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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-1492-MR

ASHOUR HAMID — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SARAH E. CLAY, JUDGE
ACTION NO. 25-CI-008168

AHMAD HAMID AND
ABDALRAMHAN HAMID — APPELLEES

OPINION AFFIRMING
AND MODIFYING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; EASTON AND ECKERLE, JUDGES.

EASTON, JUDGE: Appellant (Ashour) challenges the Jefferson Circuit Court's order dismissing with prejudice his complaint for injunctive relief for lack of jurisdiction. After a review of the record and the applicable law, we affirm the dismissal for lack of jurisdiction but modify the circuit court's order to dismiss without prejudice.

FACTUAL AND PROCEDURAL BACKGROUND

The circumstances of this circuit court action require additional background information from a related family court action. In July 2024, Ashour's two adult sons (Appellees) filed a petition for an emergency protective order (EPO) against Ashour, alleging domestic violence. On this same date, Ashour's wife (Leila) also filed an EPO petition against Ashour. EPOs were granted by the Jefferson Family Court. The EPOs restrained Ashour from being within 500 feet of the family's home, where they all resided together.

The EPOs were amended by the family court in October 2024 to allow Ashour to retrieve his personal property from the residence. A hearing was held by the family court in November 2024, in which the family court determined domestic violence had occurred. The family court entered three-year domestic violence orders (DVO) against Ashour on behalf of Appellees and Leila. The DVOs included the 500-feet restriction that was contained in the EPOs.

On April 25, 2025, Leila passed away. Subsequently, Ashour filed a motion with the family court, requesting to take possession of the family residence. The family court denied this motion by an order in July 2025, which stated:

> Respondent's motion to take possession of the home. Petitioner objects; there is a current domestic violence order in place until 2027 and their mother, who also had a DVO against Respondent has left a will that needs to be

> in probate court. Motion denied as this court does not have jurisdiction to determine a probate issue.[1]

Ashour did not appeal this order. Ashour then filed the Complaint at issue in circuit court. The Complaint requested injunctive relief in the form of Appellees being required to vacate the home, and that he be awarded possession of the home. Attached as an exhibit to the Complaint is a deed, which lists Ashour as the sole Grantee of the property. Ashour filed a motion for injunctive relief, requesting that Appellees be ordered to vacate the home and that he be allowed to move back in. He requested a hearing.

Appellees filed an Answer. They admitted Leila had passed away, but they alleged she had a marital interest in the property that she intended for them to inherit. They further alleged Leila and Ashour had been living separate and apart and that Ashour would not have had any right to possession of the property had Leila not passed away due to the DVO in place. They further claimed there was no mortgage or encumbrance on the property and that they were paying for the utilities and upkeep of the home.

The circuit court denied Ashour's motion for a hearing, and it dismissed his Complaint. The circuit court determined that Ashour's Complaint was "essentially two kinds of cases combined – it is a forcible detainer action as

[1] Docket sheet of July 14, 2025, Case Nos. 24-D-502482-001 and 24-D-502483-001; attached as Exhibits to Appellant's brief.

Plaintiff seeks the eviction of Defendants from property of which he claims ownership and entitlement to possess, and it is an action seeking modification of Orders entered in Jefferson Family Court."[2] The circuit court determined it did not have jurisdiction over this action, as the district court is vested with exclusive jurisdiction over residential landlord-tenant matters pursuant to KRS[3] 383.540 and 24A.010. The circuit court further explained it does not have jurisdiction to review or modify orders from the family court, as only the Court of Appeals is able to do so. But the dismissal was with prejudice. Ashour then timely filed his Notice of Appeal.

STANDARD OF REVIEW

Jurisdiction presents solely an issue of law, which we review de novo. *St. Joseph Catholic Orphan Society v. Edwards*, 449 S.W.3d 727, 734 (Ky. 2014).

ANALYSIS

Ashour challenges the circuit court's dismissal of his Complaint. First, he argues the circuit court erred in accepting Appellees' contentions that they paid the utility bills for the residence, as he disputes that claim. He claims the

[2] Opinion and Order Denying Plaintiff's Motion for Injunctive Relief and Dismissing, entered November 5, 2025, Trial Record (TR) at page 50.

[3] Kentucky Revised Statutes.

circuit court further erred by characterizing his complaint as a forcible detainer action over which the district court has exclusive jurisdiction.

Relatedly, Ashour argues the circuit court's general jurisdiction is the default rule, and exclusivity must be shown to be clearly vested elsewhere. Ashour contends his requested injunctive relief does not conflict with the DVO issued by the family court. And finally, he argues that even if dismissal was proper, the circuit court erred in dismissing the complaint "with prejudice," as a dismissal for lack of jurisdiction is not an adjudication on the merits.

Before we turn to Ashour's arguments, we address the non-compliance by both parties regarding the briefs to be filed with this Court. First, Ashour's brief lacks a preservation statement, as well as any citations to the record below, in contravention of RAP[4] 32. On the other hand, Appellees have failed to file any brief at all. Under RAP 31(H)(3):

> If the appellee's brief has not been filed within the time allowed, the court may: (a) accept the appellant's statement of the facts and issues as correct; (b) reverse the judgment if appellant's brief reasonably appears to sustain such action; or (c) regard the appellee's failure as a confession of error and reverse the judgment without considering the merits of the case.

"The decision as to how to proceed in imposing such penalties is a

[4] Kentucky Rules of Appellate Procedure.

matter committed to our discretion." *Roberts v. Bucci*, 218 S.W.3d 395, 396 (Ky. App. 2007).

Despite the parties' noncompliance with the rules, this Court has reviewed the record, which is not voluminous. The appeal involves a pure matter of law. We would be justified in dismissing this appeal because of Ashour's non-compliance, but we will still review the arguments and proceed for completeness.

First, we clarify the often-confused difference between subject-matter jurisdiction and particular-case jurisdiction. The circuit court has subject-matter jurisdiction over disputes about real property generally. We are actually dealing with subject-matter and particular-case jurisdiction when specific issues are addressed such as immediate possession in the forcible detainer context and possession of property in domestic violence situations.

"The Circuit Court is a court of general jurisdiction; it has original jurisdiction of all justiciable causes not exclusively vested in some other court." KRS 23A.010(1). On the other hand, the district court has "original jurisdiction in all matters specified in KRS 24A.110 to 24A.130." KRS 24A.010(1).

The circuit court in this case determined that Ashour's Complaint was essentially a forcible detainer action. A forcible detainer is "[t]he refusal of a tenant to give possession to his landlord after the expiration of his term; or of a tenant at will or by sufferance to give possession to the landlord after the

determination of his will[.]" KRS 383.200(3)(a). A forcible detainer action "is viable *only* where the relationship of the competing parties is that of landlord and tenant." *Emmons v. Madden*, 781 S.W.2d 529, 530 (Ky. App. 1989) (emphasis in original).

For Ashour's complaint to be properly deemed a forcible detainer action, a landlord-tenant relationship must be established. "If a tenant has the right to enter upon the premises granted for a specified purpose, and to this extent may enjoy them, and he does this in subordination to the title of the owner and with his assent, and, as a consideration, pays money or other thing of value, or even without the payment of any consideration, the relation of landlord and tenant is created. The reservation of rent is not essential to create the relation, although it is a usual incident of tenancy." *Alexander v. Gardner*, 96 S.W. 818, 819 (Ky. 1906).

Because no hearing occurred in the underlying case, there is very little evidence to consider. We cannot determine with certainty if Ashour and Appellees had established a landlord-tenant relationship. Ashour makes no claim either way in his brief, and Appellees have failed to file a brief. We have only the limited pleadings before us to answer this question. Based on the relationship of the parties, it could be inferred that Appellees are tenants at will. *See Ellis v. Ellis*, 275 S.W.2d 909 (Ky. 1955); *Perry v. Veal*, 134 S.W. 458 (Ky. 1911).

Ashour insists the circuit court erred in dismissing his case based on its label of it being a forcible detainer case. Yet he makes no real claim that his case is *not* a forcible detainer action. We will look at the contents of Ashour's Complaint to determine his claims. The relevant allegations in his Complaint are as follows:

> 4. Plaintiff is the owner of the home . . . .
>
> 5. Plaintiff is the father of the Defendants.
>
> 6. Plaintiff's wife, Leila Soultani, recently passed away.
>
> 7. Plaintiff offered his children the opportunity to remain in the home with him, but they refused to communicate with him. Therefore, Plaintiff demanded they vacate the home.
>
> 8. Plaintiff respectfully requests that he be awarded possession [of] his home.
>
> COUNT I
> INJUNCTIVE AND RESTRAINING ORDER RELIEF
>
> 16.[5] Plaintiff incorporates herein by reference the averments in the preceding paragraphs of this Complaint.
>
> 17. As a result of Defendants[']refusal to vacate the home, Plaintiff will suffer immediate and irreparable harm[,] loss and damage unless injunctive relief is granted to compel Defendants to vacate the home. Monetary damages are not sufficient to resolve the problems with Defendants remaining in the home.

[5] The paragraphs in the Complaint jump from numbered paragraph 8 to numbered paragraph 16.

> 18. Plaintiff respectfully requests injunctive relief to compel Defendants to vacate the home.
>
> 19. Plaintiff also respectfully requests restraining order relief prohibiting Defendants from re-entering the home in the future.[6]

Based on the plain wording of the Complaint, Ashour is requesting for the Appellees to be ordered to immediately vacate the home. It certainly sounds like a forcible detainer action. Jurisdiction of forcible detainer actions in Kentucky exists exclusively in the district courts, pursuant to KRS 383.540 and 383.210. KRS 24A.020 states "[w]hen jurisdiction over any matter is granted to District Court by statute, such jurisdiction shall be deemed to be exclusive unless the statute specifically states that the jurisdiction shall be concurrent." There is no such language indicating concurrent jurisdiction in either of these forcible detainer statutes.

But we are not hindered by the forcible detainer issue alone. We could disregard it completely. The circuit court also determined that Ashour's complaint was effectively an appeal of the family court's DVOs, which ordered him to vacate the residence. Whether we interpret Ashour's Complaint as an appeal of the DVO restrictions or a new action, the outcome he requests would necessarily affect the ordered restrictions of the DVOs. The terms of the DVOs

[6] Complaint, TR at pages 1-2.

require Ashour to stay at least 500 feet away from the residence of which he is attempting to regain possession. Thus, the specific relief requested by Ashour, if granted by the circuit court, would necessarily call for alteration of the terms of the family court's existing order.

"In those circuits where the Supreme Court has designated a family court division, matters set forth in KRS 23A.100 . . . are now exclusively vested in the family court." *Wallace v. Wallace*, 224 S.W.3d 587, 591 (Ky. App. 2007). The family court having properly taken jurisdiction over the question of possession of the family home in the DVO case, the circuit court should not be used as an easy detour to get past the DVO ruling.

We are aware of an unpublished and thus not authoritative case from this Court addressing the interplay between forcible detainer and DVO jurisdiction. If a district court determines that a party to a DVO is entitled to the possession of the property in a forcible detainer action, this may call for the family court to alter a DVO. *Hild v. Hild*, No. 2024-CA-0363-ME, 2024 WL 4996639 (Ky. App. Dec. 6, 2024).

A larger point here is that the family court can alter the DVO upon a showing of changed circumstances. That court could determine that Ashour is entitled to possession and change the residence provisions. And even if the circuit court separately made some decision about the real property ownership, this would

not automatically change the impact of the DVO provisions. We should not encourage entry of conflicting orders but still allow for a process to recognize correct ownership of property with the right of possession.

In the unique circumstances presented by this sparse record, we cannot find error in the determination of the circuit court that what Ashour was attempting was a forcible detainer eviction or a trying to get around the existing family court order about possession of this property. But we agree with Ashour in one respect. A dismissal for lack of jurisdiction is not an adjudication on the merits, and so the dismissal generally should be without prejudice. *City of Pikeville v. Kentucky Concealed Carry Coal., Inc.*, 671 S.W.3d 258, 267 (Ky. 2023). *See also Doe v. Golden & Walters, PLLC*, 173 S.W.3d 260 (Ky. App. 2005).

Ashour may be able to plead a proper case for circuit court action about this property. That could be part of contested probate proceedings or otherwise. But Ashour has not yet clearly pled an action that does not belong in another court. We must leave the propriety of any future circuit court action to another day facilitated by the dismissal without prejudice.

This Court may modify a decision of the circuit court. KRS 22A.060. Our doing so rather than remanding with specific instructions for the circuit court to make a minor adjustment to the text of an order prevents delay and waste of

time with a later entry of an amended order by the circuit court. *See Progressive Direct Insurance Company v. Hartson*, 661 S.W.3d 291, 304 (Ky. App. 2023).

CONCLUSION

For the foregoing reasons, we affirm the circuit court's determination that it did not have jurisdiction of Ashour's claims as pled, but we modify the order to state that the dismissal is without prejudice.

ALL CONCUR.

BRIEF FOR APPELLANT:

Nader George Shunnarah
Louisville, Kentucky

NO BRIEF FOR APPELLEES.