

[Cite as *Mark R. Gusley & Assoc. Co. v. Pulskamp*, 2010-Ohio-4254.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94822

MARK R. GUSLEY & ASSOC. CO.

PLAINTIFF-APPELLEE

vs.

DONALD PULSKAMP

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Parma Municipal Court
Case No. 09 CVF 04934

BEFORE: Cooney, J., Blackmon, P.J., and Boyle, J.

RELEASED: September 9, 2010

JOURNALIZED:

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COLLEEN CONWAY COONEY, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶ 2} Defendant-appellant, Donald Pulskamp (“Pulskamp”), appeals the default judgment entered against him in the Parma Municipal Court on grounds that the judgment was void for lack of subject matter jurisdiction. We find merit to the appeal and reverse.

{¶ 3} On November 30, 2009, plaintiff-appellee, Mark R. Gusley & Associates Co. LPA (“Gusley” or “the law firm”), filed a complaint in the Parma Municipal Court alleging that Pulskamp owed an outstanding balance on his attorney fee bill. On December 23, 2009, Pulskamp, pro se, filed a letter in which he denied the allegations in the complaint. The court treated Pulskamp’s letter as an answer.

{¶ 4} According to the docket, the court conducted a pretrial on February 10, 2010, at which Pulskamp failed to appear. On February 17, 2010, Gusley filed a motion for default judgment, which the court granted that same day. Pulskamp now appeals, raising two assignments of error in which he argues the trial court erred in granting a default judgment because it lacked subject-matter jurisdiction over this case.

{¶ 5} We review the issue of subject-matter jurisdiction de novo. *Cuyahoga Cty. Bd. of Commrs. v. Daroczy*, 178 Ohio App.3d 625, 2008-Ohio-5491, 899 N.E.2d 1017, ¶4. Under this standard of review, we must independently review the record and afford no deference to the trial court’s decision. *Internatl. Total Serv., Inc. v. Garlitz*, Cuyahoga App. No. 20441, 2008-Ohio-3680, ¶6, citing *Herakovic v. Catholic Diocese of Cleveland*, Cuyahoga App. No. 85467, 2005-Ohio-5985.

{¶ 6} Although Pulskamp never raised the jurisdictional issue below, lack of subject matter jurisdiction may be raised at any point during the proceedings.

Civ.R. 12(H); *Fox v. Eaton Corp.* (1976), 48 Ohio St.2d 236, 238, 358 N.E.2d 536, overruled on other grounds by *Manning v. Ohio State Library Bd.* (1991), 62 Ohio St.3d 24, 29, 577 N.E.2d 650.

{¶ 7} “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.” *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, 87, 290 N.E.2d 841. Municipal courts are created by statute and their subject-matter jurisdiction is defined by statute. *Cheap Escape Co., Inc. v. Haddox*, 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶7. R.C. 1901.02(A) provides that municipal courts “have jurisdiction within the corporate limits of their respective municipal corporations.” R.C. 1901.18(A) defines the subject-matter jurisdiction of the municipal courts as follows:

“Except as otherwise provided in this division or section 1901.181 of the Revised Code, subject to the monetary jurisdiction of municipal courts as set forth in section 1901.17 of the Revised Code, a municipal court has original jurisdiction within its territory in all of the following actions or proceedings * * * .”

{¶ 8} The list of enumerated actions includes breach-of-contract cases, which is the cause of action here.

{¶ 9} In *Cheap Escape*, the Ohio Supreme Court held: “R.C. 1901.18(A) limits municipal court subject-matter jurisdiction to actions or proceedings that have a territorial connection to the court.” *Id.* at syllabus. This court recently followed this holding. See *Francis David Corp. v. Scrapbook Memories & More*,

Cuyahoga App. No. 93376, 2010-Ohio-82; *Francis David Corp. v. Chris' Place*, Cuyahoga App. No. 93531, 2010-Ohio-678.

{¶ 10} Pulskamp argues the Parma Municipal Court did not have subject-matter jurisdiction over the instant case because there is no connection between his contract with Gusley and the Parma Municipal Court's "territory" as defined by R.C. 1901.02(B). We agree.

{¶ 11} Gusley filed its appellate brief in the instant case 19 days before oral argument and baldly asserted that "Appellee is located in Parma * * * and has other offices as well."¹ The record, however, contains no evidence that the law firm is located in Parma. Its address in the trial court record and on its appellate brief reflects a Cleveland address within the 44105 zip code — clearly not Parma.

{¶ 12} R.C. 1901.02(B) provides that "[t]he Parma municipal court has jurisdiction within the municipal corporations of Parma Heights, Brooklyn, Linndale, North Royalton, Broadview Heights, Seven Hills, and Brooklyn Heights in Cuyahoga County." According to the complaint, Gusley & Associates is located in Cleveland, Ohio. Gusley represented Pulskamp in post-decree divorce matters in the Summit County Court of Common Pleas, Domestic Relations Division. Pulskamp lives in Stow and lived in Stow the entire time that Gusley represented him. Pulskamp also states that at no time was any party located in Parma and no

¹Gusley also stated that "appellee conducts business from his home in Parma." However, the action was brought by a law firm, not an individual with a home.

transactions or business took place in Parma. There is also no suggestion that the parties had any contacts with any other enumerated municipalities located within the territorial jurisdiction of the Parma Municipal Court.

{¶ 13} Thus, we conclude that the Parma Municipal Court did not have subject matter jurisdiction over this case and that the default judgment it entered against Pulskamp is void. *Hoerner v. Downs* (1989), 63 Ohio App.3d 286, 288, 578 N.E.2d 830 (holding that “[i]f courts transcend the limits which the law prescribes, and assume to act where they have no jurisdiction, their acts are utterly void.”) Accordingly the first assignment of error is sustained.

{¶ 14} Having found that the default judgment is void, Pulskamp’s second assignment of error, in which he argues that the default judgment was entered in contravention of law, is moot.

{¶ 15} We reverse the judgment of the trial court and remand with instructions to dismiss the case for lack of subject-matter jurisdiction.

It is ordered that appellant recover of said appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the municipal 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.

COLLEEN CONWAY COONEY, JUDGE

PATRICIA A. BLACKMON, P.J., and
MARY J. BOYLE, J., CONCUR