

Rel: June 16, 2023

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

SC-2022-1008

Tracy Murray d/b/a Tracy's Treasure Company, LLC

v.

Seneathia K. Porter

**Appeal from Jefferson Circuit Court
(CV-19-903275)**

SELLERS, Justice.

Tracy Murray, doing business as Tracy's Treasure Company, LLC ("Murray"), appeals from a judgment entered by the Jefferson Circuit Court in an unlawful-detainer action initiated by Seneathia K. Porter.

Because we conclude that the circuit court lacked subject-matter jurisdiction, we dismiss the appeal.

On July 22, 2019, Porter initiated an unlawful-detainer action against Murray, seeking possession of commercial property "located [on] Pearson Avenue S.W., Birmingham," and the recovery of, among other things, unpaid rent, late fees, insurance costs, taxes, and attorney's fees. Porter claimed that she owned the property, that she had leased the property to Murray on a month-to-month basis for the sum of \$1,500 per month, that Murray had defaulted under the lease by failing to pay rent in accordance with the lease, and that she had provided Murray with written notice that her right of possession of the property had been terminated. Murray, on the other hand, denied that she had leased the property; rather, she claimed that she had executed a contract to purchase the property and had made improvements to the property. On October 18, 2022, following a bench trial, the circuit court purported to enter a judgment in favor of Porter and against Murray. Murray appealed.

Neither party challenges the circuit court's subject-matter jurisdiction in this case. Nonetheless, because subject-matter jurisdiction

cannot be waived, it is the duty of this Court to consider the lack of subject-matter jurisdiction ex mero motu. McElroy v. McElroy, 254 So. 3d 872, 875 (Ala. 2017). By statute, original jurisdiction over an unlawful-detainer action lies in the district court of the county in which the property is situated. See § 6-6-330, Ala. Code 1975 ("The forcible entry upon and detainer, or the unlawful detainer, of lands, tenements and hereditaments is cognizable before the district court of the county in which the offense is committed."); see also § 6-6-331, Ala. Code 1975 ("The complaints provided for [in the Unlawful Detainer Act, § 6-6-310 et seq., Ala. Code 1975,] must be filed with, and be tried by, the district court for the county in which the lands or tenements are situated."). In Ex parte McKinney, 87 So. 3d 502, 510 (Ala. 2011), this Court held that a circuit court may not exercise jurisdiction over an unlawful-detainer action until the district court has adjudicated the action and one of the parties has appealed to the circuit court. See § 6-6-350, Ala. Code 1975 ("Any party may appeal from a judgment entered against him or her [in an unlawful-detainer action] by a district court to the circuit court at any time within seven days after the entry thereof, and [the] appeal and the proceedings thereon shall in all respects, except as provided in [the Unlawful

Detainer Act], be governed by this code relating to appeal from district courts.").

In this case, Porter initiated the action by filing a complaint in the circuit court. That complaint was filed using an Alabama Unified Judicial System Form SC-59, titled "Statement of Claim Eviction/Unlawful Detainer." It is undisputed that the relief sought by Porter in the complaint was in the nature of the relief available in an unlawful-detainer action as opposed to the relief available in an eviction action.¹ The complaint demands the right to possession of the property

¹Unlike unlawful-detainer actions, which must be brought in the district court, eviction actions may be brought in the circuit court. See § 35-9A-461(b), Ala. Code 1975 ("District courts and circuit courts, according to their respective established jurisdictions, shall have jurisdiction over eviction actions, and venue shall lie in the county in which the leased property is located."); see also Ex parte McKinney, 87 So. 3d 502, 507 n.6 (Ala. 2011) (explaining the distinction between a cause of action for ejectment and one alleging unlawful detainer, stating: "'Ejectment may be maintained on proof of title carrying, as an element of ownership, a right to possession and enjoyment. Unlawful detainer is a penal action, summary in character, specifically designed to oust a hold-over tenant.'" (quoting Lane v. Henderson, 232 Ala. 122, 124, 167 So. 270, 271 (1936)); see also Holcomb v. Morris, 457 So. 2d 973, 976 (Ala. Civ. App. 1984) (noting that "[u]nlawful detainer concerns only the right of possession of property and usually does not involve any question of title in the land"); and Jackson Lumber Co. v. McCreary, 137 Ala. 278, 34 So. 850 (1903) (noting that ejectment is a favored method of trying titles to land).

and seeks recovery of, among other things, unpaid rent, various expenses, and attorney's fees. Porter, in fact, represents that the appeal stems from a "final judgment entered in a civil action for unlawful detainer." Porter's brief at 1. Moreover, there is nothing on the case-action summary indicating that the Jefferson District Court had previously adjudicated Porter's unlawful-detainer action. Because the district court had not adjudicated the unlawful-detainer action, the circuit court lacked jurisdiction over the action and the judgment it entered is void and, therefore, will not support an appeal. Accordingly, we dismiss Murray's appeal and instruct the circuit court to vacate its judgment in favor of Porter and to dismiss the unlawful-detainer action. Fenn v. Ozark City Schs. Bd. of Educ., 9 So. 3d 484, 487 (Ala. 2008).

APPEAL DISMISSED WITH INSTRUCTIONS.

Parker, C.J., and Wise, Stewart, and Cook, JJ., concur.