

2019-Ohio-4986

UMH OH BUCKEYE II, L.L.C., Plaintiff-Appellee,

v.

JAMES A. DECARLO, Defendant-Appellant.

No. 108912

Court of Appeals of Ohio, Eighth District, Cuyahoga

December 5, 2019

Civil Appeal from the Bedford Municipal Court Case No. 19 CVG03750

Heather Gyekenyesi, for appellee.

The Legal Aid Society of Cleveland, Matthew D. Vincel and Maria A Smith, for appellant

JOURNAL ENTRY AND OPINION

KATHLEEN ANN KEOUGH, JUDGE

{¶ 1} Defendant-appellant, James DeCarlo, appeals from the trial court's decision entering judgment in favor of plaintiff-appellee, UMH OH Buckeye, II, L.L.C. ('Buckeye'). For the reasons that follow, we vacate the trial court's judgment and order that Buckeye's complaint be dismissed.

{¶ 2} In July 2019, Buckeye filed a complaint for forcible entry and detainer against DeCarlo due to nonpayment of rent and costs. DeCarlo did not file an answer but appeared before the trial court at the hearing on Buckeye's complaint. Following the hearing, the trial court entered judgment against DeCarlo finding that he was in "default" for failing to file a responsive pleading, and that Buckeye was entitled to immediate possession of the premises. A Writ of Restitution was also ordered. The matter was stayed pending appeal.

{¶ 3} DeCarlo now appeals raising the follow two assignments of error:

I. The trial court committed reversible error in granting the judgment in forcible entry and detainer for [Buckeye] because it lacked subject matter jurisdiction in this matter due to [Buckeye's] failure to serve a notice to vacate to James DeCarlo that complies with R.C. 1923.04.

II. The trial court committed reversible error in granting the judgment in forcible entry and detainer for [Buckeye]

because it relied on the ground that [DeCarlo] did not file an answer or other responsive pleading and granting an eviction based on default is impermissible under Ohio law.

{¶ 4} Buckeye, pursuant to Loc.App.R. 16(B), filed a notice of conceded error agreeing that DeCarlo's first assignment of error is meritorious and is dispositive to the appeal.

{¶ 5} R.C. 1923.04(A) mandates as a prerequisite to a forcible entry and detainer action, that a tenant be served with a three-day notice to leave the premises that contains certain mandatory language. One of the provisions is that the notice requires the "party desiring to commence the action under this chapter shall notify the adverse party to leave the premises * * *." Courts have interpreted this language to mean that the party who commences the action must also be the party that served the three-day notice." *See Gabriel v. Lakeside Tavern of Dayton*, 2d Dist. Montgomery No. 6578, 1980 Ohio App. LEXIS 12894 (May 22, 1980) (if the notice to vacate is signed by a party other than the prospective plaintiff, it is not deemed to be served by the "party desiring to commence an action under this chapter"); *Homeowners Assn. at Arrowhead Bay v. Fidoe*, 7th Dist. Mahoning No. 12 MA 136, 2014-Ohio-1469 (eviction action dismissed because statute requiring action to be brought in the name of the unit owner was violated).

{¶ 6} Compliance with the notice provisions of R.C. 1923.04 is a precondition to invoking a court's jurisdiction in an eviction action. *Fidoe* at ¶ 13; *see also Mularcik v. Adams*, 7th Dist. Jefferson No. 03JE17, 2004-Ohio-1383, ¶ 21, 24-25 (notice with language that inadequately tracks statutorily-required language deprives trial court of subject matter jurisdiction). This is because "[p]roper service of the three-day notice is a condition precedent to the commencement of an eviction action, and it is a separate jurisdictional step that must be completed before [a forcible entry and detainer] action is filed." *Ebbing v. Mathis*, 12th Dist. Butler No. CA2012-10-201, 2013-Ohio-2273, ¶ 11.

{¶ 7} In this case, the record demonstrates that although the three-day notice to leave premises contains a signature issuing the notice, there is no typewritten text identifying who signed it, but only indicates "landlord signature." But the notice clearly does not contain Buckeye's name - the party that ultimately commenced the action against DeCarlo. Accordingly, because Buckeye did not comply with the notice requirements pursuant to R.C. 1923.04(A), the trial court did not have jurisdiction over the action including entering a judgment against DeCarlo.

{¶ 8} Because we find merit to the DeCarlo's first assignment of error and Buckeye concedes that it is

dispositive of the appeal, DeCarlo's second assignment of error also challenging the trial court's judgment is rendered moot. App.R. 12(A)(1)(c).

{¶ 9} Judgment vacated; Buckeye's complaint is dismissed.

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.

SEAN C. GALLAGHER, PJ, and ANITA LASTER
MAYS, J, CONCUR