

[Cite as *Bunting v. Estate of Bunting*, 2009-Ohio-3136.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

PAUL EDWARD BUNTING,	:	JUDGES:
	:	
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellant	:	Hon. Julie A. Edwards, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Consolidated Case Nos. 2008CA00173
	:	& 2008CA00199
ESTATE OF MARY JANE BUNTING,	:	
DECEASED, ET AL.	:	
	:	
	:	
Defendants-Appellees	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of
Common Pleas Court
Case No. 2008CV02544

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: June 24, 2009

APPEARANCES:

For Plaintiff-Appellant:

Paul Edward Bunting, #A-395-279
Belmont Correctional Institution
P.O. Box 540
St. Clairsville, Ohio 43950-0540

For Defendants-Appellees:

Jon M. Hollingsworth
1400 N. Market Avenue
Canton, Ohio 44714-2608

Delaney, J.

{¶1} Plaintiff-Appellant Paul Bunting, pro se, appeals two judgment entries of the Stark County Court of Common Pleas filed on July 18, 2008 and August 28, 2008, respectively.

{¶2} On June 3, 2008, Plaintiff¹ sought an ex parte injunction in the Stark County Court of Common Pleas to prevent the transfer and/or sale of real estate and assets which allegedly had belonged to his mother, decedent Mary Jane Bunting. Plaintiff alleges he filed a petition in the Stark County Probate Court to probate her estate. He claimed he is an heir of Bunting and entitled to inherit from her estate. He Plaintiff further alleged that his sister, Defendant Mary Watts, had improperly obtained power of attorney prior to the death of Bunting and had unlawfully transferred estate property, to wit: the residence of Mary Jane Bunting, by quit claim deed to her husband, Defendant Greg Watts. Plaintiff sought an injunction to stop the auction of the property which was scheduled for May 27, 2008.

{¶3} On June 25, 2008, Defendants filed a motion to dismiss as the auction had already taken place. A pre-trial was held on July 8, 2008 and the trial court set the matter for a non-jury trial on August 21, 2008. However, prior to trial the court granted the motion pursuant to Civ.R. 12(B)(6) on July 18, 2008.²

{¶4} On July 31, 2008, Plaintiff filed a motion for default judgment. On August 15, 2008, Plaintiff filed a notice of appeal of the July 18, 2008, judgment entry, which was assigned Case No. 2008CA0173. On August 28, 2008, the trial court issued a

¹ Plaintiff is currently serving an eighteen-year prison sentence for rape and sexual battery involving a minor child. See *State v. Bunting* (May 29, 2001) Stark App. No. 2000CA00286, unreported.

² In the entry, the trial court found the allegations of Plaintiff's complaint are not legally sufficient to state a claim for breach of contract and breach of implied warranty.

judgment entry stating it was without jurisdiction to entertain Plaintiff's motion for default judgment due to the filing of the notice of appeal. On September 10, 2008, Plaintiff filed a notice of appeal of the August 28, 2008, judgment entry, which was assigned Case No. 2008CA0199. A motion to consolidate the two appeals was granted on October 1, 2008.

{¶5} Appellant raises four Assignments of Error:

{¶6} "I. WHETHER THE TRIAL COURT INJUDICIOUSLY ERRED IN DISMISSING INJUNCTION RELIEF BY ERRONEOUSLY RULING TO CIV.R. 12(B)(6) THAT ALLEGATIONS WERE NOT LEGALLY SUFFICIENT.

{¶7} "II. WHETHER THE TRIAL COURT PREJUDICIALLY ERRED BY ERRONEOUSLY MISCONSTRUING INJUNCTION CLAIM WAS FOR BREACH OF CONTRACT AND/OR IMPLIED WARRANTY.

{¶8} "III. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY OVERRULING THE MAGISTRATE'S PRETRIAL SCHEDULED PRELIMINARY HEARING WITHOUT FURTHER PROCEEDINGS TO ASCERTAIN THE EVIDENTIARY MATERIAL EVIDENCE WAS PRIMA FACIE FACTUAL.

{¶9} "IV. WHETHER THE TRIAL COURT ABUSED IT (SIC) DISCRETION BY RULING IT LACKED JURISDICTION TO ENTERTAIN DEFAULT JUDGMENT ON GROUNDS THAT THE DEFENDANTS FAILED TO SERVICE COPY OF MOTION TO DISMISS INJUNCTION WHEN NO RESPONSIVE PLEADING TO OPPOSE WAS FILED.

I., II., III., IV.

{¶10} We will address Plaintiff's assignments of error together.

{¶11} We begin our analysis by examining the document filed by Plaintiff on June 3, 2008. It is captioned "Ex Parte Order Emergency Injunction To Prohibit an Auction of the Sale and Resale of Decedent's Intestacy Estate Property and Any Assets to Avoid Illegal Transfers While Case is Pending In Probate Court to Open Intestate Estate".

{¶12} Upon review, we find the only legal relief requested by Plaintiff in the document is injunctive relief "to enjoin Watts and/or Greg from continuing their so-called self-induced corrupt activity of administrating distribution to themselves (sic) is an illegal unjust enrichment warrants so as to carry out the provisions of decent (sic) and distribution properly and give effect to establishing the rightful heirs compels reason to the issuance of an injunction in this case as inferred as a well-pleaded complaint where relief is sought."

{¶13} We find, *sua sponte*, that the common pleas court did not have subject matter jurisdiction to determine this claim. A demonstration of a lack of subject matter jurisdiction is fatal to any action, and a party or the court *sua sponte* may challenge jurisdiction at any time during the pendency of a case. *Fox v. Eaton Corp.* (1976), 48 Ohio St.2d 236, 238, overruled on other grounds, *Manning v. Ohio Library Board* (1991), 62 Ohio St.3d 24; *Jenkins v. Keller, Admr.* (1966), 6 Ohio St.2d 122, paragraph five of the syllabus. Subject matter jurisdiction is never waived. *Patton v. Diemer* (1988), 35 Ohio St.3d 68.

{¶14} Pursuant to R.C. 2101.24, providing for the jurisdiction of probate courts, a probate court has exclusive jurisdiction over an action for conversion of estate assets. *Johnson v. Allen* (1995), 101 Ohio App.3d 181. Furthermore, probate courts have all power at law and in equity to dispose fully of any matter that is before the court, including the granting of injunctive relief. R.C. 2101.24(C); R.C. 2727.03.

{¶15} We conclude the lower court lacked subject matter jurisdiction over the claim, and thus properly dismissed it, albeit on different grounds.

{¶16} Plaintiff's assignments of error are thereby overruled.

{¶17} The judgment of the Stark County Common Pleas Court is affirmed.

By: Delaney, J.

Hoffman, P.J. and

Edwards, J. concur.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. JULIE A. EDWARDS

PAD:kgb

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Plaintiff-Appellant	:	
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-vs-	:	JUDGMENT ENTRY
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ESTATE OF MARY JANE BUNTING, DECEASED, ET AL.	:	
	:	
Defendants-Appellees	:	Consolidated Case Nos. 2008CA00173 & 2008CA00199
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. JULIE A. EDWARDS