

RENDERED: JULY 17, 2020; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000953-DG

DONALD MEINSHAUSEN

APPELLANT

ON DISCRETIONARY REVIEW FROM JEFFERSON CIRCUIT COURT
v. HONORABLE ANGELA MCCORMICK BISIG, JUDGE
ACTION NO. 18-XX-000122

FRIENDSHIP HOUSE
OF LOUISVILLE, INC.

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * **

BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND MAZE, JUDGES.

MAZE, JUDGE: This matter is before the Court on discretionary review from an order of the Jefferson Circuit Court affirming a forcible detainer judgment against Donald Meinshausen and in favor of the landlord, Friendship House of Louisville, Inc. (Friendship House). Meinshausen argues that the district court lacked subject-matter jurisdiction because the forcible detainer complaint was signed and filed by

a non-attorney representative of Friendship House. We agree, concluding that the representative lacked any capacity or interest in the property to invoke the subject-matter jurisdiction of the district court. Hence, we reverse the circuit court's order and remand for entry of an order dismissing the complaint.

The relevant facts of this action are not in dispute. Meinshausen was a tenant at Friendship House, a HUD-subsidized senior-living facility. On October 31, 2018, a forcible detainer petition was filed in Jefferson District Court by Chiquita Booker, alleging that Meinshausen was in breach of his lease due to non-payment of rent and unclean conditions in his apartment. Booker, the "Interim Housing Manager" of the building, prepared, signed and filed the petition on behalf of Friendship House. The parties agree that Booker is not a licensed attorney.

At the bench trial, counsel for Meinshausen objected to the filing, arguing that Booker was not authorized to file the complaint on behalf of Friendship House. The district court denied the motion to dismiss and entered a forcible detainer judgment in favor of Friendship House. On January 14, 2019, Meinshausen was subject to a writ of possession and his property was set out. Meinshausen no longer has possession of the apartment, and he has not asked the court to restore him to possession of the premises.

On December 6, 2018, Meinshausen filed a notice of appeal from this judgment to the Jefferson Circuit Court. He again argued that the complaint was void because Booker was not authorized to sign or file on behalf of Friendship House. In support of this argument, he relied on the then-recent opinion of this Court in *Hornsby v. Housing Authority of Dry Ridge*, 566 S.W.3d 587 (Ky. App. 2018). After considering Meinshausen’s arguments and the response by Friendship House, the circuit court affirmed the forcible detainer judgment. The court found that *Hornsby* was not controlling because Friendship House was represented by licensed counsel during the forcible detainer proceedings. Meinshausen then asked this Court for discretionary review, which was granted on August 21, 2019. Additional facts will be set forth below as necessary.

As an initial matter, Friendship House argues that Meinshausen should be limited to one appeal granted by Section 115 of the Kentucky Constitution. Friendship House contends that it is unfairly prejudiced by allowing Meinshausen a second appeal without his depositing money as required by KRS¹ 383.255. We disagree.

First, since Meinshausen was determined to be indigent, the requirements of KRS 383.255 are not applicable to this proceeding. *See Fickey v. Cross Creek Apartments, Ltd.*, 700 S.W.2d 807, 808 (Ky. App. 1985). Moreover,

¹ Kentucky Revised Statutes.

Friendship House misconstrues the nature of this proceeding. CR² 76.20 permits this Court to grant discretionary review of a judgment of the circuit court in a case appealed from the district court. As the name indicates, such review is a matter of judicial discretion and will be granted only when there are special reasons for it. *Id.*; see also *Elk Horn Coal Corp. v. Cheyenne Res., Inc.*, 163 S.W.3d 408, 419 (Ky. 2005). In granting discretionary review, the motion panel found special circumstances existed in this case to warrant further review in this Court. Consequently, Meinshausen is not receiving an additional appeal as a matter of right, but only subject to the discretion of this Court.

Friendship House next argues that this matter is moot because Meinshausen no longer has possession of the apartment. “Ordinarily, this Court dismisses an action when no relief can be given to the parties below.” *Commonwealth v. Stevens*, 489 S.W.3d 755, 760 (Ky. App. 2016). However, this Court may address an issue despite its apparent mootness under one of two exceptions. First, we may address an issue which is “capable of repetition, yet evading review[.]” *Id.* A case is capable of repetition, yet evading review, when “there is a reasonable expectation that the same complaining party would be subject to the same action again.” *Philpot v. Patton*, 837 S.W.2d 491, 493 (Ky. 1992) (citation omitted). In this case, Meinshausen does not allege that he will be

² Kentucky Rules of Civil Procedure.

subject to another forcible detainer complaint under the same circumstances.

Hence, this exception does not apply.

Second, we may review the matter under the public interest exception set out by the Kentucky Supreme Court in *Morgan v. Getter*, 441 S.W.3d 94, 103 (Ky. 2014). A court may review an otherwise moot case when “(1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question.” *Id.* at 102 (citation omitted). We conclude that this exception is applicable.

First, the proper and efficient application of the law pertaining to the special statutory proceeding for forcible entry and detainer is a matter of public interest. Second, the decision in *Hornsby* had not been rendered at the time of the district court’s judgment and was not yet final when the circuit court ruled on appeal. The scope of that opinion is a matter which apparently still requires authoritative determination. And third, landlords, including non-profit entities such as Friendship House, may have need for guidance regarding the eviction process in the future. Therefore, we conclude that this matter is subject to review under the public interest exception to the mootness doctrine.

In *Hornsby*, the forcible detainer complaint was prepared and signed by a non-attorney, the housing authority’s executive director. On discretionary

review, a panel of this Court held that the executive director engaged in the unauthorized practice of law by signing the complaint on behalf of a municipal corporation such as a housing authority.

Kentucky courts have long held that a non-attorney officer of a corporation or limited liability company may not itself engage in the practice of law. *Kentucky Bar Association v. Tussey*, 476 S.W.2d 177, 180 (Ky. 1972) (“That a corporation may not draw legal instruments through a nonprofessional officer or employee is no more phenomenal than its inability to be so represented in court.”); *Flynn v. Songer*, 399 S.W.2d 491, 494 (Ky. 1966) (“A corporation cannot practice law and must have a licensed attorney representing it in court matters.”) (internal quotation marks and citation omitted); *see also Kentucky State Bar Ass’n v. First Federal Sav. and Loan Ass’n of Covington*, 342 S.W.2d 397 (Ky. 1960). We perceive no real distinction with respect to a housing authority. As noted by the Illinois appellate court, “Municipal corporations, like their business counterparts, are soulless and inanimate, and when an agent undertakes to practice law on behalf of such a principal, he must be licensed to do so.” *Housing Authority of Cook Cty. v. Tonsul*, 115 Ill. App. 3d 739, 71 Ill. Dec. 369, 450 N.E.2d 1248, 1251 (1983).

Hornsby, 566 S.W.3d at 592-93 (footnote omitted).

Consequently, this Court held that the executive director was not authorized to file the complaint or to represent the authority at the forcible detainer proceeding. Since a forcible detainer complaint is a pleading that must be filed and practiced by an attorney or an individual representing his or her own interest, the

panel concluded that the complaint must be dismissed. *Id.* at 593. The circumstances in the present case are substantially identical to those in *Hornsby*.

Nevertheless, Friendship House argues, and the circuit court agreed, that *Hornsby* is distinguishable from the facts of the current case. Counsel for Friendship House, Mr. F. Larkin Fore, states that Booker filed the forcible detainer complaint under his supervision and at his direction. Counsel further states that his name was listed on the eviction notice and he was present and representing Friendship House at all relevant stages of the proceeding. The circuit court concluded that Mr. Fore's participation in the forcible detainer action vitiated any potential unauthorized practice by Booker.

We disagree. The preparing and filing of petitions is the unauthorized practice of law when done voluntarily by a person without a beneficial interest in the property. *Frazer v. Citizens Fid. Bank & Tr. Co.*, 393 S.W.2d 778, 782 (Ky. 1964). Clearly, Booker had no direct beneficial interest in the property, nor was she authorized to represent the interests of a separate legal entity. Consequently, we must conclude that Booker's filing of the forcible detainer petition amounted to the unauthorized practice of law.

The more significant question is whether the proper filing of a forcible detainer petition is a prerequisite to invoke the subject-matter jurisdiction of the district court. We conclude that it is. A forcible detainer complaint is a special

statutory proceeding requiring strict compliance with the statutory requirements. *Shinkle v. Turner*, 496 S.W.3d 418, 421, 423 (Ky. 2016). KRS 383.210(1) creates a statutory cause of action for “a person aggrieved by a forcible entry or detainer[.]” To assert a valid claim for forcible detainer, the plaintiff must allege a current and immediate right to possession of the premises; otherwise, he is not “aggrieved by a forcible detainer.” *Shinkle*, 496 S.W.3d at 422.

Booker had no immediate right to possession of the premises in her own capacity, nor did she have the capacity to assert that right on behalf of Friendship House. As such, she was not authorized to sign and file the forcible detainer complaint. A forcible detainer complaint is a pleading that must be filed and practiced by an attorney. *Hornsby*, 566 S.W.3d at 593. Although Mr. Fore represented Friendship House during the rest of the proceedings, Booker’s filing of the forcible detainer complaint was insufficient to invoke the subject-matter jurisdiction of the district court. We appreciate that the result would have been the same if Mr. Larkin had signed the complaint. However, neither this Court nor trial courts are at liberty to circumvent or evade the rules and statutory provisions by turning a blind eye to the requirements for the sake of expedience. *Id.* In this case, the district court never acquired subject-matter jurisdiction. Therefore, we must conclude that the complaint should have been dismissed.

Accordingly, the order of the Jefferson Circuit Court is reversed, and this matter is remanded with directions to the Jefferson District Court to enter an order dismissing the forcible entry complaint against Meinshausen.

ALL CONCUR.

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