

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

JAMES A. SMITH,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-T-0007
SHIRLEY DIETELBACH,	:	
Defendant-Appellant.	:	

Civil Appeal from the Warren Municipal Court, Case No. 2009 CVI 03178.

Judgment: Affirmed.

Robert F. Burkey, Burkey, Burkey & Scher Co., L.P.A., 200 Chestnut Avenue, N.E., Warren, OH 44483-5805 (For Plaintiff-Appellee).

John C. Grundy, John C. Grundy Co., L.P.A., 3333 Niles-Cortland Road, P.O. Box 591, Cortland, OH 44410 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Shirley Dietelbach, appeals the judgment of the Warren Municipal Court, Small Claims Division, in favor of appellee, James A. Smith. Ms. Dietelbach argues that the trial court lacked subject matter jurisdiction because Mr. Smith’s claim exceeded the monetary jurisdiction of the court. For the reasons that follow, we affirm.

{¶2} On November 13, 2009, Mr. Smith filed a “small claim complaint” in the trial court alleging that he overpaid a judgment previously entered against him and in

favor of Ms. Dietelbach. Mr. Smith prayed for judgment against Ms. Dietelbach for such overpayment in the amount of \$2,600.

{¶3} After several continuances to allow the parties to obtain the documents showing the payments made by Mr. Smith to Ms. Dietelbach, the matter proceeded to hearing before the magistrate on March 31, 2010. Both parties and their counsel were present. Because Ms. Dietelbach failed to file transcripts of any of the proceedings below, the statement of facts that follows is based on the findings of fact contained in the magistrate's decisions as adopted by the trial court.

{¶4} Following the March 31, 2010 hearing, the magistrate entered his decision on April 14, 2010. Based on the evidence submitted, he found that the parties had previously been parties to litigation in the Trumbull County Court of Common Pleas in *Shirley Dietelbach v. James A. Smith*, case No. 1998-CV-01410. In that case, on March 19, 2004, the parties entered into a settlement agreement, pursuant to which Mr. Smith consented to judgment in the amount of \$40,000 plus interest at ten per cent per annum. The parties agreed that the judgment would be stayed and satisfied in full, provided that Mr. Smith paid \$25,000 without interest to Ms. Dietelbach at \$400 per month. The magistrate found that Mr. Smith made all monthly payments as agreed, and that he inadvertently overpaid Ms. Dietelbach in the amount of \$2,600. The magistrate found that Ms. Dietelbach owed Mr. Smith \$2,600, and granted judgment in his favor and against Ms. Dietelbach in that amount plus statutory interest. The magistrate's decision was sent to counsel for both parties.

{¶5} On April 14, 2010, the trial court entered judgment adopting the magistrate's decision and affirming the judgment in favor of Mr. Smith and against Ms.

Dietelbach in the amount of \$2,600 plus interest. A copy of that judgment was sent to counsel for both parties.

{¶6} On September 14, 2010, Ms. Dietelbach filed objections to the magistrate's April 14, 2010 decision, alleging that she had never received a copy of the magistrate's decision or the court's judgment adopting same. She also alleged that she did not owe Mr. Smith any money pursuant to the parties' settlement agreement. She alleged that Mr. Smith had defaulted under the parties' settlement agreement in the prior Trumbull County litigation.

{¶7} On September 16, 2010, the trial court entered judgment overruling Ms. Dietelbach's objections.

{¶8} Thereafter, on October 8, 2010, Ms. Dietelbach filed a motion for reconsideration, once again arguing that Mr. Smith was in default under the parties' 2004 settlement agreement.

{¶9} On November 15, 2010, the court held a hearing on Ms. Dietelbach's motion for reconsideration. Following the hearing, the magistrate entered a decision, dated November 15, 2010, denying Ms. Dietelbach's motion for reconsideration. The magistrate found that the only issue Ms. Dietelbach raised at the April 14, 2010 hearing was whether she had received Mr. Smith's April 2004 payment. At that hearing, Mr. Smith submitted a copy of that check, which was endorsed by Ms. Dietelbach. She did not specifically remember the check, but acknowledged that it bore her signature. The magistrate found that at the hearing on Ms. Dietelbach's motion for reconsideration, she argued for the first time that some of the payments made by Mr. Smith were not timely; however, she failed to submit any evidence in support of such argument.

{¶10} On November 16, 2010, the trial court entered judgment adopting the magistrate's decision and denying Ms. Dietelbach's motion for reconsideration.

{¶11} Thereafter, on November 30, 2010, Ms. Dietelbach filed objections to the magistrate's decision denying her motion for reconsideration, alleging she did not review the documents Mr. Smith submitted at the April 14, 2010 hearing. On December 27, 2010, the trial court denied Ms. Dietelbach's objections.

{¶12} Ms. Dietelbach now appeals the court's December 27, 2010 judgment, asserting the following as her sole assignment of error:

{¶13} "The trial court erred as a matter of law in not dismissing the case because the trial court did not have subject matter jurisdiction."

{¶14} Lack of subject matter jurisdiction can be raised at any stage of the proceedings, and can be raised for the first time on appeal. *Jenkins v. Keller* (1966), 6 Ohio St.2d 122, paragraph five of the syllabus; *Fox v. Eaton Corp.* (1976), 48 Ohio St.2d 236, 238, overruled on other grounds at *Manning v. Ohio State Library Bd.* (1991), 62 Ohio St.3d 24. Whether a court has subject matter jurisdiction is a question of law, which we review de novo. *Rossow v. City of Ravenna*, 11th Dist. No. 2001-P-0036, 2002-Ohio-1476, at ¶7; *Burns v. Daily* (1996), 114 Ohio App.3d 693, 701.

{¶15} Ms. Dietelbach concedes the only judgment entry properly before this court is the trial court's December 27, 2010 judgment entry overruling her objections to the magistrate's denial of her motion for reconsideration. She argues, however, that because her appeal challenges the subject matter jurisdiction of the trial court to adjudicate Mr. Smith's complaint, the issue can be raised at any time.

{¶16} Ms. Dietelbach argues that the trial court lacked subject matter jurisdiction because Mr. Smith's claim exceeded the monetary jurisdiction of the court. She argues that the court's monetary jurisdiction is \$15,000 and, because the amount in controversy was either \$25,000 or \$27,600, the trial court did not have subject matter to adjudicate Mr. Smith's claim. We do not agree.

{¶17} First, we note that because Mr. Smith filed his complaint in the small claims division of the Warren Municipal Court, pursuant to R.C. 1925.02(A)(1), that division "has jurisdiction in civil actions for the recovery of *** money only, for amounts not exceeding three thousand dollars, exclusive of interest and costs." Thus, the monetary jurisdiction of this division of the trial court is \$3,000, not \$15,000.

{¶18} Ms. Dietelbach argues that the amount in controversy here was either \$25,000 or \$27,600 and therefore not within the trial court's subject matter jurisdiction. In support, she cites this court's opinion in *Transamerica Commercial Fin. Corp. v. Mid-America Marine, Inc.*, (July 16, 1993), 11th Dist. No. 92-A-1720, 1993 Ohio App. LEXIS 3583. However, that case is readily distinguishable. There, the plaintiff sought to transfer a judgment entered in its favor in the United States District Court for the Northern District of Ohio in the amount of \$257,147.53 to the Ashtabula Municipal Court for execution proceedings. In *Transamerica*, this court held that a municipal court has the power to receive transfer of judgments for execution proceedings from other courts of record, but only where the judgment transferred does not exceed the monetary jurisdiction of the court. *Id.* at *14. Here, Mr. Smith did not seek to transfer the judgment entered in the Trumbull County Court of Common Pleas to the Warren Municipal Court. In fact, the judgment entered in that court was not in his favor; it was

in favor of Ms. Dietelbach and against him. Thus, he was not seeking to enforce that judgment. He was simply attempting to recover the excess amount he had paid Ms. Dietelbach pursuant to the parties' settlement agreement. Ms. Dietelbach has failed to present any pertinent authority or plausible argument in support of her contention that the amount in controversy was the original amount of the parties' settlement agreement.

{¶19} We now consider whether this action is a civil action for the recovery of money in an amount not exceeding \$3,000, and therefore within the subject matter jurisdiction of the trial court pursuant to R.C. 1925.02(A)(1). In *DeChellis v. Rakoff* (Sept. 26, 2001), 7th Dist. No. 00-C.A.-156, 2001 Ohio App. LEXIS 4437, the Seventh Appellate District held that this issue is determined by the amount sought by the plaintiff in the complaint. *Id.* at *4-*6. In *DeChellis*, the plaintiff mother-in-law alleged in her small claims complaint that the defendant son-in-law had agreed to reimburse her for any expenses she incurred in a divorce action between the plaintiff's daughter and the defendant. The plaintiff alleged in her complaint that she borrowed \$4,100 to cover such expenses, but that the defendant refused to reimburse her. Apparently recognizing the monetary limit of the small claims court, the plaintiff only prayed for judgment against the defendant in the amount of \$3,000. However, the small claims court awarded her \$4,100, which was \$1,100 more than what the plaintiff was seeking and the authorized monetary limit of the court. The Seventh District stated:

{¶20} "R.C. § 1925.02(A)(1) limits small claims actions to amounts not exceeding \$3,000.00, exclusive of costs and interests. Our research has not uncovered any cases, reported or unreported, elaborating on the consequences of a small claims court exceeding its dollar limit. *** In the instant case the complaint states that [the

plaintiff] borrowed \$4,100.00, but that she only sought relief for \$3,000.00 of that amount. We do not view Appellee's complaint, on its face, as exceeding the monetary limits of the small claims court.

{¶21} ****

{¶22} "It is obvious that the *** Judgment Entry exceeded the jurisdiction of the small claims court. It is apparent from [the plaintiff's] *** complaint that she was aware that her claim might be worth more than the jurisdictional limit of the court. Under the circumstances, the trial court should have simply awarded [the plaintiff] the maximum award. ***" Id.

{¶23} Our review of the small claim complaint filed in the instant case reveals that the amount Mr. Smith prayed for was \$2,600. Moreover, Ms. Dietelbach concedes on appeal that Mr. Smith "alleged an overpayment of \$2,600" and that "[t]he Complaint below sought \$2,600 on the alleged overpayment." Therefore, the amount sought to be recovered was \$2,600, not \$25,000 or \$27,600, as Ms. Dietelbach argues.

{¶24} We therefore hold that Mr. Smith sought to recover \$2,600 in this action, and that the trial court did not err in asserting jurisdiction of this matter.

{¶25} For the reasons stated in this opinion, Ms. Dietelbach's assignment of error is overruled. It is the judgment and order of this court that the judgment of the Warren Municipal Court, Small Claims Division, is affirmed.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.