

[Cite as *Holt v. Cuyahoga Cty.*, 2017-Ohio-748.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104732

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**CLIFFORD HOLT**

PLAINTIFF-APPELLANT

vs.

**COUNTY OF CUYAHOGA, ET AL.**

DEFENDANTS-APPELLEES

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**JUDGMENT:**  
**REVERSED AND REMANDED**

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Civil Appeal from the  
Cleveland Municipal Court  
Case No. 2015 CVI 016624

**BEFORE:** Kilbane, P.J., McCormack, J., and Boyle, J.

**RELEASED AND JOURNALIZED:** March 2, 2017

**APPELLANT**

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**ATTORNEYS FOR APPELLEES**

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MARY EILEEN KILBANE, P.J.:

{¶1} Plaintiff-appellant, Clifford Holt (“Holt”), pro se, appeals the Cleveland Municipal Court’s judgment affirming the magistrate’s decision and entering judgment in favor of defendants-appellees, the County of Cuyahoga (the “County”) and Dennis G. Kennedy, Fiscal Officer of Cuyahoga County (collectively referred to as “defendants”). In that decision, the magistrate found Holt liable for \$150.55 in penalties assessed for the late payment of his 2014 property tax bill. For the reasons set forth below, we reverse and remand the matter instructing the trial court to vacate the \$150.55 judgment and dismiss for lack of jurisdiction.

{¶2} Holt is the owner of real property located at 3566 Bainbridge Road, Cleveland Heights, Ohio. The County sent Holt a real estate tax bill for the first half of 2014 for his property. The bill stated that the full year tax amount for his property was \$5,841.86. The bill further stated that January 22, 2015, was the last day to pay his taxes without a penalty and if payment was received later than January 22, 2015, Holt would be subject to a 10 percent penalty. Holt mailed a check in the amount of \$5,841.86 to the County. The check was processed on February 4, 2015, by a third-party, Key Bank. There was no postmark on the envelope to indicate that the check was mailed on January 22, 2015. On the back of the check, Holt wrote: “Endorsement accepts as payment prop tax 2014 for parcel # 683-17-138 in full.”

{¶3} Holt was assessed \$136.86 as a penalty for the late tax payment. He wrote a letter, contesting the additional assessment as error. In response, defendants sent a note

indicating that if he did not pay \$136.86 penalty by July 2015, the penalty would increase in September 2015.

{¶4} Then in November 2015, Holt filed a pro se complaint in Cleveland Municipal Court against the defendants. Although Holt captioned his claim as a breach of contract, Holt brought forth a declaratory judgment action against defendants. He asked the court to remove the penalty and order the defendants to accept his \$5,841.66 payment as payment in full and to not allow the defendants to proceed with the collection of the additional penalty arrearage. At the time of the complaint, Holt's penalty assessment increased to \$150.55.

{¶5} The matter was initially assigned to housing court and then reassigned to the small claims division in January 2016. The matter proceeded to trial in February 2016. In April 2016, the magistrate filed a decision finding for defendants and against Holt. The magistrate found that Holt's check was deemed received by defendants on February 4, 2015, which was 13 days after the January 22, 2015 payment due date. As a result, the magistrate found that Holt was liable for the \$150.55 penalty assessed by defendants. Holt's objections to the magistrate's decision were overruled by the court in June 2016.

{¶6} It is from this order that Holt appeals, raising the following assignment of error for review.

#### Assignment of Error

The trial court erred in not addressing the issue of the moving party in the [summary] judgment.

{¶7} As an initial matter, we address the issue of the municipal court’s jurisdiction over Holt’s declaratory judgment action, which was raised by the defendants at appellate oral argument.

{¶8} The term jurisdiction refers to the authority conferred by law on a court to exercise its judicial power in a case or controversy before it. *Cirino v. Ohio Bur. of Workers’ Comp.*, 8th Dist. Cuyahoga No. 104102, 2016-Ohio-8323, ¶ 42. Subject matter jurisdiction refers to the authority that a court has to decide a particular matter on its merits and grant the relief requested. *Id.*, citing *ABN AMRO Mtge. Group, Inc. v. Evans*, 8th Dist. Cuyahoga No. 96120, 2011-Ohio-5654. “[S]ubject-matter jurisdiction cannot be waived, cannot be conferred upon a court by agreement of the parties, and may be the basis for *sua sponte* dismissal.” (Emphasis sic.) *Nord Community Mental Health Ctr. v. Lorain Cty.*, 93 Ohio App.3d 363, 365, 638 N.E.2d 623 (9th Dist.1994), citing *Logan v. Vice*, 79 Ohio App.3d 838, 608 N.E.2d 786 (4th Dist.1992); *In re Claim of King*, 62 Ohio St.2d 87, 403 N.E.2d 200 (1980). We note that “[t]he lack of subject-matter jurisdiction is not a waivable defense and may be raised for the first time on appeal.” *In re Claim of King* at 89, citing *Jenkins v. Keller*, 6 Ohio St.2d 122, 216 N.E.2d 379 (1966), paragraph five of the syllabus.

{¶9} A review of the record in the instant case, leads this court to conclude that the Cleveland Municipal Court did not have subject matter jurisdiction to hear Holt’s declaratory judgment action.

{¶10} In *State ex rel. Foreman v. Bellefontaine Mun. Court*, 12 Ohio St.2d 26, 27, 231 N.E.2d 70 (1967), the appellant (a taxpayer) challenged a judgment of the Court of Appeals for Logan County, which dismissed the taxpayer's petition seeking a writ of mandamus compelling the municipal court to take jurisdiction of a declaratory judgment action and that sought to prohibit the county auditor from making assessments under an ordinance the taxpayer claimed was invalid.

{¶11} The Ohio Supreme Court held that while municipal courts have jurisdiction in declaratory judgment actions, these courts are not courts of general civil jurisdiction. Municipal courts are courts of limited and specific jurisdiction, which is set forth in R.C. 1901.18. *Id.* Under this section, municipal courts are given specific jurisdiction in designated areas of the law. *Id.* The court found that there was nothing in R.C. 1901.18 that gave a municipal court "the general power to render declaratory judgments or to determine the validity of an ordinance outside the exercise of its specific jurisdictional areas." *Id.* at 27-28. The court stated that

declaratory judgment statutes provide an additional remedy which may be granted by a court but they do not extend the jurisdiction as to the subject matter upon which a court may act. *San Ysidro Irrigation District v. Superior Court of San Diego County*, 56 Cal.2d 708, 365 P.2d 753, and 26 Corpus Juris Secundum 255, Declaratory Judgments, Section 113.

The court concluded that R.C. 1901.18 does not grant power to municipal courts to entertain declaratory judgments that seek to have certain tax ordinances of the city declared invalid and prohibit the county auditor from making assessments under such ordinance. *Id.* at 28.

{¶12} Here, Holt seeks to have the Cleveland Municipal Court remove the penalty assessed by the defendants for the late payment of his property tax bill. Just as in *Foreman*, in the instant case, there is nothing in R.C. 1901.18 that gives the Cleveland Municipal Court the power to render declaratory judgments prohibiting the county auditor from assessing taxpayers the late payment of property tax bills as provided in R.C. 323.121.<sup>1</sup> Thus, the municipal court lacked jurisdiction to entertain Holt's declaratory judgment action.

{¶13} Accordingly, judgment is reversed and we remand the matter instructing the trial court to vacate the \$150.55 judgment and dismiss for lack of jurisdiction.

It is ordered that appellant recover of appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the municipal court to carry this judgment into execution.

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<sup>1</sup>R.C. 323.121(A)(1) provides that

if one-half of the current taxes charged against an entry of real estate together with the full amount of any delinquent taxes are not paid on or before the thirty-first day of December in that year or on or before the last day for payment as extended pursuant to section [R.C.] 323.17, a penalty of ten per cent shall be charged against the unpaid balance of such half of the current taxes on the duplicate. If the total amount of all the taxes is not paid on or before the twentieth day of June, next thereafter, or on or before the last day for payment as extended pursuant to section 323.17 of the Revised Code, a like penalty shall be charged on the balance of the total amount of such unpaid current taxes.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY EILEEN KILBANE, PRESIDING JUDGE

TIM McCORMACK, J., and  
MARY J. BOYLE, J., CONCUR