

COURT OF APPEALS  
KNOX COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

RANDALL KISE, II	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellant	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-VS-	:	
	:	
DAVID BARBER, KNOX COUNTY	:	Case No. 05CA000012
SHERIFF	:	
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Mount Vernon Municipal Court, Case No. 05CVH101

JUDGMENT: Reversed

DATE OF JUDGMENT ENTRY: December 5, 2005

APPEARANCES:

For Plaintiff-Appellant

PHILLIP D. LEHMKUHL  
100 North Main Street  
Suite 100  
Mount Vernon, OH 43050

For Defendant-Appellee

JENNIFER L. SPRINGER  
117 East High Street  
Suite 234  
Mount Vernon, OH 43050

*Farmer, J.*

{¶1} On October 24, 2004, appellant, Randall Kise, II, was charged with one count of domestic violence, one count of resisting arrest and one count of assault. During the arrest, Knox County Sheriff's Deputies seized a .22 caliber revolver.

{¶2} The charges were subsequently dismissed. By letter dated January 11, 2005, appellant requested the return of his firearm. The prosecutor's office denied the request, citing the firearm was evidence.

{¶3} On February 1, 2005, appellant filed a complaint against appellee, Sheriff David Barber, for the return of the firearm. On February 8, 2005, the Knox County Grand Jury indicted appellant on two counts of assault upon two deputies in connection with the aforementioned arrest. On February 11, 2005, appellee filed a motion to dismiss appellant's complaint as appellant could not legally possess any firearms while under the indictment. On February 15, 2005, appellant filed an amended complaint with leave requesting that the firearm be returned to his mother. A hearing was held on March 23, 2005. By journal entry filed March 23, 2005, the trial court dismissed appellant's complaint for lack of jurisdiction.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶5} "THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DISMISSED APPELLANT'S AMENDED COMPLAINT FOR LACK OF JURISDICTION."

## II

{¶6} "THE TRIAL COURT ERRED AS A MATTER OF LAW BY FAILING TO OVERRULE THE OHIO CIVIL RULE 12(B)(6) MOTION OF THE DEFENDANT."

## I, II

{¶7} Appellant claims the trial court erred in dismissing his complaint for lack of subject matter jurisdiction. We agree.

{¶8} The trial court dismissed appellant's complaint pursuant to appellee's Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief may be granted.

{¶9} Our standard of review on a Civ.R. 12(B)(6) motion to dismiss is de novo. *Greely v. Miami Valley Maintenance Contrs. Inc.* (1990), 49 Ohio St.3d 228. A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 1992-Ohio-73. Under a de novo analysis, we must accept all factual allegations of the complaint as true and all reasonable inferences must be drawn in favor of the nonmoving party. *Byrd. v. Faber* (1991), 57 Ohio St.3d 56.

{¶10} Attached to appellee's motion to dismiss were various exhibits including appellant's recent indictment for a felony of violence. In granting the motion, the trial court stated "the gun subject of this action is evidence in a criminal matter\*\*\*[a]ccordingly, this Court no longer has jurisdiction over the subject matter of this action." See, Journal Entry filed March 23, 2005.

{¶11} We find this determination to be in error under a Civ.R. 12(B)(6) standard for the following reason. R.C.1901.18 defines the subject matter jurisdiction of a

municipal court to include "any action or proceeding at law for the recovery of money or personal property of which the court of common pleas has jurisdiction" and "any action of replevin." See, R.C. 1901.18(A)(2) and (7).

{¶12} Clearly appellee is entitled to defend against the return of the weapon under R.C. 2923.13(A) or argue that the gun is contraband. However, under a Civ.R. 12(B)(6) standard, this issue is not ripe for review.

{¶13} Upon review, we find the trial court erred in dismissing appellant's complaint for lack of jurisdiction.

{¶14} Assignments of Error I and II are granted.

{¶15} The judgment of the Mount Vernon Municipal Court of Knox County, Ohio is hereby reversed.

By Farmer, J.

Gwin, P.J. and

Wise, J. concur

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JUDGES

IN THE COURT OF APPEALS FOR KNOX COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

RANDALL KISE, II

Plaintiff-Appellant

-vs-

DAVID BARBER, KNOX COUNTY  
SHERIFF

Defendant-Appellee

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JUDGMENT ENTRY

Case No. 04CA000012

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Mount Vernon Municipal Court of Knox County, Ohio is reversed.

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JUDGES