[Cite as *Publishing Group, Ltd. v. Cooper*, 2011-Ohio-2872.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

The Publishing Group, Ltd.,	:	
Plaintiff-Appellee,	:	
		No. 10AP-791
v.	:	(M.C. No. 2010 CVF 005767)
Tim H. Cooper,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 14, 2011

Timothy J. Kincaid, for appellee.

Timothy H. Cooper, pro se.

APPEAL from the Franklin County Municipal Court

KLATT, J.

{¶1} Defendant-appellant, Tim H. Cooper, appeals from a judgment of the Franklin County Municipal Court awarding plaintiff-appellee, The Publishing Group, Ltd. ("Publishing Group"), $1,500, plus interest, for breach of contract. For the following reasons, we affirm the decision of the trial court.

{¶2} Publishing Group publishes a series of community and lifestyle magazines throughout Ohio, one of which is Westerville Magazine. Cooper operates a financial planning business from an office in Westerville. In early September 2008, Publishing Group contacted Cooper and offered to print an advertisement for Cooper's business in

Westerville Magazine's November/December 2008 issue. Cooper accepted Publishing Group's offer. On September 2, 2008, Cooper signed an agreement reserving advertisement space in Westerville Magazine's November/December 2008 issue. The agreement obligated Cooper to pay Publishing Group $1,500 within 30 days from the date that Publishing Group issued an invoice to him.

{¶3} Publishing Group included Cooper's advertisement in the November/December 2008 issue of Westerville Magazine. Although Publishing Group sent Cooper an invoice requesting payment in early October 2008, Cooper refused to pay for the advertisement. According to Cooper, the agreement he signed provided that if he did not pay for the advertisement by October 2, 2008, Publishing Group would not print it. Cooper apparently believed that by not submitting payment to Publishing Group by October 2, 2008, he relieved both parties from their obligation to perform under the agreement.

{¶4} On February 10, 2010, Publishing Group filed a breach of contract action against Cooper. At a bench trial, both Cooper and Charles Stein, CEO of Publishing Group, testified to the facts set forth above. At the conclusion of trial, the trial court entered judgment for Publishing Group in the amount of $1,500, plus interest.

{¶5} Cooper appeals the judgment of the trial court and asserts the following assignments of error:

> 1. The Franklin County Municipal Court did not have jurisdiction over this case as it was not the proper venue.
>
> 2. Trial Court erred in entering judgment against the Appellant for breach of contract.

{¶6} By his first assignment of error, Cooper challenges the trial court's jurisdiction to decide this action. Cooper asserts that Delaware County is the site of his business and where the parties' transaction occurred, so the proper venue for this case is a Delaware County, not a Franklin County, court.

{¶7} Cooper's argument betrays his confusion regarding the legal concepts of jurisdiction and venue. " 'Subject-matter jurisdiction of a court connotes the power to hear and decide a case upon its merits' and 'defines the competency of a court to render a valid judgment in a particular action.' " *Cheap Escape Co., Inc. v. Haddox, LLC*, 120 Ohio St.3d 493, 2008-Ohio-6323, ¶6 (quoting *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, 87). Because a court's power to adjudicate the merits of a case hinges upon it possessing subject-matter jurisdiction, the parties cannot waive subject-matter jurisdiction and may challenge it at any time. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶11.

{¶8} Venue, on the other hand, refers to the locality where an action should be heard. *Morrison* at paragraph one of the syllabus. Venue is a procedural matter, whereby a court determines which court, among all of those with jurisdiction, is the best to hear the action. Id. at 88; *In re W.W.*, 190 Ohio App.3d 653, 2010-Ohio-5305, ¶25; *Cheap Escape Co. v. Haddox, LLC*, 10th Dist. No. 06AP-1107, 2007-Ohio-4410, ¶11, affirmed, 120 Ohio St.3d 493, 2008-Ohio-6323. A defendant waives the right to challenge venue when he waits to raise the issue until appeal. *Cheap Escape Co.*, 2007-Ohio-4410, ¶11.

{¶9} Cooper wrongly assumes that improper venue deprives a court of its jurisdiction to hear the action. It does not. *State ex rel. Florence v. Zitter*, 106 Ohio St.3d

87, 2005-Ohio-3804, ¶23. However, the location of the events giving rise to an action may determine both the appropriate venue for an action and a municipal court's jurisdiction over that action. R.C. 1901.18(A) limits municipal court subject-matter jurisdiction to actions that have a territorial connection to the court. *Cheap Escape Co.*, 2008-Ohio-6323, syllabus. Consequently, in order for a municipal court to have subject-matter jurisdiction over an action, relevant events must occur within the territorial limits of the court. Id. at ¶8, 27.

{¶10} Here, the parties conducted their business via e-mail and fax. While Cooper was located in Delaware County when he initiated and received these communications, the Publishing Group employees that Cooper dealt with were located in their Franklin County offices. Additionally, Publishing Group distributes Westerville Magazine in Westerville, which primarily lies in Franklin County. Therefore, negotiation, drafting, and receipt of the signed agreement, as well as Publishing Group's performance under the agreement, occurred in Franklin County.[1] Given this connection to Franklin County, we conclude that the trial court had subject-matter jurisdiction over the instant action. See *Internatl. Language Bank, Inc. v. Ryan*, 11th Dist. No. 2010-A-0018, 2010-Ohio-6060, ¶31 (holding that a breach of contract action was within the Conneaut Municipal Court's jurisdiction where the plaintiff's business operated in Conneaut, the defendant contacted the plaintiff at that office, the defendant received a faxed agreement from the plaintiff's Conneaut office and faxed a signed copy to that office, and the plaintiff

[1] We take judicial notice that both Publishing Group's office, located at 4500 Mobile Drive, Suite 100, Columbus, Ohio, 43220, and the majority of Westerville are in Franklin County. Evid.R. 201(B) and (C); *Squire v. Geer*, 117 Ohio St.3d 506, 2008-Ohio-1432, ¶12 ("[A]ppellate courts can take judicial notice of certain matters."); *Koehring v. Ohio State Dept. of Rehab. and Corr.*, 10th Dist. No. 06AP-396, 2007-Ohio-2652, ¶2, fn. 1 (taking judicial notice of the counties in which the parties resided).

performed a portion of the contracted-for services in Conneaut); *Cheap Escape Co. v. Tri-State Constr., L.L.C.*, 173 Ohio App.3d 683, 2007-Ohio-6185, ¶26-27 (holding that a contract had a territorial connection to the Franklin County Municipal Court where the defendants negotiated the contract via fax with personnel in the plaintiff's Franklin County office). Accordingly, we overrule Cooper's first assignment of error.

{¶11} In his second assignment of error, Cooper first argues that the trial court erred in entering judgment against him because Publishing Group failed to admit into evidence the parties' original agreement, thereby violating Evid.R. 1002. We disagree.

{¶12} Evid.R. 1002, known as the best evidence rule, provides that, "[t]o prove the content of a writing, * * * the original writing * * * is required, except as otherwise provided in these rules." This rule rests on the belief that an original writing is more reliable, complete, and accurate as to its contents and meaning. *Northwood Home Owners Assn. v. Zanesville*, 5th Dist. No. CT2007-0016, 2007-Ohio-6996, ¶17. However, Evid.R. 1004 provides several exceptions to this rule. Pursuant to one of these exceptions, the original writing is not required, and other evidence of the contents of a writing is admissible, if "[a]t a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be subject of proof at the hearing, and that party does not produce the original at the hearing." Evid.R. 1004(3).

{¶13} In this case, both Stein and Cooper testified extensively regarding the terms of the agreement, but neither party introduced it into evidence. Not only did Cooper fail to object to Stein's testimony about the agreement's terms, he elicited further such testimony from Stein and testified himself regarding the provisions of the agreement. "[F]ailure to

timely advise a trial court of possible error, by objection or otherwise, results in a waiver of the issue for purposes of appeal." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 1997-Ohio-401. Nevertheless, even if a party fails to bring an error to the trial court's attention, an appellate court will review the trial court's judgment for plain error. Id. In a civil case, an appellate court only applies the plain-error doctrine if the asserted error "seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." Id. at 123.

{¶14} In the case at bar, we cannot conclude that the trial court committed any error, much less plain error, because the Evid.R. 1004(3) exception applies. Stein testified that a Publishing Group employee transmitted the agreement to Cooper, who signed it, and faxed a copy of the signed agreement to Publishing Group. Cooper, therefore, has always retained possession of the original agreement. Publishing Group sued Cooper for breach of contract, thus putting Cooper on notice that the terms of the agreement would be at issue during trial. Cooper, however, never produced the original agreement at trial. As Publishing Group satisfied all the requirements of Evid.R. 1004(3), that exception relieved Publishing Group from the burden of presenting the original agreement at trial. Therefore, we conclude that the trial court did not err in permitting Publishing Group to prove the existence and terms of the agreement through oral testimony.

{¶15} Next, Cooper argues that the trial court misinterpreted the agreement. Cooper contends that in the agreement, Publishing Group promised to stop publication of the advertisement if he did not pay by October 2, 2008. According to Cooper, his failure

to pay by October 2, 2008 discharged both him and Publishing Group from performing under the agreement. We disagree.

{¶16} Interpretation of contracts is a matter of law, and questions of law are subject to de novo review on appeal. *St. Marys v. Auglaize Cty. Bd. of Commrs.*, 115 Ohio St.3d 387, 2007-Ohio-5026, ¶38. When construing a contract, a court's principle objective is to ascertain and give effect to the intent of the parties. *Hamilton Ins. Serv., Inc. v. Nationwide Ins. Cos.*, 86 Ohio St.3d 270, 273, 1999-Ohio-162. "The intent of the parties to a contract is presumed to reside in the language they chose to employ in the agreement." *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, paragraph one of the syllabus. In determining the parties' intent, a court must read the contract as a whole and give effect, if possible, to every part of the contract. *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.*, 78 Ohio St.3d 353, 361-62, 1997-Ohio-202.

{¶17} Cooper bases his argument on a provision of the agreement that reads, "[t]he publisher reserves the right to stop the advertiser's advertisements and to immediately cancel this agreement at any time upon the default of the advertiser to pay any bill when due." (Tr. 59.) This provision gives Publishing Group the option to refuse to publish an advertisement for nonpayment, but it does not obligate Publishing Group to stop publication and cancel the agreement. Since Publishing Group chose to publish Cooper's advertisement, he owes Publishing Group the $1,500 he agreed to pay it. Contrary to Cooper's argument, his failure to pay by October 2, 2008 does not excuse him from remunerating Publishing Group for the advertisement it printed.

{¶18} In sum, we reject both the arguments that Cooper advances under his second assignment of error. Consequently, we overrule that assignment of error.

{¶19} For the foregoing reasons, we overrule Cooper's first and second assignments of error, and we affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

FRENCH and CONNOR, JJ., concur.