiguous lack of jurisdiction to warrant dispensing with relator's adequate remedy of appeal, the alternative writ of prohibition issued August 14, 1995, is hereby dissolved and the permanent writ of prohibition is denied. Costs to relator.

TERRENCE O'DONNELL, J. and

DIANE KARPINSKI J., CONCUR.

LEO M. SPELLACY

PRESIDING JUDGE

Journal Entry

MOTION BY MICHAEL MCLAUGHLIN TO DISMISS IS DENIED. MICHAEL MCLAUGHLIN IS NOT A PARTY TO THIS PROHIBITION ACTION. SEE *CIV.R. 12, 24*.

TERRENCE O'DONNELL, J. and

DIANE KARPINSKI J., CONCUR.

LEO M. SPELLACY

PRESIDING JUDGE