

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

JOSEPH P. EBBING,	:	
Plaintiff-Appellant,	:	CASE NO. CA2012-03-061
- vs -	:	<u>OPINION</u>
	:	10/15/2012
KASEY BOBBITT,	:	
Defendant-Appellee.	:	

CIVIL APPEAL FROM HAMILTON MUNICIPAL COURT
Case No. 11 CVG 01151

Joseph P. Ebbing, 3800 Princeton Road, Hamilton, Ohio 45011, plaintiff-appellant, pro se
Kasey Bobbitt, 517 East Avenue, Apt. B, Hamilton, Ohio 45011, defendant-appellee, pro se

PIPER, J.

{¶ 1} Plaintiff-appellant, Joseph Ebbing, appeals a decision from the Hamilton Municipal Court dismissing his complaint for forcible entry and detainer.¹

{¶ 2} Before addressing the pertinent facts of the case at bar, a short history of Ebbing's past involvement with the municipal court and this court will prove helpful to our

1. Pursuant to Loc.R. 6(A), we sua sponte remove this case from the accelerated calendar and place it on the regular calendar for purposes of issuing this opinion.

disposition of the case. In the past, Ebbing has filed pro se complaints in the municipal court for forcible entry and detainer (FED) actions against tenants who rented properties from a corporation belonging to Ebbing's wife. Ebbing was not listed as a landlord on the leases, and was not an owner of the premises in any way. This court has affirmed a decision of the trial court dismissing Ebbing's complaint because Ebbing was not the proper party to bring the FED action where he was neither an owner nor party to the lease. *Ebbing v. Lawhorn*, 12th Dist. No. CA2011-07-125, 2012-Ohio-3200.

{¶ 3} Turning now to the case at bar, defendant-appellee, Kasey Bobbitt, entered into a written rental agreement with Ebbing, who was listed on the lease as the "Landlord." Bobbitt then took possession of the apartment on April 5, 2011. When Bobbitt failed to pay rent by May 5, 2011, Ebbing served Bobbitt with a three-day notice to vacate the premises by May 8, 2011. Ebbing then filed a pro se complaint in the Hamilton Municipal Court on May 9, 2011 for FED. Ebbing claimed damages of \$462.84 in unpaid rent, and further moved the court to award him rent of \$440 per month until Bobbitt and her children vacated the premises.

{¶ 4} During the hearing before the magistrate on the FED action, at which Bobbitt failed to appear, the magistrate asked Ebbing if he was the owner of the premises that Bobbitt rented. Ebbing responded, "Your Honor, I'd like to respectfully ask you to uh – remove yourself from the case if you're going to try the case [as a] witness." The magistrate then dismissed the case and asked the record to reflect that he was dismissing the case because Ebbing did not own the property that Bobbitt rented.

{¶ 5} Ebbing filed a motion for findings of fact and conclusions of law and also moved to set aside the magistrate's order of dismissal. The magistrate later entered findings of fact and conclusions of law, and set a hearing date for Ebbing to appear with counsel to proceed with the FED action. Ebbing then filed objections to the magistrate's

decision, and a motion to disqualify the magistrate from further proceedings. Ebbing attached the lease to his objections, which clearly indicated that he was the landlord and a party to the lease. The trial court overruled Ebbing's objections and adopted the magistrate's decision to dismiss the action. Ebbing now appeals the trial court's decision raising the following assignment of error.

{¶ 6} THE TRIAL COURT ERRED BY AFFIRMING THE MAGISTRATE'S DECISION AND DISMISSING PLAINTIFF'S ACTION.

{¶ 7} Ebbing argues in his sole assignment of error that the trial court erred in overruling his objections to the magistrate's decision dismissing the FED action.

{¶ 8} In *Ebbing v. Lawhorn*, this court affirmed the trial court's decision to dismiss Ebbing's FED action because he was not the owner of the property or a party to the lease. 2012-Ohio-3200. Here, however, the facts differ significantly because Ebbing was clearly listed on the lease with Bobbitt and Ebbing signed the lease in his own name as "Landlord." Therefore, Ebbing was not only a party to the lease, but was also the designated landlord.

{¶ 9} Also within *Lawhorn*, we discussed the Ohio Supreme Court's decision that a nonattorney who appears in court on behalf of the property owner to file FED actions engages in the unauthorized practice of law. *Cleveland Bar Assn. v. Picklo*, 96 Ohio St.3d 195, 2002-Ohio-3995. The appellant in that case, Picklo, had defended the unauthorized practice of law claim brought against her by the Cleveland Bar Association by relying on the statutory definitions of "landlord" as set forth in R.C. 1923.01 and 5321.01. However, the court determined that the Legislature's attempt to define a group of nonattorneys who could file and prosecute FED actions was a violation of separation of powers because only the court could determine who may and may not practice law. Therefore, the *Picklo* court concluded, "the definitions in R.C. 1923.01(C)(2) and 5321.01(B) represented

unconstitutional invasions of our power to define the practice of law." *Id.* at ¶ 3. However, the court did not hold that a landlord may not file FED actions, only that those "appearing in court on another's behalf and conducting another's case" could not file an FED action without engaging in the unauthorized practice of law. *Id.* at ¶ 5.

{¶ 10} Based on the *Picklo* court's reasoning, we concluded in *Lawhorn* that because Ebbing was not the owner or a party to the lease, he would be engaging in unauthorized practice of law by filing the FED action on behalf of his wife's corporation. Again, however, the facts here differ significantly because Ebbing was a party to the lease, listed as the landlord on the lease, and was acting on his own behalf as landlord rather than acting as an agent on behalf of the premises owner. Therefore, the trial court erred by overruling Ebbing's objection to the magistrate's decision.

{¶ 11} Ebbing's sole assignment of error is sustained, and the cause is remanded for further proceedings consistent with this opinion.

{¶ 12} Judgment reversed and remanded.

RINGLAND, P.J., and YOUNG, J., concur.

Young, J., retired, of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 6(C), Article IV of the Ohio Constitution.