[Cite as *J & J Invests. of Ohio, Inc. v. Hooper*, 2026-Ohio-4480.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

J & J INVESTMENTS OF OHIO INC., :

Plaintiff-Appellee, :

No. 116062

v. :

ANGELA HOOPER, :

Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: November 12, 2026

Civil Appeal from the Cleveland Municipal Court
Housing Division
Case Nos. 2025-CVG-012141 and 2025-CVG-012811

Appearances:

Powers Friedman Linn, PLL, Kyle Ripma, and Rachel E. Cohen, *for appellee*.

The Legal Aid Society of Cleveland, Joseph C. Tomino, and Barbara A. Reitzloff, *for appellant*.

MICHAEL JOHN RYAN, J.:

{¶ 1} Defendant-appellant Angela Hooper ("Hooper") appeals from the trial court's December 24, 2025 judgment entry granting plaintiff-appellee J&J Investments of Ohio Inc.'s ("J&J") motion for partial summary judgment in its

forcible-entry-and-detainer action. For the following reasons, we reverse and remand.

Factual and Procedural History

{¶ 2} Hooper has been a residential tenant living in a home located on Kenneth Avenue in Cleveland ("the property") for over ten years. In September 2023, J&J took over property management of the property on behalf of the property owner. Beginning in October 2023, Hooper and J&J entered into a month-to-month lease agreement. Since J&J began managing the property, Hooper has reported various issues with the property to J&J. These issues include severe water leaks and the resulting water damage, such as mold growth and lifting and damaging floor coverings.

{¶ 3} On April 17, 2025, Hooper served J&J with a final request for repairs, pursuant to R.C. 5321.07, via email.

{¶ 4} On May 19, 2025, J&J served Hooper with a notice of termination of her tenancy via email, informing Hooper that her tenancy would terminate on June 30, 2025. Hooper did not vacate the premises. Instead, at some point following the notice of termination, Hooper submitted a complaint to the City of Cleveland's Department of Building and Housing and initiated a rent deposit.

{¶ 5} The department of building and housing conducted an inspection of the property on June 30, 2025, and on July 16, 2025, it issued a violation notice to the property owner, identifying 17 violations of Cleveland's housing code.

{¶ 6} On July 18, 2025, J&J issued a three-day notice to Hooper to vacate the premises; the notice was affixed to the front door of the property. Again, Hooper did not vacate the premises.

{¶ 7} As a result, J&J filed two separate complaints in the Housing Division of the Cleveland Municipal Court. First, on August 15, 2025, in Case No. 25CVG012141, J&J filed a complaint and application to release rent ("the rent release case"). J&J alleged that Hooper had deposited a rent payment in the sum of $700 with the court, that Hooper failed to comply with the notice requirements set forth in R.C. 5321.07, and further, that J&J was not in violation of "any obligation imposed upon it by the rental agreement or any obligation imposed upon it by any building, housing, health or safety code."

{¶ 8} Second, on August 26, 2025, in Case No. 25CVG012811, J&J filed the within complaint for forcible entry and detainer against Hooper ("the eviction case"). J&J alleged that Hooper had unlawfully and forcibly detained J&J from possession of the property since July 24, 2025. Hooper raised a retaliation defense under Cleveland Cod. Ord. ("CCO") 375.08.

{¶ 9} The trial court consolidated the two complaints.

{¶ 10} Hooper and J&J filed cross-motions for partial summary judgment related to the eviction case. Hooper attached correspondence between herself and J&J and photos corroborating her complaints to her motion for summary judgment. J&J attached an affidavit from James Penner ("Penner"), a property manager

employed by J&J, along with a copy of the lease agreement between J&J and Hooper and additional correspondence.

{¶ 11} On December 24, 2025, the trial court granted J&J's motion for partial summary judgment, finding that there is a conflict between R.C. 5321.03 and CCO 375.08. The court further found that R.C. 5321.02, et seq., preempt CCO 375.08's protection from retaliatory terminations of tenancy and, therefore, J&J was entitled to evict Hooper. The court simultaneously denied Hooper's motion for partial summary judgment, holding that Hooper did not establish that there is no genuine issue of material fact as to whether the housing code violations at the property materially affected Hooper's health and safety.

{¶ 12} Hooper appeals, presenting five assignments of error for our review:

> I. The trial court erred in holding that R.C. 5321.03 preempts CCO 375.08 because CCO 375.08's prohibition on retaliatory terminations of tenancy is not in conflict with R.C. 5321.03's license of eviction of holdover tenants even with retaliatory intent.
>
> II. The trial court erred in holding that R.C. 5321.19 preempts CCO 375.08, because CCO 375.08 is part of the Housing Code of the City of Cleveland, and R.C. 5321.19 excludes Housing Codes from its alleged preemptions.
>
> III. The trial court erred in holding that R.C. 5321.19 and R.C. 5321.20 preempt CCO 375.08, because R.C. 5321.19 and R.C. 5321.20 are not in conflict with CCO 375.08.
>
> IV. The trial court erred in holding that R.C. 5321.19 and R.C. 5321.20 preempt CCO 375.08, because R.C. 5321.19 and R.C. 5321.20 are not general laws.
>
> V. The trial court erred in not applying Hooper's affirmative defense of retaliation under CCO 375.08 to its factual findings regarding Ms. Hooper's complaints to J&J of its violations of R.C. 5321.04.

Law and Analysis

{¶ 13} Appellate review of a trial court's grant of summary judgment is de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). Pursuant to Civ.R. 56(C), summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in their favor. *Cleveland v. State*, 2013-Ohio-1186, ¶ 8 (8th Dist.), citing *Horton v. Harwick Chem. Corp.*, 73 Ohio St.3d 679 (1995), paragraph three of the syllabus. The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Id.*, citing *Dresher v. Burt*, 75 Ohio St.3d 280 (1996).

{¶ 14} In her first assignment of error, Hooper contends that the trial court erred in finding that R.C. 5321.02 and 5321.03 preempt CCO 375.08. We agree.

{¶ 15} R.C. 5321.02 prohibits retaliatory action by a landlord. The section provides in relevant part as follows:

> (A) Subject to section 5321.03 of the Revised Code, a landlord may not retaliate against a tenant by increasing the tenant's rent, decreasing services that are due to the tenant, or bringing or threatening to bring an action *for possession* of the tenant's premises because:
>
> (1) The tenant has complained to an appropriate governmental agency of a violation of a building, housing, health, or safety code that is applicable to the premises, and the violation materially affects health and safety; [or]

> (2) The tenant has complained to the landlord of any violation of section 5321.04 of the Revised Code[.]

(Emphasis added.) R.C. 5321.02(A).

{¶ 16} R.C. 5321.03 governs actions by landlords and provides in relevant part:

> (A) Notwithstanding section 5321.02 of the Revised Code, a landlord may bring an action under Chapter 1923 of the Revised Code for possession of the premises if:
>
> . . .
>
> (4) The tenant is holding over the tenant's term.

{¶ 17} According to J&J, R.C. 5321.02(A) and 5321.03 conflict with CCO 375.08, and because of Hooper's holdover-tenant status, J&J properly initiated this eviction action against Hooper under the State's statutes.

{¶ 18} CCO 375.08 largely mirrors R.C. 5321.02(A), with one key exception. It provides:

> (a) subject to division (d) of this section, a landlord may not retaliate against a tenant by increasing the tenant's rent, decreasing services that are due to the tenant, bringing or threatening to bring an action for possession of the tenant's premises, *terminating or threatening to terminate the tenant's rental agreement, or refusing to renew the tenant's rental agreement or to continue the tenant's tenancy* because:
>
> (1) The tenant has complained to an appropriate governmental agency of a violation of a building, housing, health, or safety code that is applicable to the premises, and the violation materially affects health and safety;
>
> (2) The tenant has complained to the landlord of any violation of R.C. 5321.04[.]

(Emphasis added.) CCO 375.08.

{¶ 19} Thus, while both R.C. 5321.02(A) and CCO 375.08(a) provide that a landlord may not retaliate against a tenant by increasing rent, decreasing services, or bringing or threatening to bring an action for possession of the premises, CCO 375.08(a) goes a step further by adding protection for a tenant from a landlord terminating or threatening to terminate the rental agreement, or refusing to renew the rental agreement. We find that the extra protection CCO 375.08 provides is a permissible exercise of the city's home rule authority and does not conflict with R.C. 5321.02(A).

{¶ 20} The Home Rule Amendment to the Ohio Constitution authorizes municipalities to exercise "all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Ohio Const., art. XVIII § 3. The intent of the Home Rule Amendment is "to empower municipalities to establish different forms of local self-government, to implement local ordinances not in conflict with general laws of the state and to 'do those things . . . which are not forbidden by the lawmaking power of the state.'" (Citation omitted.) *Am. Fin. Servs. Assn. v. Cleveland*, 2006-Ohio-6043, ¶ 26.

{¶ 21} Courts use a three-part test to evaluate whether a municipality has exceeded its powers under the Home Rule Amendment: "A state statute takes precedence over a local ordinance when (1) the ordinance is an exercise of police power, rather than local self-government, (2) the statute is general law, and (3) the ordinance is in conflict with the statute." *Mendenhall v. Akron*, 2008-Ohio-270,

¶ 17; *see also Canton v. State*, 2002-Ohio-2005, ¶ 9 (establishing the test utilized in *Mendenhall*).

{¶ 22} Hooper concedes that CCO 375.08 is an exercise of police power but maintains that the State's statutes do not preempt the city's ordinance because they do not conflict with it and because the State's statutes are not general laws. We agree.

{¶ 23} Regarding whether there is a conflict, "[T]he test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa." *Struthers v. Sokol*, 108 Ohio St. 263, 268 (1923); *see also Mendenhall*. We do not find a conflict. Although R.C. 5321.02 largely mirrors CCO 375.08, there is a distinction. The distinction is not that the city's ordinance permits that which the state statutes forbid, or vice versa. Rather, the distinction is that the city's ordinance expands the tenant's right in a way the state statutes do not.

{¶ 24} Specifically, R.C. 5321.02 does not address retaliation in the form of *termination of a tenancy*; rather, it addresses retaliation in the form of increasing rent, decreasing services, or threatening or bringing an action for possession. On the other hand, CCO 375.08 includes the added protection for a tenant of prohibiting a landlord from retaliating by "terminating the tenant's rental agreement, or refusing to renew the tenant's rental agreement or to continue the tenant's tenancy."

{¶ 25} Rather than conflict with R.C. 5321.02 and 5321.03, CCO 375.08 affords a tenant extra protection that the State's statutes do not, which we believe was intentional. Otherwise, without that added layer, a tenant could make multiple

complaints to a landlord or governmental entity about the premises during his or her tenancy; the landlord could ignore the complaints or make empty promises to remedy the situation; the lease could expire, with the tenant remaining in the premises; and the tenant would be without recourse.

{¶ 26} For the above-stated reasons, R.C. 5321.03 and CCO 375.08 do not conflict and, thus, the city's ordinance is not preempted by the state's statutes. The first assignment of error is sustained.

{¶ 27} For her second assignment of error, Hooper contends that the trial court erred in finding that R.C. 5321.19 preempts CCO 375.08. Hooper contends that the city's ordinance is part of its housing code and R.C. 5321.19 excludes housing codes from its preemptions.

{¶ 28} R.C. 5321.19(A) provides that

> no political subdivision may enact, adopt, renew, maintain, enforce, or continue in existence any charter provision, ordinance, resolution, rule, or other measure that is in conflict with this chapter, or that regulates the rights and obligations of parties to a rental agreement that are regulated by this chapter . . . .

{¶ 29} However, R.C. 5321.19(B) provides the following exception: "This chapter does not preempt . . . [h]ousing, building, health, or safety code . . . of any political subdivision." CCO 375.08 is part of the housing code of the City of Cleveland. The ordinance is located in Part IIIC, Title IX of the Cleveland Cod. Ord., which is titled, "Land Use Code – Housing Code."

{¶ 30} This court has previously utilized the placement of an ordinance within the code as a determinative factor. In *Beachwood v. Simon*, 1993 Ohio App.

LEXIS 5987 (8th Dist. Dec. 16, 1993), this court noted that the ordinance at issue was contained under the general heading of "Part Thirteen - Building Code" of the Codified Ordinances of Beachwood. However, Title Five of Part Thirteen is entitled "Housing Code" and Chapter 1355 (including Cod. Ord. § 1355.10 pursuant to which defendant was charged) is a subpart of the Housing Code entitled "Basic Standards of Residential Occupancy." *Id.* at *4.

{¶ 31} The panel ultimately determined that the ordinance in question was part of a "local housing code"; as such, the ordinance was excluded from being preempted under R.C. 5321.19. The same analysis applies here. Therefore, under R.C. 5321.19(B), R.C. 5321.02 and 5321.03 do not preempt the housing code of the City of Cleveland, including CCO 375.08.

{¶ 32} Hooper's second assignment of error is sustained.

{¶ 33} In Hooper's third assignment of error, she contends that the trial court erred in finding that R.C. 5321.19 and 5321.20 preempt the city's ordinance because they are in conflict with it. In her fourth assignment of error, Hooper contends that the trial court erred in finding that R.C. 5321.19 and 5321.20 preempt the city's ordinance because the State's statutes are not general laws.

{¶ 34} Because we have determined that CCO 375.08 does not conflict with R.C. Ch. 5321 and is therefore not preempted, we find the third and fourth assignments of error to be moot and decline to address them further. *See* App.R. 12(A)(1)(c).

{¶ 35} In her fifth assignment of error, Hooper contends that the trial court erred by not applying her retaliation defense under CCO 375.08 regarding her complaints to J&J. Because we find that CCO 375.08 does not conflict with state statutes, we agree.

{¶ 36} The trial court found that the statute preempted the ordinance and that, as a holdover tenant, Hooper was not permitted to assert a retaliation defense. Thus, the merits of Hooper's retaliation defense were not considered at the trial-court level. An appellate court should review a trial court's judgments and not usurp the trial court's role by making initial factual determinations and conclusions of law. *Meekins v. Oberlin*, 2018-Ohio-1308 (8th Dist.). "Issues raised in summary judgment motions that are not considered by the trial court should not be determined by an appellate court in the first instance." *Fayak v. Univ. Hosps.*, 2020-Ohio-5512, ¶ 28 (8th Dist.).

{¶ 37} Thus, we sustain the fifth assignment of error and remand the matter to the trial court for further proceedings, including consideration of Hooper's retaliation defense.

{¶ 38} Having found merit to Hooper's first, second, and fifth assignments of error and sustaining them, the trial court's December 24, 2025 judgment is reversed, and the case is remanded.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

_____
MICHAEL JOHN RYAN, JUDGE

EILEEN T. GALLAGHER, P.J., CONCURS;
TIMOTHY W. CLARY, J., DISSENTS (WITH SEPARATE OPINION)

TIMOTHY W. CLARY, J., DISSENTING:

{¶ 39} I respectfully dissent from the majority opinion.

{¶ 40} I would find that R.C. 5321.02 and 5321.03 preempt CCO 375.08. I agree with the trial court that CCO 375.08 conflicts with R.C. 5321.02 and 5321.03. Cleveland's ordinance expressly prohibits a retaliatory termination of tenancy, and while the state statutes do not explicitly address retaliatory terminations, they expressly permit retaliatory terminations against holdover tenants. Therefore, I believe that the trial court correctly found that CCO 375.08 is preempted by R.C. 5321.03 and accordingly I would overrule Hooper's first assignment of error.

{¶ 41} With respect to Hooper's second assignment of error, I disagree with the majority's conclusion that CCO 375.08 is not preempted because it is a part of the City of Cleveland's housing code. Although I recognize that CCO 375.08 is a part of the city's housing code, it does not purport to regulate the exterior condition of rental properties, and instead attempts to regulate the rights and obligations of

parties to a rental agreement. Therefore, the fact that the municipal ordinance exists under Title IX of the Cleveland Cod. Ord., titled "Land Use Code — Housing Code" does not mean that it cannot be preempted by state law. For these reasons, I would overrule Hooper's second assignment of error.

{¶ 42} With respect to Hooper's third and fourth assignments of error, I would find that R.C. 5321.19 and 5321.20 are in conflict with CCO 375.08 and are general laws that preempt municipal ordinances such as CCO 375.08. Therefore, I would overrule Hooper's third and fourth assignments of error.

{¶ 43} Because I would have determined that the trial court properly found that CCO 375.08 was preempted by state law, state law permits eviction actions against holdover tenants, and a holdover tenant cannot assert the affirmative defense of retaliation in an eviction action, I likewise could not conclude that the trial court somehow erred in declining to consider Hooper's affirmative defense of retaliation in support of her motion for summary judgment. I would overrule Hooper's fifth assignment of error.

{¶ 44} For these reasons, I respectfully dissent.