

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

V. CAROLE ALFF

Plaintiff-Appellant

-vs-

MEGAN LYNN BALL

Defendant-Appellee

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JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case Nos. 14-CA-56

14-CA-61

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Municipal Court,
Case No. 13CVG01683

JUDGMENT:

Dismissed

DATE OF JUDGMENT:

July 30, 2015

APPEARANCES:

For Plaintiff-Appellant

C. BERNARD BRUSH
5530 Columbia Road, SW
Pataskala, OH 43062

For Defendant-Appellee

MICHAEL J. O'REILLY
BRIAN J. CALANDRA
30 Hill Road South
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Farmer, J.

{¶1} On July 16, 2013, appellant, V. Carole Alff, filed a forcible entry and detainer and damages action against appellee, Megan Lynn Ball. Appellee filed a handwritten answer on August 14, 2013. On February 26, 2014, appellee filed a motion for leave to file an amended answer and a counterclaim instantler. On March 5, 2014, appellant filed a Civ.R. 41(A) voluntary dismissal of the complaint. On March 12, 2014, the trial court granted the motion for leave.

{¶2} On September 22, 2014, the trial court set the matter for trial, finding the voluntary dismissal was invalid because appellee's counterclaim had been served upon appellant prior to the filing of the dismissal. Appellant filed an appeal (Case No. 14CA00056).

{¶3} On October 20, 2014, appellant filed a Civ.R. 60(B) motion for relief from judgment, seeking to vacate the September 22, 2014 judgment entry. By judgment entry filed October 21, 2014, the trial court denied the motion. Appellant filed an appeal (Case No. 14CA00061).

{¶4} The two cases were consolidated by this court on December 1, 2014. This matter is now before this court for consideration. Assignments of error are as follows:

I

{¶5} "THE TRIAL COURT ERRED IN RETAINING JURISDICTION OVER THE ACTION AFTER PLAINTIFF-APPELLANT FILED HER CIVIL RULE 41(A)(1) DISMISSAL."

II

{¶6} "WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING APPELLANT'S 60(B) MOTION FOR RELIEF WITHOUT HOLDING AN EVIDENTIARY HEARING."

I, II

{¶7} Appellant claims the trial court erred in retaining jurisdiction of the case after her Civ.R. 41.(A)(1) voluntary dismissal was filed and erred in denying her subsequent Civ.R. 60(B) motion for relief from that judgment.

{¶8} Appellee has filed a motion to dismiss the appeals, claiming no final appealable order.

{¶9} In *State of Ohio, ex rel. V. Carole Alff v. Patrick N. Harris, Judge*, 5th Dist. Fairfield No. 15-CA-11, 2015-Ohio-_____, ¶10 and 11, filed June 29, 2015, this court granted the following writs of prohibition and mandamus:

Civ.R. 41 prohibits a plaintiff from filing a voluntary dismissal if the plaintiff has been served with a counterclaim. In this case, the plaintiff below had not been served with a filed counterclaim. Rather, she had merely been served with a motion for leave to file a counterclaim. Even if a copy of the proposed counterclaim was included in the motion, no counterclaim was pending or had been filed prior to the filing of the Civ.R. 41(A) dismissal. For this reason, the Civ.R. 41(A) dismissal was valid and divested the trial court of any jurisdiction to act following its filing. We have concluded the trial court is about to act and has acted without

authority to do so. We further find there is no adequate remedy at law.

"To be an adequate remedy at law, it must be complete, beneficial, and speedy." *State ex rel. Arnett v. Winemiller* (1997), 80 Ohio St.3d 255, 259, 685 N.E.2d 1219, 1222. Because of the time and resources required for a trial, an appeal following a trial would not be complete, speedy and beneficial. For these reasons, the requested writ of prohibition will issue.

We also find the writ of mandamus is appropriate in this case. Respondent has a clear legal duty to close the case once the voluntary dismissal was filed. Relator has a right to have the dismissal recognized. As above, an appeal would not provide an adequate remedy at law.

{¶10} Based upon this decision, the assignments of error herein and the motion to dismiss are moot. The appeals are dismissed and the motion to dismiss is denied.

By Farmer, P.J.

Wise, J. and

Delaney, J. concur.

SGF/sg