

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

BARD PROPERTIES LLC

C. A. No. 24521

Appellant

v.

STEPHANIE DALTON, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
AKRON MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 08CVG12688

Appellees

DECISION AND JOURNAL ENTRY

Dated: July 15, 2009

DICKINSON, Judge.

INTRODUCTION

{¶1} A landlord sued to evict three tenants from two apartments. All of the tenants were behind on their rent payments. The landlord sued to recover both apartments in one complaint because the single tenant of the second apartment had signed the other lease as a guarantor of performance for the couple living in the first apartment. The trial court dismissed the action, holding that landlord-tenant law would not permit two forcible entry and detainer actions to proceed in one complaint. This Court reverses because it can find no support for that proposition and the Ohio Rules of Civil Procedure permit joinder of claims in this situation.

BACKGROUND

{¶2} Bard Properties LLC leased apartment 680-G on Hancock Avenue in Akron to Stephanie Dalton and Darnell Jones. Another Bard tenant, Lisa Gadson, signed the Dalton lease as a guarantor. According to Bard, Ms. Dalton and Mr. Jones failed to pay their rent after

September 2008. Ms. Gadson failed to pay the Dalton rent as guarantor and also failed to pay her own rent on apartment 670-F.

{¶3} Bard sued all three tenants in one complaint for forcible entry and detainer. Bard included claims against Ms. Dalton and Mr. Jones for restitution of apartment 680-G, as well as back rent, late charges, cost of repair, and cost of the complaint. It alleged that Ms. Gadson was jointly and severally liable on those claims under the terms of the Dalton lease. Bard's complaint also included claims against Ms. Gadson for restitution of apartment 670-F, as well as back rent, late charges, cost of repair, and cost of the complaint.

{¶4} After a hearing, the magistrate found that Bard had a possessory interest as owner of the properties located at 680 and 670 Hancock Street. After reciting facts regarding the leases and when rent was last paid on each apartment, the magistrate determined that the tenants were entitled to judgment because "[t]he Landlord-Tenant Law does not allow two forcible entry and detainer actions to be brought under one complaint." The magistrate recommended that "[t]hese matters [be] dismissed without prejudice."

{¶5} On the same day, November 12, 2008, the trial court adopted the magistrate's decision and entered judgment for the tenants. Bard objected to the magistrate's decision. It argued that the law does not restrict eviction complaints to one premises and joinder was proper under the Ohio Rules of Civil Procedure. On November 14, 2008, the trial court overruled Bard's objection and adopted the magistrate's report based on the magistrate's determination that "Ohio law does not allow separate tenants to be evicted in the same action."

{¶6} Apparently believing that the trial court's entry dismissed only the forcible entry and detainer claims, Bard moved the trial court to reconsider its ruling, or in the alternative, to convert its November 14 order into a final, appealable order. It argued that, without Civil Rule

54(B) language, the order dismissing only the forcible entry and detainer claims was not final and appealable. On November 21, 2008, the trial court issued an order denying Bard's motion for reconsideration, overruling the objection, adopting the magistrate's decision, and declaring the order to be final and appealable. Bard filed a notice of voluntary dismissal regarding the two claims for relief seeking money damages "[t]o the extent [they were] not heretofore dismissed by the Court." On December 3, 2008, Bard filed a notice of appeal from the November 12, 14, and 21 judgment entries.

FINAL, APPEALABLE ORDER

{¶7} "A judgment entry giving or denying a landlord possession of premises is final (and immediately appealable), regardless of whether other claims between the parties remain to be determined by the trial court." *Crossings Dev. Ltd. P'ship v. H.O.T. Inc.*, 96 Ohio App. 3d 475, 482 (1994). Rule 54(B) of the Ohio Rules of Civil Procedure is not applicable to forcible entry and detainer actions. *Id.* (citing *Cuyahoga Metro. Hous. Auth. v. Jackson*, 67 Ohio St. 2d 129, 132 (1981)).

{¶8} In this case, it is not clear that the trial court intended to dismiss only the forcible entry and detainer claims. The trial court adopted the report of the magistrate that recommended: "[t]hese matters [be] dismissed without prejudice." That language seems to affect all claims asserted in the complaint. Regardless of whether the claims for money damages remained pending after the trial court's November 14 order, Bard's notice of voluntary dismissal of those claims is a nullity. If the claims were previously dismissed, the notice accomplished nothing. If the claims remained pending, the notice was a nullity because a party cannot voluntarily dismiss one, but less than all of its claims against any one opponent under Rule 41(A) of the Ohio Rules of Civil Procedure. *Pattison v. W.W. Grainger Inc.*, 120 Ohio St. 3d 142, 2008-Ohio-5276, ¶20.

{¶9} In any event, the trial court’s judgment entry of November 14, 2008, overruling Bard’s objection and adopting the magistrate’s decision, was a final, appealable order. Bard’s notice of appeal was timely filed in relation to the November 14 order. App. R. 4(A). Therefore, this Court has jurisdiction over the appeal.

JOINDER OF CLAIMS

{¶10} Bard’s sole assignment of error is that the trial court incorrectly dismissed its complaint. This Court notes that the tenants have not filed an appellate brief. Therefore, this Court “may accept [Bard’s] statement of the facts and issues as correct and reverse the judgment if [Bard’s] brief reasonably appears to sustain such action.” App. R. 18(C).

{¶11} Neither the magistrate nor the trial court cited any authority for the proposition that “[t]he Landlord-Tenant Law does not allow two forcible entry and detainer actions to be brought under one complaint.” This Court is not aware of any provision of Ohio’s landlord-tenant law that would support the trial court’s holding. Furthermore, if the claims against Ms. Gadson regarding her own apartment were improperly joined with those regarding the Dalton apartment, the trial court had the option of severing the claims and proceeding separately. Civ. R. 21.

{¶12} The Rules of Civil Procedure apply to forcible entry and detainer actions unless “they would by their nature be clearly inapplicable.” Civ. R. 1(C)(3). Although courts have held certain civil rules inapplicable when they run contrary to the summary nature of the statutory procedure, Bard has cited *Jemo Assoc. Inc. v. Garman*, 70 Ohio St. 2d 267 (1982) and *Forney v. Climbing Higher Enters. Inc.*, 158 Ohio App. 3d 338, 2004-Ohio-4444, for the proposition that Rules 20 and 21 of the Ohio Rules of Civil Procedure apply in forcible entry and detainer actions. Based on this Court’s reasoning in *Forney*, we see no reason why Rules 18, 20, and 21

of the Ohio Rules of Civil Procedure would be “clearly inapplicable” to forcible entry and detainer actions. See *Forney*, 2004-Ohio-4444, at ¶15 (holding the filing of existing compulsory counterclaims mandatory in forcible entry and detainer action when plaintiff included a claim for money damages).

{¶13} Under Rule 20(A) of the Ohio Rules of Civil Procedure, “[a]ll persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or succession or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.” Under Rule 18(A) of the Ohio Rules of Civil Procedure, “[a] party asserting a claim to relief as an original claim . . . may join, either as independent or as alternate claims, as many claims, legal or equitable, as he has against an opposing party.”

{¶14} Bard alleged in its complaint that Ms. Gadson signed the Dalton lease as a guarantor of performance and was, therefore, jointly and severally liable for any amounts owed under the Dalton lease. On that basis, Civil Rule 20(A) authorized Bard to join Ms. Gadson as a defendant in its claims against Ms. Dalton and Mr. Jones. Once Ms. Gadson was properly joined as a defendant, Civil Rule 18(A) authorized Bard to join all of its other claims against her in the same action. The trial court incorrectly dismissed Bard’s complaint. Bard’s assignment of error is sustained.

CONCLUSION

{¶15} The trial court incorrectly dismissed Bard’s complaint based on a mistake of law. The judgment of the Akron Municipal Court is reversed, and the cause remanded for further proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Akron Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellees.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
MOORE, P. J.
CONCUR

APPEARANCES:

JOSEPH E. OLIVER, attorney at law, for appellant.

STEPHANIE DALTON, pro se, appellee.

DARNELL JONES, pro se, appellee.

LISA GADSON, pro se, appellee.