

[Cite as *Richmond's Ent., Inc. v. Anderson*, 2016-Ohio-609.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

RICHMOND'S ENTERPRISE, INC.	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 26674
	:	
v.	:	Trial Court Case No. 14-CVG-1225
	:	
MATTIE N. ANDERSON	:	(Civil Appeal from
	:	Dayton Municipal Court)
Defendant-Appellant	:	
	:	

.....

OPINION

Rendered on the 19th day of February, 2016.

.....

JULIA C. KOLBER, Atty. Reg. No. 0078855, Boucher & Boucher Co., L.P.A., 12 West Monument Avenue, Suite 200, Dayton, Ohio 45402-1202
Attorney for Plaintiff-Appellee

KELLI A. BARTLETT, Atty. Reg. No. 0077263, Legal Aid of Western Ohio, Inc., 130 West Second Street, Suite 700 West, Dayton, Ohio 45402
Attorney for Defendant-Appellant

.....

HALL, J.

{¶ 1} Mattie N. Anderson appeals from the trial court's entry of judgment against her on a forcible-entry-and-detainer claim brought by plaintiff-appellee Richmond's

Enterprise, Inc.

{¶ 2} In her sole assignment of error, Anderson contends the trial court erred in failing to dismiss the claim as moot where she vacated a house she leased from Richmond's Enterprise and returned the keys prior to a hearing on the issue.

{¶ 3} The record reflects that Anderson was a long-term tenant in a house owned by Richmond's Enterprise. In April 2014, Richmond's Enterprise filed a two-count complaint against Anderson. Count one set forth a claim for forcible entry and detainer, seeking possession of the house. Count two sought unpaid rent and other damages. The case proceeded to a May 15, 2014 hearing before a magistrate. At the outset of the hearing, counsel for Richmond's Enterprise stipulated that Anderson had "vacated the property." (Hearing Tr., Doc. #14 at 1). Specifically, counsel stipulated that Anderson had "moved from the premises" on May 5, 2014. (*Id.* at 3). The first witness for Richmond's Enterprise, Jeffrey Richmond, then testified that he had received the "keys to the property." (*Id.* at 11). Based on the fact that possession of the house had been returned to Richmond's Enterprise, Anderson moved to dismiss the forcible-entry-and-detainer claim as moot. (*Id.* at 1). Richmond's Enterprise opposed the motion, arguing that it still was entitled to an order granting it restitution of the premises because Anderson did not move out until after its complaint had been filed. (*Id.* at 1). The magistrate overruled Anderson's motion to dismiss, reasoning: "For the record, I will overrule the motion to dismiss based on plaintiff's desire to still move forward; even though I believe there's an agreement that the keys have been rendered, but that just happened today." (*Id.* at 2). The magistrate then granted Richmond's Enterprise restitution of the premises. (*Id.* at 31; see also Doc. #13). The magistrate continued the second cause of action regarding

damages. (Doc. #14 at 31).

{¶ 4} Anderson filed objections to the magistrate's ruling. Among other things, she argued that the magistrate had erred in awarding restitution of the premises where that issue was moot at the time of the hearing. (Doc. #15 at 3). While her objections were pending, the parties filed an agreed entry settling the second cause of action regarding damages. (Doc. #17). As a result, the second cause of action was dismissed, leaving only the forcible-entry-and-detainer claim for resolution. (*Id.*). The trial court then overruled Anderson's objections to the magistrate's forcible-entry-and-detainer ruling. With regard to mootness, it reasoned:

While the parties stipulated that Defendant vacated the premises on May 5, 2014, the Magistrate clearly stated on the record that the parties agreed that the keys were not returned to Plaintiff until the day of the Eviction Trial. The Magistrate then asked Plaintiff if restitution of the premises was still an issue and Plaintiff indicated that it was still seeking a Writ of Restitution. The Court finds that the Magistrate correctly proceeded with the Eviction Trial. Plaintiff did not have full possession of the premises until it had the keys. Plaintiff would not know until after the Eviction Trial whether Defendant had completely vacated and removed her belongings or whether a Writ was needed.

(Doc. #19 at 2).

{¶ 5} On April 23, 2015, the trial court filed its judgment entry in favor of Richmond's Enterprise. This appeal followed.

{¶ 6} The sole issue raised by Anderson on appeal is whether the trial court erred

in failing to dismiss the forcible-entry-and-detainer cause of action as moot. It is well settled that forcible-entry-and-detainer actions determine only the right to immediate possession of the property. *Cherry v. Morgan*, 2d Dist. Clark Nos. 2012 CA 11, 2012 CA 21, 2012-Ohio-3594, ¶ 4, citing *Seventh Urban, Inc. v. University Circle Property Development, Inc.*, 67 Ohio St.2d 19, 25, 423 N.E.2d 1070 (1981). Therefore, “[o]nce a landlord has been restored to the property, the forcible entry and detainer action becomes moot because, having been restored to the premises, there is no further relief that can be granted.” (Citation omitted). *Id.* Ordinarily, “when a case is deemed moot, the proper remedy is dismissal, the basis for which is that there is no controversy for the court to decide.” *Monroe v. Korleski*, 10th Dist. Franklin No. 10AP-718, 2011-Ohio-1784, ¶ 10. We review a trial court’s decision to hear an otherwise-moot case under an abuse-of-discretion standard because a trial court may, in its discretion, render judgment on a moot issue if it determines that an exception to mootness applies. *Brown v. Dayton*, 2d Dist. Montgomery No. 24900, 2012-Ohio-3493, ¶ 9.

{¶ 7} Here the forcible-entry-and-detainer action against Anderson became moot prior to the hearing on the issue. As set forth above, counsel for Richmond’s Enterprise stipulated, at the outset of the hearing, that Anderson already had “vacated the property” and had “moved from the premises.” Witness Jeffrey Richmond also testified that he had received the “keys to the property.” Because the only issue in a forcible-entry-and-detainer action is the right to immediate possession of the premises, and Richmond’s Enterprise admittedly had obtained possession prior to the hearing, there was nothing for the magistrate or the trial court to decide with regard to restitution of the premises. The issue was moot.

{¶ 8} In reaching the forgoing conclusion, we are unpersuaded by the trial court's observation that "Plaintiff did not have full possession of the premises until it had the keys" and "would not know until after the Eviction Trial whether Defendant had completely vacated and removed her belongings[.]" Even accepting, *arguendo*, that Richmond's Enterprise did not have "full possession" until it had the keys, it obtained those keys just before the hearing started. At that point, it did have "full possession," meaning that there was nothing for the magistrate to decide. As for the trial court's concern that Richmond's Enterprise did not know, until after the hearing, whether Anderson had "fully vacated" the house and removed her belongings, Richmond's Enterprise stipulated, before the hearing, that Anderson had "vacated the property" and had "moved from the premises." If Richmond's Enterprise had any doubt about whether Anderson really was out of the house, it should not have stipulated that she was gone. In light of the stipulation by Richmond's Enterprise that she had vacated and moved out, we believe the trial court's concerns were misplaced.

{¶ 9} On appeal, Richmond's Enterprise suggests that (1) the keys Anderson returned may not have been the keys to the house, (2) other family members may have been residing in the house, or (3) some of Anderson's possessions may have remained inside the house. These arguments fail to persuade us that the forcible-entry-and-detainer action was not moot. The record contains no evidence to suggest that any of these circumstances existed. Jeffrey Richmond testified that he had received the "keys to the property." He could have known this by comparing the keys he received to a spare set of keys in his possession. Or he simply may have assumed that the keys Anderson returned

were the keys to the house. Either way, he freely acknowledged that the “keys to the property” had been returned to him. We note too that the lease agreement did not authorize anyone else to reside in the house, and Richmond’s Enterprise did not allege any unauthorized occupation. With regard to personal property potentially left in the house, any such property would have been abandoned by Anderson once she moved out and returned the keys to Richmond’s Enterprise. In any event, leaving personal property in the house would not avoid a finding of mootness because the only issue in a forcible-entry-and-detainer action is the landlord’s right to immediate possession of the premises, which Richmond’s Enterprise admitted they had obtained by virtue of their stipulation.

{¶ 10} We also do not find any exceptions to mootness that the trial court could have relied on below. Such exceptions include determining (1) that a matter is capable of repetition yet evading review, (2) that a matter produces adverse collateral consequences for the party challenging mootness, or (3) that a matter involves an important constitutional question. *Brown* at ¶ 11. We fail to see how the trial court could have invoked any of these exceptions to avoid finding the forcible-entry-and-detainer action moot once Anderson moved out of the house and returned the keys to Richmond’s Enterprise.

{¶ 11} In a final argument, Richmond’s Enterprise contends Anderson’s appeal itself is moot because she has vacated the premises. In essence, Richmond’s Enterprise turns Anderson’s own argument on its head. Richmond’s Enterprise uses Anderson’s argument that the trial court should have dismissed its forcible-entry-and-detainer claim to suggest that we should dismiss her appeal as moot for the same reason. Richmond’s Enterprise asserts that, by statute, Anderson was required to seek a stay of a writ of

restitution and to post a bond to avoid having her appeal dismissed as moot.

{¶ 12} We find the foregoing argument unpersuasive. Anderson did not need to seek a stay and post a bond because she was not attempting to forestall being evicted from the house. She already had vacated it. Moreover, the record suggests that Anderson herself may suffer adverse collateral consequences if the trial court's judgment on the moot forcible-entry-and-detainer claim is permitted to stand. The record reflects that Anderson participates in the HUD Housing Choice Voucher Program (Section 8). (See attachments to Doc. #1; see *also* Hearing Tr. at 4-5). This court has recognized that a federal regulation, 24 C.F.R. 982.552, applies to that program and gives a public housing agency authority to deny admission or terminate assistance to anyone who was been evicted from federally assisted housing in the past five years. *Gold Key Realty v. Collins*, 2d Dist. Greene No. 2013 CA 57, 2014-Ohio-4705, ¶ 26. In our view, the existence of a judgment against Anderson on the moot forcible-entry-and-detainer claim creates a non-speculative and reasonably-possible adverse collateral consequence for Anderson that is sufficient to avoid us finding her appeal moot.

{¶ 13} Based on the reasoning set forth above, we conclude that the trial court erred in denying Anderson's motion to dismiss the forcible-entry-and-detainer claim as moot. Her assignment of error is sustained. The trial court's entry of judgment against Anderson on the moot forcible-entry-and-detainer claim is reversed and vacated.¹

.....

DONOVAN, P.J., and FROELICH, J., concur.

¹ As noted above, the complaint filed by Richmond's Enterprise also included a cause of action for damages, which was settled and dismissed, leaving only the forcible-entry-and-detainer claim for our resolution, but the trial court retains authority over the dismissed claim if enforcement of the settlement becomes an issue. (Doc. #17).

Copies mailed to:

Julia C. Kolber

Kelli A. Bartlett

Hon. Daniel G. Gehres