

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

CONNIE THOMPSON, as Conservator for
Barbara Hansford

C.A. No. 29226

Appellee

v.

STACY HANSFORD

APPEAL FROM JUDGMENT
ENTERED IN THE
AKRON MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 18CV07241

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 28, 2019

HENSAL, Judge.

{¶1} Stacy Hansford appeals a judgment of the Akron Municipal Court that allowed a writ of restitution to Connie Thompson, conservator of Barbara Hansford. For the following reasons, this Court reverses.

I.

{¶2} Barbara Hansford owns a home in Akron where she and her daughter Stacy Hansford lived for many years. In October 2015, Barbara Hansford created a revocable living trust with her as the trustee and her daughter as the successor trustee. The same day, she deeded the Akron home to the trust. A few days later, a doctor diagnosed Barbara Hansford with early-stage dementia.

{¶3} At some point during the next year, Barbara Hansford moved to Missouri. Stacy Hansford remained living in the Akron home. In December 2016, Barbara Hansford revoked a power of attorney that she had previously signed. A week later she revoked the trust agreement.

She subsequently conveyed the Akron home back to herself. In July 2017, a Missouri court appointed Ms. Thompson conservator of Barbara Hansford. Ms. Thompson testified that her responsibility as conservator is to oversee Barbara Hansford's financial interests.

{¶4} According to Ms. Thompson, after being appointed Barbara Hansford's conservator, Barbara Hansford told her that she would like the Akron home sold. Ms. Thompson testified that, since November 2017, she has paid over \$2,700 in utilities and \$5,500 in property taxes to maintain the home even though Barbara Hansford has no intention of returning to Ohio. She testified that she asked Stacy Hansford to pay the utilities, but Stacy Hansford told her it was too expensive. She, therefore, asked Stacy Hansford to vacate the home. Stacy Hansford refused, claiming that the home still belongs to the trust.

{¶5} In August 2018, Ms. Thompson filed a complaint for forcible entry, detainer, and other money damages in the Akron Municipal Court, seeking to evict Stacy Hansford from the Akron home. Stacy Hansford counterclaimed, alleging that the property had been fraudulently transferred and seeking to quiet title of the property in the trust. She also moved to transfer the case to the court of common pleas because her counterclaim exceeded the jurisdictional limits of the court. The case proceeded to a hearing before a magistrate. Following the hearing, the magistrate determined that Stacy Hansford failed to establish that Barbara Hansford was incompetent at the time she revoked the trust. He also determined that, even if Barbara Hansford had been incompetent, Stacy Hansford did not have any right to possess the Akron home under the terms of the trust. He further determined that Stacy Hansford's counterclaims did not deprive the municipal court of jurisdiction over Ms. Thompson's forcible entry and detainer action. He, therefore, concluded that a writ should be granted. The municipal court filed a journal entry that

same day ordering that a writ of restitution be allowed. Stacy Hansford has appealed, assigning four errors.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED IN ADOPTING THE MAGISTRATE'S DECISION BECAUSE IT WAS IMPROPER FOR THE MUNICIPAL COURT TO RETAIN JURISDICTION OVER, AND SUBSEQUENTLY DISPOSE OF, CLAIMS EXCEEDING ITS JURISDICTION RATHER THAN TRANSFER THE ENTIRE CASE TO THE COURT OF COMMON PLEAS FOR A FULL ADJUDICATION.

{¶6} Stacy Hansford argues that the trial court incorrectly proceeded with Ms. Thompson's forcible entry and detainer action even though it did not have jurisdiction over her counterclaims. "A trial court's authority to determine a matter in controversy is a question of law, which this Court reviews de novo." *Servpro v. Kinney*, 9th Dist. Summit No. 24969, 2010-Ohio-3494, ¶ 11.

{¶7} Initially, we note that the Ohio Supreme Court has held that "[a] counterclaim may be interposed in any action in forcible entry and detainer, as authorized by Civ.R. 13." *Jemo Assocs., Inc. v. Garman*, 70 Ohio St.2d 267 (1982), paragraph one of the syllabus. We also note that a municipal court has jurisdiction "only in those cases in which the amount claimed * * * does not exceed fifteen thousand dollars * * *." R.C. 1901.17; see *Behrle v. Beam*, 6 Ohio St.3d 41, 42 (1983) ("The General Assembly alone may provide for the creation of [municipal] courts and their jurisdictional powers.").

{¶8} Stacy Hansford's fraudulent-transfer counterclaim requested damages in excess of \$25,000, which is greater than the municipal court's monetary jurisdiction. Civil Rule 13(J) provides that, "[i]n the event that a counterclaim, cross-claim, or third-party claim exceeds the jurisdiction of the court, the court shall certify the proceedings in the case to the court of

common pleas.” Similarly, Revised Code Section 1901.22(E) provides that, “[i]n any action in a municipal court in which the amount claimed by any defendant in any statement of counterclaim exceeds the jurisdictional amount, the judge shall certify the proceedings in the case to the court of common pleas * * *.”

{¶9} Although Stacy Hansford’s fraudulent transfer counterclaim exceeded the jurisdictional limits of the municipal court, the court did not certify the case to the common pleas court. Instead, the magistrate found that the counterclaims “are nothing more than a vague attempt to draw[] Barbara Hansford’s title into question and merely cites an amount of damages above the jurisdictional limits of this Court.” He determined that the municipal court would not allow Stacy Hansford to “stall” the forcible entry and detainer action “merely by pleading an amount over \$15,000.00 and arguing matters wholly unrelated to the possession of the property.”

{¶10} “The simple language of R.C.1901.22(E) * * * suggests that a municipal court has no choice but to certify or transfer a case where a counterclaim exceeds the applicable jurisdictional ceiling.” *State ex rel. Pennington v. Fiehrer*, 12th Dist. Butler No. CA93-08-167, 1993 WL 491631, *2 (Nov. 29,1993). Similarly, the Eleventh District Court of Appeals has concluded that “[a] logical interpretation” of Rule 13(J) “requires the entire case to be certified to the common pleas court.” *State, ex rel. Penn v. Swain*, 21 Ohio App.3d 119, 121 (11th Dist.1984). The Eighth District Court of Appeals has concluded, however, that a municipal court does not have to certify cases to the common pleas “based solely upon the amount stated in the demand” but instead is “authorized to examine the new claims to determine whether they state authentic claims that exceed its monetary jurisdiction[.]” *State ex rel. El Turk v. Comstock*, 8th Dist. Cuyahoga Nos. 106444, 106446, 2018-Ohio-2125, ¶ 6; *Hersch v. Debreczeni*, 33 Ohio App.2d 235, 238-239 (8th Dist.1973). We note that, even if this Court were to adopt the Eighth

District's position, Ms. Thompson did not argue that Stacy's Hansford's fraudulent-transfer counterclaim was not authentic, and the magistrate did not examine whether it met the formal requirements of the civil rules. *Hersch* at 238, citing Civ.R. 8(A); see *Easy Living, Inc. v. Davis*, 1st Dist. Hamilton No. C-840401, 1985 WL 6743, *1 (Apr. 17, 1985) (explaining that, because the counterclaim that "prayed for damages in excess of the monetary jurisdiction of the municipal court * * * met all the requisites of Rule 8(A)[,] * * * the trial court should have certified the action to the common pleas court.").

{¶11} Ms. Thompson argues that the municipal court was permitted to bifurcate her forcible entry and detainer action from Stacy Hansford's counterclaims, relying on the Fifth District Court of Appeals' decision in *Lyons v. Link*, 5th Dist. Knox No. 03CA000006, 2003-Ohio-2706. The Fifth District held that certification was not necessary in that case because it determined that Civil Rule 13(J) does not apply to a forcible entry and detainer action. *Id.* at ¶ 11, citing Civ.R. 1(C). We note that *Lyons* did not address whether Section 1901.22(E) applies in the absence of Rule 13(J). We also note that the Fifth District later held in *Isaiah's Wings, LLC v. McCourt*, 5th Dist. Knox No. 2005-CA-39, 2006-Ohio-3573, that a counterclaim may not be severable from the forcible entry and detainer action if it "is so interrelated as to require the issues all be heard together." *Id.* at ¶ 6.

{¶12} The Fifth District appears to be the only district which has allowed a municipal court to bifurcate a forcible entry and detainer action from a counterclaim that exceeds the monetary jurisdiction of the court. Its decision in *Lyons* also did not discuss its prior decision in *Marino v. Grewell*, 5th Dist. Tuscarawas No. 93-AP-020012, 1993 WL 364937 (Aug. 5, 1993), in which it held:

When an action in forcible entry and detainer is filed in a municipal court and involves several issues which the municipal court does not have jurisdiction to

determine, it is error for the court to decide only the forcible entry and detainer part of the case, rather than transferring the entire action to the common pleas court for a complete adjudication upon all the issues involved.

Id. at *2, quoting *Richwood Homes, Inc. v. Brown*, 3 Ohio App.3d 204 (10th Dist.1981), paragraph two of the syllabus.

{¶13} Ultimately, it is not necessary for this Court to determine whether it would adopt the reasoning of the Fifth District because, even under *Isaiah's Wings*, the municipal court should have transferred this action to the court of common pleas. Ms. Thompson's forcible entry and detainer action was based on her assertion that Barbara Hansford validly transferred ownership of the Akron home from the trust back to herself. According to Stacy Hansford's counterclaim, however, Barbara Hansford was incapacitated or incompetent at the time of that transfer. The counterclaim also asserted that Stacy Hansford was the trust's acting trustee. Thus, the forcible entry and detainer action and the counterclaim were so interrelated that they could not be decided separately. *See Isaiah Wings, LLC*, 2006-Ohio-3573, at ¶ 5; *New Asian Super Market v. Weng*, 10th Dist. Franklin No. 17AP-207, 2018-Ohio-1248, ¶ 19.

{¶14} Upon review of the record, we conclude that the municipal court did not have jurisdiction over this action because Stacy Hansford's counterclaim demanded damages in excess of \$15,000. R.C. 1901.17. "A judgment rendered by a court which has no jurisdiction over the subject matter is void." *M&T Constr. and Excavating, Inc. v. Koe-Krompecher*, 4th Dist. Gallia No. 91CA10, 1991 WL 261014 (Dec. 3, 1991), citing *Patton v. Diemer*, 35 Ohio St.3d 68 (1988), paragraph three of the syllabus. Stacy Hansford's first assignment of error is sustained. Our decision on the first assignment of error renders Stacy Hansford's remaining assignments of error moot. We, therefore, decline to address them. App.R. 12(A)(1)(c).

III.

{¶15} The municipal court did not have jurisdiction to decide Ms. Thompson's forcible entry and detainer action. The judgment of the Akron Municipal Court is vacated, and this matter is remanded for further proceedings consistent with this decision.

Judgment vacated,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Akron Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

JENNIFER HENSAL
FOR THE COURT

TEODOSIO, P. J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

WARNER MENDENHALL and BRIAN UNGER, Attorneys at Law, for Appellant.

J. REID YODER, Attorney at Law, for Appellee.