

[Cite as *Kovar v. Latosky*, 2003-Ohio-7368.]

Please see Original Opinion at *Kavar v. Latosky*, 2003-Ohio-1749.

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

LARRY KOVAR,	:	OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2002-L-037
MONICA LATOSKY,	:	
Defendant-Appellee.	:	

Civil Appeal from Willoughby Municipal Court, Case No. 02 CVG 00055.

Judgment: Affirmed.

Keith R. Kraus and Richard N. Selby, II, Dworken & Bernstein Co., L.P.A., 60 South Park Place, Painesville, OH 44077 (For Plaintiff-Appellant).

Michael P. Germano, Wiles and Richards, Centre Plaza South, 35350 Curtis Boulevard, #530, Eastlake, OH 44095 (For Defendant-Appellee).

Pursuant to an inadvertent error on page 6 of this Court's Opinion filed on April 7, 2003, it is ordered, *sua sponte*, that the attached page 6 be substituted.

The Clerk of Courts is instructed to substitute page 6 of this Court's April 7, 2003 Opinion with the page 6 attached to this entry.

DIANE V. GRENDELL, J.

{¶1} Larry Kovar (“appellant”) appeals the February 11, 2002 decision of the Willoughby Municipal Court. In that decision, the trial court granted Monica Latosky’s (“appellee”) motion to stay the forcible entry and detainer action initiated against her by appellant. For the following reasons, we affirm the decision of the Willoughby Municipal Court in this matter.

{¶2} Appellant filed a forcible entry and detainer action against appellee on January 10, 2002. Appellee then filed a complaint for divorce in the Lake County Common Pleas Court on January 24, 2002. On January 25, 2002, appellee filed her answer to appellant’s forcible entry complaint, asserted a defense of common law marriage, and noted that a divorce action was pending in the Lake County Common Pleas Court. Appellee also filed her motion to stay on January 25, 2002, in which she provided specific information as to the origin of the alleged common law marriage with appellant.

{¶3} A hearing on the motion to stay was held before the magistrate on February 7, 2002. At the conclusion of the hearing, the magistrate decided to stay the matter pending a determination of the parties’ marital status and property rights by the Lake County Common Pleas Court, Domestic Relations Division. The municipal court adopted the magistrate’s decision on February 11, 2002. This timely appeal followed, and appellant asserts one assignment of error for our review:

{¶4} “[1.] The trial court erred to the prejudice of plaintiff-appellant by staying the eviction proceeding on the basis of a subsequently filed “common law marriage” divorce complaint.”

{¶5} Appellant contends that the municipal court in this case has original jurisdiction over the forcible entry and detainer action pursuant to R.C. 1901.18(A)(8). Appellant also contends that: “A forcible entry and detainer action is intended to serve as an expedited mechanism by which an aggrieved landlord may recover possession or real property ***. Thus, ***, the drafters of the Rules of Civil Procedure were careful to avoid encrusting the special remedy with a time consuming procedure tending to destroy its efficacy.” *Miele v. Ribovich* (2000), 90 Ohio St.3d 439, 441.

{¶6} For most forcible entry and detainer cases, appellant is correct. However, cases involving the possible exclusion of a spouse from a marital residence fall within an exception to the norm.

{¶7} Generally, a municipal court has original jurisdiction over forcible entry and detainer actions. R.C. 1901.18(H). In exercising that jurisdiction, the issue is the impact, if any, of a party’s assertion of an existing marriage.

{¶8} Although “municipal courts have jurisdiction to determine cases in forcible detainer, they are without jurisdiction to determine domestic relations cases and may not determine that one or the other may be excluded from the marital home pursuant to statute providing that neither spouse can be excluded from the other’s dwelling, except on a decree or order of injunction by a court of competent jurisdiction.” *Slansky v. Slansky* (1973), 33 Ohio App.2d 127, 139; R.C. 3103.04. A “Common Pleas Court, or its domestic relations division, has exclusive jurisdiction to exclude one spouse from the marital dwelling.” *Slansky*, supra. Furthermore, “The court of common pleas, including division of courts of domestic relations, has full equity power and jurisdiction appropriate to the determination of all domestic relation matters.” R.C. 3105.11.

{¶9} In *Slansky*, the parties were unquestionably married. Therefore, the marital status of the parties was not at issue. By contrast, the marital status of the parties, as an alleged common law marriage couple, is the central issue in this case.

{¶10} This court addressed the common law marriage defense issue in *Demidovich v. Poccia* (Nov. 10, 1988), 11th Dist. No. 4036, 1988 Ohio App. LEXIS 4483. In that case, the defendant in a forcible entry and detainer action asserted that she was the common law wife of the plaintiff-property owner, and, therefore, the municipal court lacked subject matter jurisdiction. This court distinguished that alleged common law marriage case from the actual marriage situation in *Slansky* because the pending common law divorce action had been dismissed. Thus, we concluded that a municipal trial court is not required to address the marriage defense, and may proceed with the forcible entry action, unless evidence of a valid marriage is presented. Moreover, this court held that the defendant's "mere" assertion in her answer that a common law marriage existed was not sufficient to establish the defense. *Id* at 2.

{¶11} The Eighth Appellate District reached a similar conclusion in *State ex rel. Carro v. Weiler* (2001), 143 Ohio App.3d 402 (fact that alleged common law wife was appealing the determination of the Court of Common Pleas, Division of Domestic Relations, that she was not a common law wife, did not deprive the municipal court of jurisdiction in a forcible entry and detainer action). At a minimum, a municipal court has jurisdiction to determine whether the assertion of an existing marriage, in this case a common law marriage, is a dilatory tactic to delay such expedited proceedings or is supported by some credible evidence that precludes further jurisdiction over the issue and warrants a stay or dismissal of those proceedings.

{¶12} The municipal court in this case was faced with an alleged common law marriage. Consistent with *Demidovich*, the municipal court in this case had jurisdiction to take evidence on the issue of an existing common law or statutory marriage. In other words, appellee could have provided the trial court with a license, certificate, proof of disposition on the marital issue from a court of valid jurisdiction, or evidence of a valid common law marriage. If appellee were able to do so, then the case would evolve into an action to quiet title, which would require the municipal court to dismiss the action for lack of jurisdiction. *Haas v. Gerski* (1963), 175 Ohio St. 327; *Wells v. Cunningham* (1990), 56 Ohio Misc.2d 9. However, if appellee could not prove that an existing marriage was present, the municipal court could then proceed with the instant forcible entry and detainer action. *Demidovich*, supra. In that case, the municipal court's determination that the parties were not involved in an existing marriage would only be applicable to the specific facts of the forcible entry and detainer action and would not serve as a bar to a subsequent action brought by either party. R.C. 1923.03. A subsequent divorce action could still be adjudicated in the domestic relations court. *Haas*, supra, at 330.

{¶13} While the municipal court in this case had jurisdiction to proceed with the forcible entry and detainer action, the court also had the power to stay proceedings if the circumstances warranted such a stay.

{¶14} A trial court's decision to stay proceedings shall not be overturned absent an abuse of discretion. *Glenmoore Builders, Inc. v. Kennedy*, 11th Dist. No. 2001-P-0007, 2001-Ohio-8777, 2001 Ohio App. LEXIS 5449. An abuse of discretion is more than an error of law or judgment; it implies that the action of the trial court was

unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶15} Courts have the power to stay proceedings pending resolution of potentially dispositive developments. *State v. Hochhausler* (1996), 76 Ohio St.3d 455, 464; *State ex rel. Smith v. Friedman* (1970), 22 Ohio St.2d 25. This authority flows from the inherent power of the courts to control their dockets. *Id.* Among the factors that courts have held warrant a stay are the efficiency and judicial economy that results from staying matters pending resolution of potentially dispositive developments. See *State ex rel. Zellner v. Cincinnati Bd. of Edn.* (1973), 34 Ohio St.2d 199, 201-202. Additionally, the common pleas domestic relations court also has concurrent original jurisdiction in a forcible entry and detainer action. *Seventh Urban, Inc. v. Univ. Circle Property Dev., Inc.* (1981), 67 Ohio St.2d 19.

{¶16} Avoiding judicial duplication and potentially divergent judicial rulings are valid reasons for staying an action pending resolution of potentially dispositive developments. Those reasons are particularly relevant in this case where a decision to evict appellee could subsequently run afoul of R.C. 3103.04, should the domestic relations court confirm the existence of a common law marriage.

{¶17} In the interests of judicial economy, the municipal court had the discretionary authority to grant a stay in the instant matter. If the parties in this case were adjudged to be involved in a common law marriage, then R.C. 3105.11 would bar the municipal court from excluding appellee from the marital home. We cannot say that the municipal court abused its discretion by staying this action. Under these

circumstances, the exercise of the municipal court's discretionary stay authority was proper.

{¶18} Based on the foregoing reasons, we hold that the municipal court's decision to stay the proceedings was not an abuse of discretion. Appellant's sole assignment of error is without merit. The decision of the Willoughby Municipal Court is affirmed.

Judgment affirmed.

DONALD R. FORD, P.J., concurs.

JUDITH A. CHRISTLEY, J., dissents with dissenting opinion.

JUDITH A. CHRISTLEY, J., dissenting.

{¶19} I respectfully dissent primarily concerning the ability of the municipal court to stay the forcible entry and detainer action. However, I also have concerns with other aspects of the analysis with respect to the extent of a municipal court's jurisdiction when a common law marriage claim is asserted.

{¶20} There is no question that absent an unambiguous lack of jurisdiction, any court, including a municipal court, has the authority to determine its own jurisdiction. *State ex rel. Roots Local School Dist. Bd. of Edn. v. Portage Cty. Court of Common Pleas* (1977), 78 Ohio St.3d 489, 491-492. Thus, to that limited extent, a municipal court can conduct a narrow inquiry when a claim of a common law marriage is asserted as a defense to a forcible entry and detainer action. The fact that such a claim is being made as a dilatory tactic is irrelevant to the court's right to inquire.

{¶21} That being said, when a claim of common law marriage is made, the total extent of the municipal court’s inquiry is whether a judicial adjudication regarding the existence of a common law marriage has already been made by a court of competent jurisdiction. If there is no evidence of such a determination, then the municipal court can proceed with the forcible entry and detainer action as though the parties were unmarried. The municipal court has absolutely no jurisdiction to go beyond that inquiry as the jurisdiction to determine the validity of a claim of a common law marriage is the exclusive jurisdiction of the domestic court.

{¶22} This is no different from a situation were a tenant claims an equitable interest in the real estate as a defense to eviction. The municipal court has no jurisdiction to maintain a quiet title action; hence, it must proceed solely on the issue of who holds present recorded title. *Haas v. Gerski* (1963), 175 Ohio St. 327. It cannot go beyond that determination.

{¶23} Under *Haas*, reliance on present title was clearly not considered to be a quiet title action as there was no determination of title beyond the simple determination of who was the present titleholder of record. It would be a simple inquiry as to the status of an existing public record. As a result, an eviction proceeding in municipal court was irrelevant to any pending or subsequent common pleas action to quiet title, as there would be no conflicting determination of title. The reason being is that “there [was] no question as to present record title” in the municipal court. *Id.* at paragraph one of the syllabus.

{¶24} The principles set out in *Haas* were reaffirmed in 1980 by the Supreme Court of Ohio in *State ex rel. Carpenter v. Warren Mun. Court* (1980), 61 Ohio St.2d

208. There, not only did the court determine that the municipal court *could* proceed when there is a simultaneous quiet title action proceeding in common pleas court, but it determined that it *must* proceed.

{¶25} Again quoting *Haas*, the Supreme Court held that “In the case at bar, appellee held the title to the property by duly recorded deed. *** For the purpose of the forcible entry and detainer action, this was conclusive of his right to present possession *after having given the required notice to vacate the premises. Were appellee not permitted to prove his right to possession by proving his record title, the forcible entry and detainer statute would have little meaning. ****” (Emphasis sic and citations omitted.) *State ex rel. Carpenter* at 209, quoting *Haas* at 330-331.

{¶26} “To allow the Municipal Court the discretion to stay proceedings in this cause would be to defeat the purpose of the forcible entry and detainer statutes (*i.e.*, immediate possession), to permit their circumvention by merely bringing title into question in a collateral suit in common pleas court, and to deny through successive appeals, the relief they were intended to provide.” (Emphasis sic.) *State ex rel. Carpenter* at 210.

{¶27} Thus, not only is the inquiry into the existence of a common law marriage very limited in a forcible entry and detainer action, but if no legal adjudication is found to exist, the municipal court must proceed to adjudicate the eviction as though the parties were unmarried. Per *Carpenter*, no stay is permissible if there is evidence of a present record title in the name of the landlord. Thus, I would reverse and remand to the trial court with orders to proceed with the eviction.