

[Cite as *Montefiore Home v. O'Donnell*, 2018-Ohio-5238.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107074

THE MONTEFIORE HOME

PLAINTIFF-APPELLEE

VS.

KAREN O'DONNELL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Civil Appeal from the
Shaker Heights Municipal Court
Case No. 17 CVF 01368

BEFORE: Jones, J., Boyle, P.J., and Keough, J.

RELEASED AND JOURNALIZED: December 20, 2018

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LARRY A. JONES, SR., J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1, the trial court records and briefs of counsel.

{¶2} Defendant-appellant Karen O'Donnell ("O'Donnell") requested that this appeal from a judgment in favor of plaintiff-appellee The Montefiore Home ("Montefiore") on her counterclaims be placed on our accelerated calendar under App.R. 11.1 and Loc.App.R. 11.1. By doing so, she has agreed that we may render a decision in "brief and conclusionary form" consistent with App.R. 11.1(E).

{¶3} In 2017, Montefiore filed a complaint in Shaker Heights Municipal Court for breach of contract against O'Donnell for her failure to pay the balance of her mother's nursing home bill

from her mother's estate and despite a signed Admission Agreement with the home.¹ O'Donnell counterclaimed alleging numerous class action counterclaims.² Montefiore moved to dismiss pursuant to Civ.R. 12(B)(6). The trial court granted the motion to dismiss in part finding that O'Donnell did not meet the requirements for a class action under Civ.R. 23, but allowed her counterclaims to remain without class action status. O'Donnell filed a timely notice of appeal.

{¶4} In her sole assignment of error, O'Donnell argues that the trial court erred in dismissing the class action claims.

{¶5} We find that the trial court did not abuse its discretion in finding that O'Donnell failed to properly plead a class action pursuant to Civ.R. 23. *See State ex rel. Cook v. Zimpher*, 17 Ohio St.3d 236, 479 N.E.2d 263 (1985) (trial court has broad discretion in determining whether a class may be maintained as a class action). O'Donnell has not shown that the proposed class is so numerous that joinder of all members is impracticable, that there are questions of law or fact common to the class, that the claims and defenses of the representative parties are typical of the claims and defense of the class, or that she would fairly and adequately protect the interests of the class. *See Civ.R. 23(A)*.

{¶6} For example, in her counterclaims, O'Donnell's proposed class included persons who entered into an Admissions Agreement with Montefiore in "the 8 years preceeding the filing of this counterclaim." 42 C.F.R. 483.15(a)(3), which O'Donnell alleged Montefiore violated, was amended in October 2016 to prohibit facilities from requesting a third-party guarantee of payment.

¹ The nursing home alleged that the balance owed was \$5,405.

² It is unclear why, upon assertion of O'Donnell's counterclaims and request for class action status, the municipal court did not transfer the case to the common pleas court. *See R.C. 1907.23*. O'Donnell does not seek a defined monetary amount in her counterclaims and neither party raised this issue; we decline to sua sponte address it on appeal.

Any disputes involving class members sued prior to October 2016 would be subject to a previous version of 42 C.F.R. 483.15, that did not include that prohibition. O'Donnell, who signed the Admissions Agreement with Montefiore in March 2017, did not sign a personal guarantee, and thus the claims and defenses of O'Donnell as the representative party would not be typical of the claims and defenses of the proposed class and would not fairly and adequately protect the interests of the proposed class.

{¶7} Finally, we note that Montefiore argues on appeal that none of O'Donnell's claims have merit and therefore the trial court should have granted its Civ.R. 12(B)(6) motion to dismiss.

The sole issue before this court, however, is whether the trial court erred in denying the class action. Montefiore did not file a cross-appeal arguing that the trial court erred in failing to dismiss O'Donnell's claims in toto. Thus, it is premature for this court to determine whether O'Donnell's counterclaims, as they stand without class action status, have merit. *See Ojalvo v. Bd. of Trustees*, 12 Ohio St.3d 230, 233, 466 N.E.2d 875 (1984) (The certification stage of a class action is not an appropriate time to delve into the merits of a case.).

{¶8} Judgment affirmed. Case remanded for proceedings on O'Donnell's counterclaims without class action status.

It is ordered that appellant and appellee split the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Shaker Heights Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., JUDGE

MARY J. BOYLE, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR