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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-696

Filed: 18 February 2020

Rowan County, No. 18 CVD 1014

JAY L. WALLACE, Plaintiff,

v.

CHARLES L. GETER, Defendant.

Appeal by defendant from order entered 28 February 2019 by Judge Charlie Brown in Rowan County District Court. Heard in the Court of Appeals 7 January 2020.

No brief filed for plaintiff-appellee.

Legal Aid of North Carolina, Inc., by Janet McAuley Blue, Allison Weller Tikare, Andrew Cogdell, Celia Pistolis, and David Post Law, PLLC, by David B. Post, for defendant-appellant.

YOUNG, Judge.

This appeal arises out of a summary ejectment. The trial court did not have subject matter jurisdiction to grant summary ejectment, and we therefore vacate and remand.

I. Factual and Procedural History

WALLACE V. GETER

Opinion of the Court

For about six years, Charles Geter (“Geter”) and Jay Wallace (“Wallace”) worked together at the Veterans Administration Hospital in Salisbury, North Carolina, where Wallace was Geter’s supervisor for two of those years. During this employment, Wallace made multiple unsecured loans of two or three hundred dollars to Geter when he would fall behind on his bills. Geter repaid those loans within two weeks.

In early 2018, Geter could not pay his light bill and asked Wallace to loan him \$800.00. Geter and Wallace met at the hospital on 13 February 2018, where Geter brought a deed for his property. The parties agreed that Wallace would lend Geter \$800.00 to be repaid on or before 1 April 2018. The collateral for the loan was the deed to Geter’s home. Wallace agreed to return the deed to Geter upon repayment of the loan.

Wallace testified that “months went by” and he never heard from Geter. On 30 March 2018, Geter called Wallace to tell him that he would repay him on 2 April 2018, instead of 1 April 2018. Wallace recorded his quitclaim deed one day after the loan was due, on 2 April 2018. On 17 April 2018, Wallace filed a Complaint in Summary Ejectment against Geter in Small Claims Court. The complaint did not allege a “Rate of Rent” or “Date Rent Due.” The complaint alleged that the “Total Amount of Rent Past Due was \$0 and that the Total Amount Due was \$0.” Wallace

also failed to indicate any basis for the ejectment or allege why he was entitled to remove Geter and recover possession of the property.

On 25 April 2018, the magistrate entered a judgment for possession and costs against Geter and found that the rate of rent was zero. On 30 April 2018, Geter timely appealed, requested a jury trial, and posted a Bond to Stay Execution on Appeal of Summary Ejectment Judgment in the amount of zero dollars. On 3 January 2019, with both parties appearing *pro se*, the trial court granted Geter's request for a continuance over Wallace's objection.

On 20 February 2019, with counsel, Geter moved to dismiss the complaint for lack of subject matter jurisdiction, because the parties were not in a landlord-tenant relationship. The court denied the motion, and ruled that Wallace was entitled to judgment for possession. Prior to the entry of the Order, a Writ of Possession was issued of 20 February 2019 and returned unserved on 27 February 2019. The court's ruling was filed on 28 February 2019. Geter filed notice of appeal.

II. Standard of Review

"The question of subject matter jurisdiction may be raised at any time, even in the Supreme Court." *Lemmerman v. A.T. Williams Oil Co.*, 318 N.C. 577, 580, 350 S.E.2d 83, 85 (1986). "Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010).

III. Subject Matter Jurisdiction

Defendant contends that the trial court erred in exercising subject matter jurisdiction in this summary ejectment action when no landlord-tenant relationship existed between the parties. We agree.

Summary ejectment actions are governed by N.C. Gen. Stat. § 42-26 (2019). The remedy provided by this statute is restricted to cases where the relation between the parties is exclusively that of landlord and tenant. *See Hauser v. Morrison*, 146 N.C. 248, 59 S.E. 693 (1907) (holding that a mortgagee cannot use summary ejectment to eject a mortgagor). Although the district court has jurisdiction to hear a summary ejectment proceeding even if the plaintiff does not allege a landlord-tenant relationship in the complaint, the plaintiff must prove this relationship exists to be granted the summary ejectment remedy. *See Adams v. Woods*, 169 N.C. App. 242, 244, 609 S.E.2d 429, 431 (2005) (holding a landlord-tenant relationship must be proven by the evidence).

If the plaintiff fails to prove the existence of a landlord-tenant relationship, the district court lacks jurisdiction and it must dismiss the plaintiff's cause of action. *See Hayes v. Turner*, 98 N.C. App. 451, 454-55, 391 S.E.2d 513, 515 (1990) (holding that a trial court had no jurisdiction to hear a summary ejectment action when a devisee of the decedent's will sought summary ejectment of the decedent's former live-in

WALLACE V. GETER

Opinion of the Court

caregiver and there was no allegation or evidence of a landlord-tenant relationship, including no evidence of rental payments or a lease).

Here, there was no evidence presented at trial to support a finding that Wallace and Geter were in a landlord-tenant relationship, notwithstanding the boilerplate language in the Complaint in Summary Ejectment form that “the defendant entered into possession of premises described below as a lessee of plaintiff.” Neither party produced a written lease nor otherwise admitted that they had entered into such an agreement regarding the property. The complaint disclosed that Geter did not pay any rent to Wallace and failed to assert that Geter committed any statutory violation entitling Wallace to possession.

The evidence showed that in February 2018, Geter borrowed \$800.00 from Wallace. At that time, Geter produced a deed purporting to transfer the property to Wallace. Both parties testified that the property was to be security for the loan. The property was not subject to any lease when Wallace recorded the deed and filed this action. As such, the evidence shows that the parties are in a creditor-debtor relationship rather than a landlord-tenant relationship. Therefore, summary ejectment was not the appropriate remedy, and the trial court did not have subject matter jurisdiction to grant such remedy. We therefore vacate the grant of summary ejectment and remand for dismissal of the action.

VACATED AND REMANDED.

WALLACE V. GETER

Opinion of the Court

Judges MCGEE and DIETZ concur.

Report per Rule 30(e).