

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ROSEMARY PIROLOZZI

Plaintiff-Appellee

-VS-

REATHA MURPHY

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 2014 AP 12 0051

OPINION

CHARACTER OF PROCEEDING:

Appeal from New Philadelphia
Municipal Court, Case No. CVG
1400670

JUDGMENT:

Dismissed and Remanded

DATE OF JUDGMENT:

May 13, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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P.O. Box 711
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JOSEPH I. TRIPODI
114 East High Avenue
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Farmer, J.

{¶1} On May 2, 2011, appellant, Reatha Murphy, entered into a land contract with appellee, Rosemary Pirolozzi, for the purchase of real property located in Mineral City, Ohio.

{¶2} On or about July 22, 2014, appellee sent appellant a notice of forfeiture for non-payment of monthly payments and real estate taxes under the land contract. A notice to leave premises was served upon appellant on or before August 9, 2014.

{¶3} On August 14, 2014, appellee filed a complaint in the New Philadelphia Municipal Court for forfeiture of interest in land installment contract and forcible detainer against appellant. On August 26, 2014, appellant filed an answer and counterclaim, claiming in part damages exceeding the monetary jurisdiction of the municipal court.

{¶4} A pretrial was held on October 9, 2014. By judgment entry filed November 3, 2014, the trial court determined it would retain jurisdiction over the complaint's forcible detainer claim and the counterclaim's specific performance claim, and the remainder of the claims would be transferred to the court of common pleas.

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

I

{¶6} "THE TRIAL COURT COMMITTED AN ERROR OF LAW IN ITS INTERPRETATION OF *BEHRLE V. BEAM* IN THAT THE MUNICIPAL COURT FAILED TO RETAIN JURISDICTION OVER THE LEGAL AND EQUITABLE ISSUES AND REMEDIES WHICH ARISE IN THE PLEADINGS IN THE INSTANT CAUSE."

II

{¶7} "THE TRIAL COURT COMMITTED AN ERROR OF LAW WHEN IT REFUSED TO RETAIN JURISDICTION OF THE CASE AND FOLLOW OHIO LAW, WHICH ERROR SUBJECTS APPELLANT TO DEFENSES OF *RES JUDICATA* AND ISSUE PRECLUSION AS STATED IN *GRAVA V. PARKMAN TWP* (SUPRA)."

III

{¶8} "THE TRIAL COURT COMMITTED AN ABUSE OF DISCRETION WHEN IT REFUSED TO PERMIT APPELLANT TO DEPOSIT PAYMENTS DUE WITH THE CLERK OF COURTS, IN THE INSTANT CAUSE, PENDING TRIAL."

I, II, III

{¶9} Appellant claims the trial court erred in refusing to retain jurisdiction over the entire case and erred in denying her the right to deposit amounts owed with the clerk of courts pending resolution of the matter. Based upon our review of the record, we find this appeal lacks a final appealable order.

{¶10} Ohio law provides that appellate courts have jurisdiction to review only final orders or judgments. See *generally* Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505 .02. If an order is not final and appealable, an appellate court has no jurisdiction to review the matter and it must be dismissed. To be final and appealable, an order must comply with R.C. 2505.02. Subsection (B) provides the following in pertinent part:

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment.

{¶11} In previous cases we have found the issuance of a writ of restitution of the premises to be a final appealable order; however, a writ of restitution was not issued in this case. Appellee's complaint was for forfeiture of the premises under R.C. Chapter 5313 and forcible detainer. On August 26, 2014, appellant filed an answer and counterclaim, claiming in part damages exceeding the monetary jurisdiction of the municipal court.

{¶12} A pretrial was held on October 9, 2014. During the pretrial, an extensive discussion was held as to whether the trial court could retain jurisdiction of the case in light of appellant's counterclaim seeking damages in excess of its monetary limits. By judgment entry filed November 3, 2014, the trial court determined the following:

The court finds that the complaint for forcible entry and detainer and the second counterclaim for specific performance should be retained in this court for trial, but that the remaining counts of the counterclaim, as presently filed, must be transferred to the Tuscarawas County Court of

Common Pleas after the trial is concluded. The court finds that it has no jurisdiction to consider or enter a monetary judgment on behalf of the defendant in excess of \$15,000.00, as prayed for in counterclaim. ORC 1901.17 and 1901.18.

The court finds that the defendant's counterclaim for monetary judgment in excess of the court's statutory jurisdiction distinguishes the present case from *Berhle v. Beam*, (1983) 6 Ohio St. 3d 41. In *Berhle* neither party was seeking a monetary judgment.

{¶13} Within the judgment entry, the trial court set a trial date for December 29, 2014. On November 26, 2014, appellant filed a notice of appeal on the trial court's decision. On December 4, 2014, the trial court stayed the trial date because of the filing of the appeal.

{¶14} Without any determination by the trial court that affects a judgment, this case does not have a final appealable order.

{¶15} Based upon this finding, the appeal is hereby dismissed and the matter is remanded to the New Philadelphia Municipal Court for continuation of the case.

By Farmer, J.

Gwin, P.J. and

Wise, J. concur.

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