

RENDERED: OCTOBER 25, 2019; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-000218-DG

HAZEL P. COLE

APPELLANT

ON DISCRETIONARY REVIEW FROM EDMONSON CIRCUIT COURT
v. HONORABLE TIMOTHY R. COLEMAN, JUDGE
ACTION NO. 18-XX-00001

EMMA JEAN VINCENT,
BY HER ATTORNEY IN FACT,
BARBARA JEAN SEABOLT

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: GOODWINE, SPALDING, AND TAYLOR, JUDGES.

GOODWINE, JUDGE: This forcible detainer action is before this Court on discretionary review of the order of the Edmonson Circuit Court affirming the Edmonson District Court's finding Hazel P. Cole ("Cole") guilty of forcible detainer. After careful review, we reverse and remand.

Emma Jean Vincent (“Vincent”) is the mother of three children, including Cole. Vincent deeded the property at issue to her three children and retained a life estate. Vincent brought a forcible detainer action against Cole, who kept cows on the property. The district court found Cole guilty of forcible detainer, finding although there was no landlord-tenant relationship between the parties, Cole had no right to possession of the property. The circuit court affirmed, holding “any possession by [Cole] of the subject property would be permissive, and, once that permission is withdrawn, such as it was in this case, subject to a forcible detainer action by [Vincent].” R. at 27-28.

Cole then moved this Court for discretionary review, arguing the district court’s and circuit court’s decisions were erroneous because a landlord-tenant relationship is required to maintain a writ of forcible detainer. This Court granted discretionary review. The sole issue before us is whether the district court lacked subject matter jurisdiction over the underlying action as the parties did not have a landlord-tenant relationship. “We review determinations on subject-matter jurisdiction *de novo*.” *Basin Energy Co. v. Howard*, 447 S.W.3d 179, 184 (Ky. App. 2014) (citing *Appalachian Regional Healthcare, Inc. v. Coleman*, 239 S.W.3d 49, 54 (Ky. 2007)).

Cole argues the district court lacked subject matter jurisdiction over the case because the parties did not have a landlord-tenant relationship. Vincent

summarily argues such a relationship is not required because Cole obtained possession of the property without Vincent's consent. KRS¹ 383.200 defines forcible entry and forcible detainer as follows:

(2) A forcible entry is:

(a) An entry without the consent of the person having the actual possession;

(b) As to landlord, an entry upon the possession of his tenant at will or by sufferance, whether with or without the tenant's consent.

(3) A forcible detainer is:

(a) The refusal of a tenant to give possession to his landlord after the expiration of his term; or of a tenant at will or by sufferance to give possession to the landlord after the determination of his will;

(b) The refusal of a tenant of a person who has made a forcible entry to give possession, on demand, to the person upon whose possession the forcible entry was made;

(c) The refusal of a person who has made a forcible entry upon the possession of one who acquired it by a forcible entry to give possession, on demand, to him upon whose possession the first forcible entry was made;

(d) The refusal of a person who has made a forcible entry upon the possession of a tenant for a term to deliver possession to the landlord, upon demand, after the term expires; and, if the term expires whilst a writ of forcible entry sued out by

¹ Kentucky Revised Statutes.

the tenant is pending, the landlord may, at his cost and for his benefit, prosecute it in the name of the tenant.

“It is well settled in this Commonwealth that a forcible detainer action is viable *only* where the relationship of the competing parties is that of landlord and tenant.” *Emmons v. Madden*, 781 S.W.2d 529, 530 (Ky. App. 1989). The purpose of such an action is “to restore to a landlord premises unlawfully detained by a mere tenant.” *Hall’s Ex’rs v. Robinson*, 165 S.W.2d 163, 166 (Ky. 1942). Our long-standing precedent indicates a landlord-tenant relationship is also required to maintain a forcible entry action. *See American Coal Land Co. v. Miller*, 206 S.W. 18, 20 (Ky. 1918); *Lovely v. Stacey*, 188 S.W. 389, 389 (Ky. 1916); *Cuyler v. Estis*, 64 S.W. 673, 674 (Ky. 1901); *Quertemus v. Breckinridge*, 35 Ky. (5 Dana) 125, 125 (1837). Furthermore, KRS Chapter 383 is titled “Landlord and Tenant,” which indicates legislative intent that the statutes therein apply only to parties with a landlord-tenant relationship. Thus, we reject Vincent’s argument that a landlord-tenant relationship is not required to maintain an action for forcible entry.

Nowhere in her pleadings does Vincent allege she and Cole had a landlord-tenant relationship. Instead, it is undisputed that Vincent holds a possessory interest in the property through a life estate and Cole owns the same property through a remainder. Although another remedy may be available to

Vincent to oust Cole from the property, the district court lacked subject matter jurisdiction over this case because the parties do not have a landlord-tenant relationship. As such, the circuit court erred in affirming the district court.

For the foregoing reasons, we reverse the judgment of the Edmonson Circuit Court and remand with instructions to vacate the judgment of the Edmonson District Court.

TAYLOR, JUDGE, CONCURS.

SPALDING, JUDGE, DISSENTS AND WRITES A SEPARATE OPINION.

SPALDING, JUDGE, DISSENTING: I respectfully dissent.

Pursuant to the forcible entry and detainer statute, the district court had jurisdiction to hear the above-styled matter and grant a judgment in favor of the appellee.

While I understand reliance on the case of *Emmons v. Madden*, 781 S.W.2d 529 (Ky. App. 1989), I believe that holding contradicts the actual wording of the forcible detainer statute.

KRS 383.210(1) states that upon the “complaint by a person aggrieved by a forcible entry **or** detainer to the District Court of the county in which the land or tenement, or a principal part thereof, lies, a warrant shall issue[.]” (Emphasis added.) KRS 383.210(2) states that “trial of writs of forcible entry, forcible detainer or forcible entry and detainer” will be by the court unless

either party demands a trial by jury. Finally, KRS 383.235 states that “[t]he jurors, after hearing the evidence, shall, by their inquest, say whether the defendants, or either of them, be guilty or not guilty of the forcible entry or detainer complained of[.]” All of these statutes hold that forcible entry is a different concept than a forcible detainer. KRS 383.200(2)(a) defines a forcible entry as “entry without the consent of the person having the actual possession” of the property. It does not require the person who enters without consent be a tenant or the person with actual possession be a landlord.

The appellee as the life tenant has full use and possession of the property during her natural life with the only caveat being that she cannot commit waste thereupon. *Hammons v. Hammons*, 327 S.W.3d 444, 451 (Ky. 2010). The life tenant has actual possession of the property and alleges the appellant is upon the property without consent. Therefore, KRS 383.200(2)(a) would apply. Hence, it is my opinion that the district court had jurisdiction to hear the appellee’s case that appellant is committing a forcible entry upon the property and I would affirm the circuit court.

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