[Cite as *Brown v. Pub. Storage*, 2019-Ohio-5441.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Mabel Brown,	:	
Plaintiff-Appellant,	:	
v.	:	No. 19AP-297 (C.P.C. No. 18CV-6655)
Public Storage et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on December 31, 2019

On brief: *Mabel Brown*, pro se. **Argued:** *Mabel Brown*.

On brief: *Collins & Slagle Co., LPA*, and *Ehren W. Slagle*, for appellee Garry Brown. **Argued:** *Ehren W. Slagle*.

APPEAL from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} Plaintiff-appellant, Mabel Brown, appeals a judgment of the Franklin County Court of Common Pleas ("trial court") that dismissed her action against defendant-appellee, Garry Brown. For the following reasons, we affirm that judgment.

{¶ 2} Mabel and Garry Brown married on September 21, 1994. During the marriage, Garry rented a storage unit from Cardinal Self Storage Worthington LLC ("Cardinal"). Garry stored his firearm collection, along with other items, in the unit. In 2013, Mabel filed for divorce from Garry in the Franklin County Court of Common Pleas, Division of Domestic Relations ("domestic court"). Immediately after filing for divorce, Mabel secured from the domestic court a temporary restraining order against Cardinal. That order enjoined Cardinal "[f]rom permitting access to any storage units rented in the

name of Defendant, Garry Brown[,] * * * until further Order of the Court." (Dec. 9, 2013 Restraining Order Against Def. Cardinal Self Storage.)

{¶ 3} In a judgment dated April 7, 2015, the domestic court granted the Browns a divorce. In relevant part, the judgment ordered the parties to jointly inventory the items in the storage unit. The judgment further specified that "[t]he restraining order[ ] on the storage unit * * * shall remain in place until the parties have inventoried the items contained within. Parties shall be joint[ly] granted access to said restrained items for purposes of inventory at which time the TRO[ ] shall be lifted thereafter." (Apr. 7, 2015 Agreed Judgment Entry/Decree of Divorce at Section 3.2.2.) After completing the inventory, the parties were to obtain an appraisal of the firearms and divide the firearms between them according to the formula the court devised.

{¶ 4} In a motion filed February 1, 2017, Mabel asked the domestic court to find Garry guilty of contempt because he had violated the temporary restraining order by removing the firearms and other items from the storage unit. Mabel filed a second motion for contempt on November 29, 2017, and she again asserted that Garry had violated the restraining order by emptying the storage unit. In the second motion, Mabel also alleged that the inventory Garry had given to her listing the firearms he owned omitted certain firearms and undervalued others.

{¶ 5} On August 2, 2018, while the motions for contempt were pending in the domestic court, Mabel filed an action in the trial court against Garry, Cardinal, and Public Storage.[1] Before any defendant answered or otherwise responded, Mabel filed an amended complaint. In the amended complaint, Mabel alleged that Cardinal and/or Public Storage had allowed Garry to access the storage unit and remove its contents, which deprived her of the ability to inventory those contents. Mabel also stated that she did not believe Garry had fully disclosed to her all the firearms that he owned. Mabel sought recovery because: (1) "Defendant Cardinal Storage and/or Defendant Public Storage violated its duties under the [storage unit rental agreement] and the Restraining Order" (Compl. at ¶ 11), and (2) "Defendant Cardinal Storage and/or Public Storage failed to hire and retain employees, contractors or agents capable of operating the facility and following the Restraining Order

[1] Apparently, Mabel incorrectly named "Cardinal Self Storage, LLC" as a defendant, instead of "Cardinal Self Storage Worthington LLC." Mabel named Pubic Storage as a defendant because Cardinal sold the storage facility containing the unit Garry rented to Public Storage in 2016.

and failed to provide adequate supervision and training to such employees, contractors or agents." *Id.* at ¶ 16.

{¶ 6} Garry moved to dismiss for lack of subject-matter jurisdiction pursuant to Civ.R. 12(B)(1) and failure to state a claim pursuant to Civ.R. 12(B)(6). Mabel opposed Garry's motion. In a decision and entry issued October 16, 2018, the trial found that it lacked subject-matter jurisdiction over any purported claims against Garry, concluding, "[i]t is clear from reading Plaintiff's Complaint that her claims against Mr. Brown arise from his alleged failure to comply with orders issued by the Domestic Court. It is the Domestic Court's job to enforce its own orders and they cannot be enforced via a separate action filed here." (Oct. 16, 2018 Decision and Entry Granting Def.'s Mot. to Dismiss.) The trial court, therefore, dismissed the action against Garry.

{¶ 7} Mabel appealed the October 16, 2018 judgment to this court, but we dismissed that appeal because the judgment was not a final, appealable order. Mabel then moved the trial court to reconsider its October 16, 2018 judgment or, in the alternative, certify that there was no just cause to delay entry of a final judgment against Garry even though claims against Cardinal remained pending.[2] In an entry dated April 26, 2019, the trial court granted Mabel's alternative request, and it expressly added Civ.R. 54(B) language to the October 16, 2018 judgment, making it a final, appealable order.

{¶ 8} Mabel now appeals the October 16, 2018 judgment, and she assigns the following errors:

> [1.] THE TRIAL COURT ERRED IN FINDING THE DOMESTIC RELATIONS DIVISION HAD EXCLUSIVE JURISDICTION OVER THE CLAIMS IN PLAINTIFF-APPELLANT'S COMPLAINT VERSUS DEFENDANT GARRY BROWN AND IN DISMISSING THE COMPLAINT ON SUBJECT[-]MATTER JURISDICTION.
>
> [2.] THE TRIAL COURT IGNORED KEY FACTS AND MISINTERPRETED OHIO SUPREME COURT AND 10TH DISTRICT PRECEDENT IN DISMISSING THE COMPLAINT WHICH IS AN ABUSE OF DISCRETION WARRANTING REVERSAL.

[2] By this point in the proceedings, Mabel had voluntarily dismissed her claims against Public Storage, so Garry and Cardinal remained the only defendants.

{¶ 9} Because the two assignments of error are interrelated, we will address them together. By both of these assignments of error, Mabel challenges the trial court's decision to dismiss her action against Garry for lack of subject-matter jurisdiction.

{¶ 10} A trial court must grant a Civ.R. 12(B)(1) motion to dismiss for lack of subject-matter jurisdiction if the complaint fails to raise a cause of action cognizable by the forum. *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989). When deciding whether to dismiss pursuant to a Civ.R. 12(B)(1) motion, a trial court is not confined to the allegations of the complaint. *Southgate Dev. Corp. v. Columbia Gas Trans. Corp.*, 48 Ohio St.2d 211 (1976), paragraph one of the syllabus. Rather, a trial court may consider any facts established in the record. *Cirino v. Ohio Bur. of Workers' Comp.*, 153 Ohio St.3d 333, 2018-Ohio-2665, ¶ 17. Appellate courts review dismissals pursuant to Civ.R. 12(B)(1) de novo. *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 146 Ohio St.3d 315, 2016-Ohio-478, ¶ 12.

{¶ 11} Initially, we must clarify that the operative complaint in this case is the amended complaint. We recognize that Mabel filed a second amended complaint on September 5, 2018. Mabel, however, failed to comply with Civ.R. 15(A) when filing that complaint.

{¶ 12} In relevant part, Civ.R. 15(A) provides:

> A party may amend its pleading once as a matter of course within twenty-eight days after serving it or, if the pleading is one to which a responsive pleading is required within twenty-eight days after service of a responsive pleading or twenty-eight days after service of a motion under Civ.R. 12(B), (E), or (F), whichever is earlier. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave.

Thus, a plaintiff may amend a complaint once as a matter of course within (1) 28 days of service of the complaint, or (2) the earlier of 28 days of service of (a) a responsive pleading or (b) a motion to dismiss, to strike, or for a more definite statement. *Hunter v. Rhino Shield*, 10th Dist. No. 18AP-244, 2019-Ohio-1422, ¶ 13, citing Civ.R. 15 Staff Notes (July 1, 2013) (explaining the 2013 changes to Civ.R. 15(A)). In all other cases, a plaintiff may not file an amended complaint without first obtaining the opposing party's written consent or leave from the trial court.

{¶ 13} Here, Mabel used her one chance to amend as a matter of course when she filed her amended complaint on August 13, 2018. Thus, she needed the opposing parties' consent or the trial court's leave to file the second amended complaint. The record lacks any documentation showing that she obtained either. The second amended complaint, therefore, is a legal nullity. *See id*. at ¶ 17.

{¶ 14} While the amended complaint asserts claims against Cardinal and Public Storage, it does not even attempt to set forth any claim against Garry. At best, it includes the allegation that Garry violated the temporary restraining order, and Mabel suffered injury due to that alleged violation. However, a party must seek its remedy for a violation of a restraining order through contempt proceedings. *Obara v. Obara*, 2d Dist. No. 26668, 2016-Ohio-5651, ¶ 12 ("Civil contempt proceedings provide the remedy for failure to comply with a court order."); R.C. 2727.11 ("An injunction or restraining order granted by a judge may be enforced as an act of the court, and disobedience thereof may be punished by the court, or by a judge who granted it in vacation, as a contempt.").

{¶ 15} " 'It is a well-established rule that the power to judge a contempt rests exclusively with the court contemned, and that no court is authorized to punish a contempt against another court.' " *Johnson v. Perini*, 33 Ohio App.3d 127, 129 (3d Dist.1986); *accord In re G.B.*, 2d Dist. No. 27601, 2017-Ohio-8418, ¶ 47 (quoting and following *Johnson*); *In re Lance*, 8th Dist. No. 102838, 2016-Ohio-2717, ¶ 16 (quoting and following *Johnson*); *Queensgate II Assocs./Uptown Towers v. Walker*, 1st Dist. No. C-960911 (Aug. 14, 1998) (vacating a judgment finding a party in contempt for violating an order of a different court because "[t]he power to judge contempt rests exclusively with the court contemned"); *Estate of Nozik v. Nozik*, 11th Dist. No. 94-L-171 (Nov. 9, 1995) (quoting and following *Johnson*); *White v. Stafford*, 8th Dist. No. 61838 (Jan. 14, 1993) ("The contempt claim is under the jurisdiction of the court overseeing the [ ] case from which the contempt arose. It is the trial court in that [ ] case which has the exclusive authority to punish the contemnor in order to ensure the exercise of its orders."). Thus, subject-matter jurisdiction to determine and sanction a contempt rests with the court against which the contempt is committed. *In re Lance* at ¶ 16-17; *Walker*; *Nozik*; *White*; *Johnson* at 129.

{¶ 16} Here, the domestic court issued the temporary restraining order Garry allegedly violated. Consequently, the domestic court is the only court that has subject-

matter jurisdiction to decide whether Garry violated the temporary restraining order and, if he did, penalize him for it. Accordingly, we conclude that the trial court did not err in granting Garry's motion to dismiss, and we overrule Mabel's two assignments of error.

{¶ 17} For the foregoing reasons, we overrule the first and second assignments of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

LUPER SCHUSTER and NELSON, JJ., concur.