

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO ex rel. MARJORIE J. JURCZENKO,	:	PER CURIAM OPINION
	:	
Relator,	:	CASE NO. 2009-L-178
	:	
- vs -	:	
	:	
LAKE COUNTY COURT OF COMMON PLEAS, et al.,	:	
	:	
Respondents.	:	
	:	
FAST PROPERTY SOLUTIONS, INC.,	:	
	:	
Intervening-Respondent.	:	

Original Action for Writ of Prohibition.

Judgment: Writ denied.

James R. Douglass, 20521 Chagrin Boulevard, Ste. D, Shaker Heights, OH 44122-9736 (For Relator).

Charles E. Coulson, Lake County Prosecutor, and *Michael L. DeLeone*, Assistant Prosecutor, Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Respondents, Lake County Court of Common Pleas and Judge Eugene A. Lucci).

Joseph R. Klammer, Lindsay II Professional Center, 6900 Lindsay Drive, #7, Mentor, OH 44060 (For Intervening Respondent, Fast Property Solutions, Inc.)

PER CURIAM.

{¶1} This action in prohibition is presently before this court for disposition of the summary judgment motion of all three respondents, the Lake County Court of Common

Pleas, Judge Eugene A. Lucci, and Fast Property Solutions, Inc. Upon considering the parties' respective legal arguments and evidentiary materials, this court concludes that respondents have established that a writ of prohibition cannot lie under the facts of this matter to contest Judge Lucci's subject matter jurisdiction over the underlying civil case between Fast Property Solutions and relator, Marjorie J. Jurczenko. Specifically, the materials before us indicate that relator will never be able to show that any alleged flaw in Judge Lucci's authority to proceed is plain and unambiguous.

{¶2} A review of the various evidentiary materials readily demonstrates that the basic facts of the instant case are not in dispute. In May 2006, relator and her husband entered into an agreement to purchase a single-family home and real property located on Lakeview Drive in Mentor, Ohio. As part of the express terms of this agreement, the Jurczenkos became obligated to pay the prior owners the sum of \$152,000 for the real estate.

{¶3} After owning their new residence for only forty-three days, the Jurczenkos entered into a separate transaction with Fast Property Solutions. Under the first step of this transaction, the Jurczenkos assigned the purchase agreement for the subject real estate to Fast Property Solutions. Under the second step, the couple and the company executed a "lease/purchase" agreement, which essentially allowed the couple to retain possession of the residence notwithstanding the assignment to the company.

{¶4} Pursuant to the terms of the "lease/purchase" agreement, the Jurczenkos were obligated to pay Fast Property Solutions a monthly rent payment of \$900. These rent payments were to continue for a period of twelve months, from July 2006 through June 2007. During that same time frame, the Jurczenkos were also responsible for

other periodic payments pertaining to the residence, such as utilities and insurance.

{¶5} The “lease/purchase” agreement further provided that, once the one-year lease period concluded, the Jurczenkos had the option of reacquiring the residence from Fast Property Solutions for the sum of \$180,000. According to this provision of the agreement, the option to purchase had to be exercised by June 1, 2007.

{¶6} Despite the fact that the Jurczenkos failed to timely exercise their option to purchase at the close of the one-year lease period, they continued to live in the residence over the ensuing months. Finally, in December 2007, Fast Property Solutions instituted an action in forcible entry and detainer against the Jurczenkos in the Mentor Municipal Court. Ultimately, that particular case was voluntarily dismissed when the two sides were able to negotiate a separate contract to modify the original “lease/purchase” agreement. As part of the Modification Lease Purchase Agreement, the Jurczenkos agreed that the option to purchase the residence for the sum of \$180,000 had to be exercised by May 31, 2008. The agreement further stated that the Juczenkos had agreed to sign a consent judgment entry which Fact Property Solutions could employ to obtain an immediate final decision if it became necessary to pursue a second case for possession of the property.

{¶7} When the Jurczenkos again failed to pay the required amount to exercise the option to purchase, a second complaint for forcible entry and detainer was filed, in July 2008, by Fast Property Solutions in the Mentor Municipal Court. Attached to the new complaint was a copy of the consent judgment entry which had been signed by the Jurczenkos and specifically referenced in the Modification Lease Purchase Agreement. Before the Jurczenkos even had an opportunity to respond to the second complaint, the

municipal court signed the consent judgment entry and entered it upon the docket of the case. In September 2008, the municipal court issued a separate entry which granted a writ of restitution and ordered the Jurczenkos' immediate removal from the residence.

{¶8} Prior to the issuance of the writ, the Jurczenkos had moved the municipal court to vacate the consent judgment entry. As to the validity of the consent entry itself, the Jurczenkos contended that the entry was not enforceable because they had sent a notice of rescission concerning the entry to Fast Property Solutions two months before the filing of the second action. In addition, the Jurczenkos asserted that the municipal court did not have the requisite jurisdiction over the subject matter of the litigation. As to the latter point, they argued that a forcible entry and detainer action was inappropriate under the circumstances because they had not had a landlord-tenant relationship with Fast Property Solutions. According to the Jurczenkos, even though the original contract had been labeled as a "lease/purchase" agreement, the nature of its terms established that it was actually a "creative financing" document under which: (1) they had retained color of title to the subject residence; and (2) Fast Property Solutions had only obtained a mortgage interest in the property.

{¶9} In granting the writ of restitution, the municipal court did not address the substance of the pending motion to vacate. As a result, the Jurczenkos initiated a prohibition proceeding before this court to enjoin the municipal court from continuing to exercise its jurisdiction over the second forcible entry and detainer action. After this court rendered a stay of the lower court proceedings, the Jurczenkos entered into negotiations with counsel for the municipal court to resolve the prohibition matter. Those discussions ended in a settlement under which the lower court agreed to go

forward on the merits of the pending motion to vacate. Hence, our prior stay order was lifted, and the first prohibition case against the municipal court was voluntarily dismissed.

{¶10} In subsequently ruling upon the motion to vacate, the municipal court held that the Jurczenkos should have been given the opportunity to respond to Fast Property Solutions' second complaint before a final determination was made. Accordingly, the issuance of the writ of restitution was vacated, and the Jurczenkos were permitted to file an answer to the complaint. However, the court rejected the contention that it did not have subject matter jurisdiction to hear the merits of the forcible entry and detainer claim. Therefore, despite the fact that the Jurczenkos filed a separate motion to dismiss under Civ.R. 12(B)(1), the municipal court scheduled the action for trial in December 2008.

{¶11} Given the Jurczenkos' basic position that the municipal court lacked the authority to conduct such a trial, they instituted a second prohibition case before this court. Again, after we granted a temporary stay of the municipal court proceedings, the Jurczenkos were able to negotiate a new settlement of the matter with the counsel for the municipal court. This second settlement essentially provided that the stay order would be momentarily lifted so that the Jurczenkos could submit an amended answer which would set forth certain counterclaims against Fast Property Solutions. Upon the filing of the amended answer, the municipal court would then reconsider whether it still should go forward on the merits of the forcible entry and detainer claim.

{¶12} In their amended answer, the Jurczenkos raised nine counterclaims which primarily asserted that Fast Property Solutions had engaged in certain unconscionable

and fraudulent acts as part of the underlying transaction between them. Through the counterclaims, the Jurczenkos sought a money judgment in the sum of \$500,000. After reviewing the substance of the nine counterclaims, the municipal court rendered a new judgment in which it expressly concluded that the limits of its monetary jurisdiction had now been exceeded. Based upon this, the municipal court ordered the transfer of the entire action between Fast Property Solutions and the Jurczenkos to the Lake County Court of Common Pleas. In turn, the Jurczenkos' second prohibition case before this court was again voluntarily dismissed.

{¶13} Once the transfer of the underlying action had been completed, the matter was assigned to Judge Lucci of the common pleas court for final disposition. While the parties were engaging in preliminary discovery, the Jurczenkos renewed their motion to dismiss Fast Property Solutions' single claim for lack of jurisdiction. As they had before the municipal court, the Jurczenkos contended that Fast Property Solutions could not maintain a proper claim in forcible entry and detainer because the original agreement of the parties had established a mortgagor/mortgagee, not landlord/tenant relationship. In light of this, they further contended that, because the municipal court never had subject matter jurisdiction over that particular claim, the common pleas court and Judge Lucci could not have acquired jurisdiction over the claim through the transfer.

{¶14} In August 2009, Judge Lucci issued a judgment overruling the Jurczenkos' motion to dismiss. One day following the release of this decision, they filed a notice of their intent to voluntarily dismiss their nine counterclaims. Approximately forty-five days later, Fast Property Solutions moved for the enforcement of a settlement agreement that the parties had allegedly negotiated during the prior proceedings before the municipal

court.

{¶15} Ultimately, Judge Lucci set the trial date for the forcible entry and detainer claim and the motion to enforce for December 18, 2009. Exactly one month before the scheduled date, an oral hearing was conducted on other pending motions in the action. During this proceeding, Judge Lucci and the attorneys for both sides had a discussion regarding whether the Jurczenkos' amended answer contained a request for a jury trial. When both attorneys indicated that they could not affirmatively state that a written jury demand had been made, Judge Lucci concluded that the matter would proceed as a trial to the bench.

{¶16} At the outset of the trial, counsel for the Jurczenkos made an oral motion for a jury trial on all pending matters. As the grounds for this demand, counsel stated that a subsequent review of their amended answer had shown that it did contain an express request for a jury trial. Counsel further maintained that, notwithstanding the statements which had been made during a prior oral hearing, the Jurczenkos had never properly withdrawn their demand. In overruling this new motion, Judge Lucci held that a waiver of the right to a jury trial had occurred as part of the discussion with the attorneys in the prior oral hearing.

{¶17} A four-day bench trial then ensued on the forcible entry and detainer claim and the motion to enforce. After the completion of the proceeding's first day, Marjorie J. Jurczenko, relator, brought the instant action in prohibition against Judge Lucci and the Lake County Court of Common Pleas. In seeking a writ to enjoin any new proceedings in the underlying case, relator raised two basic challenges to Judge Lucci's jurisdiction over the matter. First, she again asserted that Judge Lucci could not go forward on the

forcible entry and detainer claim because the municipal court could not transfer a matter which never fell with the scope of its subject matter jurisdiction. Second, relator alleged that Judge Lucci lost his jurisdiction over the entire matter when he erroneously denied the Jurczenkos their right to a jury trial on the remaining issues.

{¶18} After initially reviewing the basic factual allegations in relator's petition, this court overruled her first motion to stay all further proceedings before Judge Lucci. As a result, the scheduled trial went forward and Judge Lucci issued a final judgment on Fast Property Solutions' sole claim and motion to enforce. In light of the subsequent events, relator has twice amended her petition to include new allegations.

{¶19} Within ten days after the filing of the present case, Fast Property Solutions moved to intervene in this matter as a respondent. Given that Fast Property Solutions was the plaintiff in the underlying proceeding and, therefore, had a legitimate interest in the final outcome of the case, this court granted the motion to intervene. Fast Property then joined in the summary judgment motion of Judge Lucci and the Lake County Court of Common Pleas, which had been submitted while this court was considering the motion to intervene.

{¶20} Under the primary argument in their summary judgment motions, all three respondents focus upon the first aspect of the prohibition petition, under which relator contested the jurisdiction of the Mentor Municipal Court to proceed on the forcible entry and detainer claim. In essentially asserting that relator's jurisdictional challenge is not appropriate in the context of a prohibition case, respondents initially note that, pursuant to R.C. 1901.18(A)(8), an Ohio municipal court generally has subject matter jurisdiction over an action in forcible entry and detainer. Based upon this, they contend that, since

Fast Property Solutions' complaint contained nominal allegations as to the existence of a landlord/tenant relationship between it and the Jurczekos, the Mentor court had the authority to determine whether its statutory jurisdiction had been properly invoked in that instance. Respondents further contend that, even if the municipal court's analysis of the jurisdictional issue was somehow flawed, relator still had an adequate remedy through an appeal of the jurisdictional ruling following the conclusion of the proceedings before the common pleas court.

{¶21} In support of the foregoing argument, respondents attached to their motion certified copies of various documents from the underlying action between Fast Property Solutions and the Jurczekos. These documents consisted of: (1) the trial docket of the proceedings before the municipal court; (2) Fast Property Solutions' original complaint and attachments; (3) the Jurczekos' first answer, amended answer, and attachments; (4) the municipal court's judgment transferring the action to the court of common pleas; and (5) the trial docket of the proceedings before the common pleas court.

{¶22} In replying to the summary judgment motion, relator has not contested the authenticity of the certified copies presented by respondents. Similarly, relator has not challenged the general statement of facts that relate to the copies. Furthermore, she has not denied that, as a general proposition, a municipal court has the authority to hear a forcible entry and detainer claim.

{¶23} Despite this, relator still maintains that the undisputed facts of the instant matter support the ultimate conclusion that the merits of Fast Property Solutions' sole claim were never properly before the municipal court for final disposition. Specifically, she argues that, even though Fast Property Solutions may have labeled its claim as one

in forcible entry and detainer, the true substance of its claim was governed by the exact nature of the terms in the “lease/purchase” agreement. As to this point, relator submits that the terms of the original agreement could only be interpreted to indicate that Fast Property Solutions had never been the Jurczenkos’ landlord, but instead had only held a mortgage on the subject residence. Based upon this, she further submits that, since it was impossible for Fast Property Solutions to state a viable claim in forcible entry and detainer, it follows that the municipal court lacked the authority to transfer the underlying action to Judge Lucci and the common pleas court.

{¶24} In order to fully address the merits of the parties’ respective contentions, it is first necessary to restate the elementary principles pertaining to the issuance of a writ of prohibition. As this court has noted on numerous occasions, the writ itself has been described as a legal order under which a court of superior jurisdiction enjoins a court of inferior jurisdiction from exceeding the general scope of its inherent authority. *State ex rel. Feathers v. Hayes*, 11th Dist. No. 2006-P-0092, 2007-Ohio-3852, at ¶9. Consistent with this basic description, the Supreme Court of Ohio has expressly held that a writ of prohibition cannot be issued unless the relator can establish that: (1) a judicial officer or court intends to exercise judicial power over a pending matter; (2) the proposed use of that power is unauthorized under the law; and (3) the denial of the writ will result in harm for which there is no other adequate remedy in the ordinary course of the law. *State ex rel. Florence v. Ritter*, 106 Ohio St.3d 87, 2005-Ohio-3804, at ¶14. As to the application of these elements in the context of a given case, this court has emphasized that the writ has historically been considered an extraordinary remedy which should not be issued in a routine manner. *State ex rel. The Leatherworks Partnership v. Stuard*, 11th Dist. No.

2002-T-0017, 2002-Ohio-6477, at ¶15.

{¶25} In regard to the “adequate remedy” element of the writ, it has previously been recognized that a direct appeal of the trial court’s jurisdictional determination is a sufficient legal remedy which acts as a bar to a prohibition claim. *Feathers*, 2007-Ohio-3852, at ¶10, citing *Hughes v. Calabrese*, 95 Ohio St.3d 334, 2002-Ohio-2217. Yet, it has also been held that an exception to the foregoing principle exists. That is, while the fact that a direct appeal could be pursued by the relator is usually controlling in relation to whether the writ will lie, it is likewise well established that there are certain sets of fact under which the existence of an adequate legal remedy is no longer dispositive. Under this exception, the third element for the writ essentially disappears from the equation. In explaining the nature of the exception, the court has stated:

{¶26} “As to the second and third elements for the writ, this court has emphasized that the absence of an adequate legal remedy is not necessary when the lack of judicial authority to act is patent and unambiguous; i.e., if the lack of jurisdiction is clear, the writ will lie upon proof of the first two elements only. *** However, if the lack of jurisdiction is not patent and unambiguous, the fact that a party can appeal a lower court’s decision bars the issuance of the writ because, when a court has general jurisdiction over the subject matter of a case, it has the inherent authority to decide whether that jurisdiction has been properly invoked in a specific instance. ****” (Citations omitted). *State ex rel. Godale v. Geauga Cty. Ct. of Common Pleas*, 166 Ohio App.3d 851, 2006-Ohio-2500, at ¶6.

{¶27} In claiming in the instant action that a prohibition case is the proper way to challenge the jurisdictional rulings of both the municipal court and Judge Lucci, relator

has not denied that the substance of those rulings could be addressed in a direct appeal from Judge Lucci's final judgment on the forcible entry and detainer claim. Therefore, the critical issue before this court concerns whether the alleged lack of jurisdiction at the municipal level was plain and unambiguous. In considering this type of issue in earlier prohibition proceedings, we have developed the following standard for determining if a particular jurisdictional flaw is plain and unambiguous:

{¶28} “In reviewing the case law on this particular point in prior cases, this court has noted that if there are no set of facts under which a trial court or judge could have jurisdiction over a particular case, the alleged jurisdictional defect will always be considered patent and unambiguous. On the other hand, if the court or judge generally has subject matter jurisdiction over the type of case in question and his authority to hear that specific action will depend on the specific facts before him, the jurisdictional defect is not obvious and the court/judge should be allowed to decide the jurisdictional issue. See *State ex rel. Lee v. Trumbull Cty. Probate Court* (Sept. 17, 1999), 11th Dist. No. 97-T-01 50, 1999 Ohio App. LEXIS 4326. In summarizing the precedent on this point, this court stated:

{¶29} “The logic behind the foregoing proposition is that if a trial court possesses general jurisdiction over a particular subject matter, it should be allowed to determine its own jurisdiction. If that determination is legally incorrect, a party can challenge the court's decision through an appeal of the decision at that conclusion of the action at the trial level. It is only when a trial court does not have general jurisdiction over a subject matter that a writ of prohibition will lie; i.e., a lack of jurisdiction is only patent and unambiguous when the court's own findings, even if supported by the

evidence, do not support the exercise of jurisdiction.’ *Id.*, 1999 Ohio App. LEXIS 4326, at *15.” *The Leatherworks Partnership*, 2002-Ohio-6477, at ¶19-20.

{¶30} In applying the foregoing standard to the undisputed facts of the present matter, this court would first reiterate that there is no question that the Mentor Municipal Court had the general authority to hear and decide a claim in forcible entry and detainer. R.C. 1901.18(A)(8) specifically states that any municipal court in this state has original jurisdiction over any forcible entry and detainer action that might arise within the court’s territorial limits. Based on this, it logically follows that the ability of the Mentor Municipal Court to proceed on the specific case submitted by Fast Property Solutions turned upon whether the company stated a viable claim in forcible entry and detainer.

{¶31} As was noted above, a certified copy of Fast Property Solutions’ complaint before the municipal court was attached to respondents’ summary judgment motion. A review of this pleading readily shows that it contained the following allegations: (1) Fast Property Solutions was the “landlord” over the premises in question; (2) the Jurczenkos were the current tenants on the premises, pursuant to the original lease agreement and the “modification” agreement; (3) as of July 18, 2008, the Jurczenkos had been served with the required three-day notice and had still failed to pay all sums owed under the lease agreement; and (4) the Jurczenkos were unlawfully and forcibly denying Fast Property Solutions access to the subject residence. In addition, a copy of the “lease/purchase” agreement and the modification contract were attached to the complaint.

{¶32} Considered as a whole, the factual assertions in Fast Property Solutions’ complaint were readily sufficient as a matter of law to set forth a viable claim in forcible

entry and detainer. That is, when interpreted in a manner that is most favorable to the company, the allegations indicated that the company could prove a possible set of facts under which it would be entitled to a writ of restitution. Accordingly, the underlying case before the municipal court did not involve a situation in which the company attempted to assert a claim which the court would never have the jurisdiction to hear and determine, regardless of the circumstances.

{¶33} In essentially contending that the municipal court should have immediately rejected Fast Property Solutions' claim as legally insufficient, relator focuses upon the various terms of the "lease/purchase" agreement. As was previously discussed, relator takes the position that those terms readily showed that Fast Property Solutions had not become the actual owner of the subject residence, but rather had only taken a mortgage interest in the property. However, in asking the court to draw this conclusion in regard to the meaning of the parties' agreement, relator is not merely seeking a preliminary determination as to the legal sufficiency of Fast Property Solutions' complaint. Instead, she is seeking a final legal interpretation of the meaning of the original agreement.

{¶34} As a general proposition, this court would agree that it is feasible for a trial court to engage in contract interpretation in the context of a preliminary Civ.R. 12(B)(6) analysis. Yet, when the municipal court in the underlying case was required to construe the "lease/purchase" agreement in ruling upon the Jurczenkos' motion to dismiss, it was not merely making a general determination as to the scope of its statutory jurisdiction. Instead, the municipal court was deciding if it could exercise its clear statutory authority in light of the specific contractual provisions of that case.

{¶35} Pursuant to the well-established case law of this court, an alleged lack of

jurisdiction will not be deemed plain and unambiguous when it is incumbent upon the trial court to make a preliminary ruling in deciding whether there is jurisdiction in that specific instance. While the preliminary ruling is usually factual in nature, we conclude that such a ruling can involve the legal interpretation of a contractual agreement. Again, if the trial court has general subject matter jurisdiction over a type of legal proceeding, it should be permitted to determine if that jurisdiction has been properly invoked under the facts of a particular case.

{¶36} Consistent with the foregoing legal discussion, this court holds that, since the Mentor Municipal Court generally had subject matter jurisdiction over proceedings in forcible entry and detainer, the merits of its preliminary ruling as to the actual nature of the “lease/purchase” agreement cannot be challenged in the context of a prohibition action. That is, we conclude that, because any ultimate decision as to the jurisdiction of the municipal court would have involved an initial legal interpretation of the underlying contractual agreement, any alleged flaw in the municipal court’s authority over the case was not, as a matter of law, plain and unambiguous. Therefore, in order for relator to be entitled to the writ of prohibition, she must be able to demonstrate a lack of an adequate legal remedy.

{¶37} In relation to the “adequate remedy” issue, relator asserts that, in light of the nature of the underlying litigation, a direct appeal from Judge Lucci’s final judgment cannot constitute an “adequate” remedy under the specific circumstances. In support of this assertion, she states that, since the writ of restitution will likely be executed before the merits of the appeal could be heard, the appeal itself will be rendered meaningless.

{¶38} As to this point, this court would indicate that, once relator had brought a

direct appeal from the final judgment, she could have then moved Judge Lucci or this court to grant a stay of execution during the pendency of the matter. Furthermore, given that the appeal would stem from an action in forcible entry and detainer, it would not be necessary for relator to post a supersedeas bond covering the entire sum owed under the option to purchase. Rather, under a stay order issued by this court, she likely would only be required to post a monthly amount equal to the rental value of the residence in question.¹ Hence, to the extent that the amount for the bond would not necessarily be impossible to cover, we reject relator's assertion that an appeal cannot be an adequate remedy when it is taken from the final judgment in a forcible entry and detainer action.

{¶39} For the stated reasons, this court ultimately holds that respondents have established that, under the undisputed facts of the instant matter, relator will not be able to satisfy the second and third elements for the writ in regard to that aspect of her claim in which she contests the subject matter jurisdiction of the Mentor Municipal Court. That is, the evidentiary materials before us show that: (1) the municipal court did not exceed the scope of its jurisdiction in a plain and unambiguous manner; and (2) relator had an adequate remedy at law. Moreover, since no plain and unambiguous jurisdictional error occurred prior to the transfer of the underlying case, Judge Lucci also acted within the scope of his authority in going forward on the merits. Thus, the issuance of a writ of prohibition cannot be predicated upon the "subject matter jurisdiction" aspect of relator's

1. At the outset of this original action, relator moved this court to stay the execution of the writ of restitution. However, in setting the amount of the supersedeas bond in the context of a prohibition action, this court would not consider the same factors as would be relevant to granting a stay during a pending appeal.

sole claim before this court.

{¶40} As was noted above, under the second aspect of her prohibition claim, relator maintained that Judge Lucci lacked the proper authority to proceed on the merits of the underlying case because he had denied the Jurczenkos their constitutional right to a jury trial. Specifically, she submits that a writ is warranted because Judge Lucci erroneously concluded that they had waived their prior demand for a jury.

{¶41} A review of the relevant case law indicates that a similar argument was addressed by the Sixth Appellate District in *State ex rel. Porter v. Abood*, 6th Dist. No. 0T-07-045, 2007-Ohio-6002. In that prior case, the relators sought writs in mandamus and prohibition to require the trial judge in an underlying forcible entry and detainer case to conduct a jury trial on the final merits. At the outset of its analysis, the *Porter* court emphasized that neither writ would lie unless there was no alternative legal remedy that the relators could pursue. The court then concluded in relation to both writs that the relators had an adequate legal remedy because they could bring a direct appeal from the final judgment in the underlying matter. *Id.* at ¶3.

{¶42} Given that *Porter* also involved an action in forcible entry and detainer, its holding would clearly apply to the undisputed facts of the instant action. Accordingly, neither aspect of relator's original petition for prohibition set forth proper grounds for the issuance of the requested writ.

{¶43} Finally, it must be noted that, in filing her second supplemental petition, relator attempted to assert a third basis for her prohibition claim. As the foundation for this third reason, relator alleged that, in rendering his final judgment in the underlying case, Judge Lucci expressly ordered that the Jurczenkos' counterclaims and amended

answer be stricken from the entire record of the litigation on the grounds that they had never moved the municipal court for leave to submit those pleadings. Based upon this new development, relator now contends that, by ordering the clerk of courts to strike the counterclaims, Judge Lucci has inadvertently deprived himself of the authority to issue a final ruling on the original forcible entry and detainer claim. Relator emphasizes that, since the decision to transfer the underlying case to the common pleas court was solely predicated upon the existence of the counterclaims, Judge Lucci's order had the effect of rendering the "transfer" judgment void.

{¶44} As to this point, our review of relator's own allegations indicates that, while the underlying case was pending before Judge Lucci at the common pleas level, the Jurczenkos voluntarily dismissed their entire counterclaim approximately four months before the issuance of the "strike" order. In challenging Judge Lucci's jurisdiction over the transferred case, relator has not disputed that the dismissal of their part of the litigation had no effect upon Judge Lucci's authority to go forward on the forcible entry and detainer claim. Therefore, given that the counterclaim was no longer pending as of the beginning of the trial, the decision to strike the pleadings, regardless of its relative merit, did not have any effect upon Judge Lucci's ability to render a final judgment as to the remaining aspects of the litigation.

{¶45} To be entitled to prevail in a summary judgment exercise, the moving party must be able to establish that: "(1) there are no remaining issues of material fact which need to be litigated; (2) the moving party has a right to be granted judgment as a matter of law; and (3) even when the evidentiary materials are interpreted in a manner that is most favorable to the nonmoving party, a reasonable person would still only be

able to reach a conclusion adverse to that party.” *McGhan v. Vettel*, 11th Dist. No. 2008-A-0036, 2008-Ohio-6063, at ¶57. Pursuant to the foregoing analysis, this court holds that respondents have satisfied this standard in relation to two of the elements of relator’s sole prohibition claim. Again, since any alleged jurisdictional error on the part of the Mentor Municipal Court or Judge Lucci was not plain and unambiguous, any legitimate issue regarding the propriety of their judicial acts should be contested in a direct appeal from the ultimate final judgment.

{¶46} The motions for summary judgment of all three respondents, Judge Lucci, the Lake County Court of Common Pleas, and Fast Property Solutions, Inc., are granted. It is the order of this court that final judgment is hereby entered in favor of the three respondents as to relator’s entire claim in prohibition.

MARY JANE TRAPP, P.J., CYNTHIA WESTCOTT RICE, J., TIMOTHY P. CANNON, J.,
concur.