

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Carol Scudere dba Professional Domestic Services and Professional Domestic Institute,	:	
	:	
Plaintiff-Appellee,	:	No. 09AP-422
	:	(M.C. No. 2007CVF-048954)
v.	:	
	:	(REGULAR CALENDAR)
Lynda France,	:	
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on December 31, 2009

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*Hill Allison & DeWeese, LLC, Christian D. Donovan and Stephen S. DeWeese*, for appellee.

*Reinhart Law Office, and Harry R. Reinhart*, for appellant.

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APPEAL from the Franklin County Municipal Court.

McGRATH, J.

{¶1} Defendant-appellant, Lynda France ("appellant"), appeals the judgment of the Franklin County Municipal Court, which rendered judgment against her in favor of plaintiff-appellee, Carol Scudere ("appellee"). For the following reasons, we reverse.

{¶2} In June 2007, the parties entered into an employee referral agreement ("agreement") whereby appellee would act as a recruiter to procure a household professional ("nanny") for appellant. The agreement provided that appellant would pay appellee a placement fee, which was to be formulated as "the greater of either (1)

\$5,000.00 (minimum placement fee) or (2) an amount equal to 25 percent of the applicant/employee's projected and/or agreed upon first year full-time gross annual salary." (Complaint at Exhibit A, ¶2.) The agreement also contained a forum selection clause, which provided:

THE PARTIES AGREE AND CLIENT CONSENTS THAT THE LAWS OF THE STATE OF OHIO GOVERN THIS AGREEMENT WITHOUT RECOURSE TO THE RULES OF CONFLICT OF LAWS AND THAT THE JURISDICTION AND VENUE FOR ANY AND ALL ACTIONS OR LEGAL DISPUTES PURSUANT TO OR RELATED TO SAID AGREEMENT SHALL BE IN FRANKLIN COUNTY, OHIO, FURTHER, PDS/DC AND CLIENT BOTH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OUT OF THIS AGREEMENT.

{¶3} A dispute subsequently arose between the parties. On October 22, 2007, appellee filed a breach of contract complaint in the municipal court alleging that appellant failed to pay the placement fee as required by the agreement and sought damages in the amount of \$11,415.62, plus a late fee of \$100.00, interest, as well as the cost of collection.

{¶4} Procedurally, as germane to this appeal, appellant filed a motion to dismiss or transfer pursuant to Civ.R. 3(B) on February 12, 2008, which the trial court denied on May 12, 2008. Asserting different grounds, appellant filed a second motion to dismiss on March 6, 2009; specifically, appellant argued that the trial court lacked subject-matter jurisdiction under R.C. 1901.18 based on the Ohio Supreme Court's decision in *Cheap Escape Entertainment Co. v. Haddox, LLC*, 120 Ohio St.3d 493, 2008-Ohio-6323. On March 31, 2009, the trial court denied appellant's second motion to dismiss, and the matter proceeded to a bench trial. On April 21, 2009, the trial court entered judgment in

favor of appellee. Appellant timely appealed and advances two assignments of error for our review, as follows:

FIRST ASSIGNMENT OF ERROR:

THE COURT ERRED IN OVERRULING THE DEFENDANT'S MOTION TO DISMISS AND SUBSEQUENTLY ENTERING JUDGMENT WHEN IT LACKED JURISDICTION OVER THE SUBJECT MATTER.

SECOND ASSIGNMENT OF ERROR:

THE TRIAL COURT ERRED TO APPELLANT'S SUBSTANTIAL PREJUDICE WHEN IT ENTERED JUDGMENT IN A BREACH OF CONTRACT CASE IN FAVOR OF PLAINTIFF IN THE AMOUNT OF \$23,728.32 WHEN THAT AMOUNT OF MONEY HAS NO RELATIONSHIP TO THE DAMAGE ALLEGEDLY SUFFERED BY THE PLAINTIFF.

{¶5} In her first assignment of error, appellant argues that the court lacked subject-matter jurisdiction to entertain appellee's lawsuit. Specifically, appellant cites to *Cheap Escape*, for the proposition that a municipal court's subject-matter jurisdiction is expressly limited to those actions occurring within its territory, and, here, appellant contends that none of the relevant actions occurred in Franklin County. As such, appellant asserts that the trial court did not have subject-matter jurisdiction, regardless of the forum-selection clause. We agree.

{¶6} Subject-matter jurisdiction refers to a court's power to adjudicate the merits of a case. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, at ¶11. The issue of subject-matter jurisdiction is open to challenge at any time because subject-matter jurisdiction is a condition precedent to a court's ability to hear a case. *Id.* If a court acts without subject-matter jurisdiction, then any proclamation by that court is void. *Id.* We review de novo the issue of subject-matter jurisdiction without any deference to the

municipal court's determination. *In re Protest Against Jerome Twp. Zoning Referendum Petition on New California Woods*, 162 Ohio App.3d 712, 2005-Ohio-4189, ¶8.

{¶7} The subject-matter jurisdiction of municipal courts is set forth statutorily by R.C. 1901.18, providing, in pertinent part:

(A) Except as otherwise provided in this division or section 1901.181 [1901.18.1] 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 and to perform all of the following functions:

\* \* \*

(3) In any action at law based on contract, to determine, preserve, and enforce all legal and equitable rights involved in the contract, to decree an accounting, reformation, or cancellation of the contract, and to hear and determine all legal and equitable remedies necessary or proper for a complete determination of the rights of the parties to the contract[.]

{¶8} The Supreme Court of Ohio analyzed the limits of municipal court jurisdiction in *Cheap Escape*, which affirmed this court's decision. In that case, the parties agreed that all of the events relative to the transaction occurred outside Franklin County and that the only connection to Franklin County was a forum-selection clause, which designated either the Franklin County Municipal Court or the Franklin County Common Pleas Court as the proper venue for litigation. In agreeing with this court that jurisdiction was lacking, the Supreme Court of Ohio explained:

R.C. 1901.18(A) limits municipal court subject-matter jurisdiction to actions or proceedings that have a territorial connection to the court. Because the parties admittedly did not have territorial connections to the Franklin County Municipal Court, the court lacked subject-matter jurisdiction in this matter. Although the parties entered into contracts with

what appear to be valid forum-selection clauses, such clauses may be used only to choose from among venues that have subject-matter jurisdiction; litigants cannot vest a court with subject-matter jurisdiction by agreement.

Id. at ¶22 (citations omitted).

{¶9} In this case, the parties disagree as to whether there are territorial connections that sufficiently vest the Franklin County Municipal Court with jurisdiction. Contrary to appellant's position that there are no qualifying connections, appellee contends that the following connections exist for the purpose of jurisdiction: (1) appellee's legal counsel is located in Franklin County; (2) the agreement was drafted, in part, by appellee's legal counsel in Franklin County; (3) appellee advertised in Franklin County; and (4) appellee interviewed applicants in Franklin County.

{¶10} Consideration of appellee's argument, when viewed in light of the applicable case law, compels us to conclude that the trial court lacked subject-matter jurisdiction, as none of the "connections" cited by appellee can be deemed events that gave rise to appellee's claims. Neither the location of appellee's counsel's office, nor the geographical situs of where the agreement was drafted, have any relevance to the parties' contractual dispute and appellant's alleged breach of the agreement. Further, while it may be true that appellee advertised in Franklin County, there is nothing in the record that suggests appellant, who lives in Cuyahoga County, Ohio, was persuaded to contract with appellee as a result of her advertising efforts in Franklin County, Ohio. In the same vein, we find there is nothing in the record to suggest that the specific nanny procured by appellee for appellant was, in any way, connected to Franklin County, nor is there any apparent connection between appellee's personal business protocol and the agreement at issue.

In sum, we do not find that any of the relevant actions occurred in Franklin County so as to vest the municipal court with jurisdiction, and, thus, we sustain appellant's first assignment of error.

{¶11} Having sustained appellant's first assignment of error, we need not reach appellant's second assignment of error as the same is rendered moot. Therefore, we reverse the judgment of the Franklin County Municipal Court and remand with instructions to dismiss for lack of jurisdiction.

*Judgment reversed; cause remanded with instructions.*

BROWN and CONNOR, JJ., concur.

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