

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

JOHNETTE L. TCHELIDZE,	:	APPEAL NO. C-140767
	:	TRIAL NO. 14CV-17272
Plaintiff-Appellee,	:	
vs.	:	<i>OPINION.</i>
JOSEPH CHEVROLET,	:	
Defendant-Appellant.	:	

Civil Appeal From: Hamilton County Municipal Court, Small Claims Division

Judgment Appealed from is: Vacated and Cause Remanded

Date of Judgment Entry on Appeal: April 15, 2016

*Johnette L. Tchelidze, pro se,*

*Frost Brown Todd LLC and Katherine A. Klaeren, for Defendant-Appellant.*

Please note: this case has been removed from the accelerated calendar.

**STAUTBERG, Judge.**

{¶1} Joseph Chevrolet appeals from the judgment of the Hamilton County Municipal Court, Small Claims Division, in favor of Johnette L. Tchelidze in the amount of \$3000. Because we hold that that the trial court lacked subject-matter jurisdiction over this action, we vacate the trial court’s judgment and instruct the trial court on remand to dismiss this entire case pursuant to Civ.R. 12(H)(3).

**I. Background Facts and Procedure**

{¶2} Ms. Tchelidze purchased a vehicle from Joseph Chevrolet pursuant to a financing agreement. Ultimately, Joseph Chevrolet repossessed the vehicle, claiming that she had breached the financing agreement, and threatened to sell it. Ms. Tchelidze then filed a small-claims complaint against Joseph Chevrolet complaining, inter alia, that she “should be able to drive and still make payments,” and that she tried “to make my payments but they won’t except [sic] it,” and asking the court to “help me make a deal \* \* \* on payments.” She wrote in “3000” next to “Amount \$” on the preprinted complaint form, but she left blank a second place on the form: “Plaintiff says that there is due and owing from defendant(s) the sum of\_\_\_\_\_.” Joseph Chevrolet unsuccessfully moved to dismiss the complaint under Civ.R. 12(B)(6) for the failure to state a claim, and later answered and counterclaimed for damages.

{¶3} A trial was held before a magistrate, at which Ms. Tchelidze repeatedly told the magistrate that she just wanted her truck returned. Although Joseph Chevrolet indicated that it still possessed the vehicle, the magistrate recognized on the record that she could not order the return of the vehicle. After taking the case under submission, the magistrate issued a written decision in which she entered

judgment for Ms. Tchelidze in the amount of \$3000 based on a claim of wrongful repossession. The magistrate also found for Ms. Tchelidze on the counterclaim. Joseph Chevrolet objected to the magistrate's decision, but the trial court overruled those objections and adopted the magistrate's decision.

{¶4} Joseph Chevrolet now appeals, raising two assignments of error. First, Joseph Chevrolet argues that the trial court erred by entering judgment for Ms. Tchelidze on the theory of wrongful possession because she failed to prove the merits of her claim. Second, it argues that the trial court should have dismissed the complaint under Civ.R. 12(B)(6). Ms. Tchelidze has not filed a brief.

## II. Analysis

{¶5} We begin our analysis with the second assignment of error, which requires a review of the small-claims complaint. Ultimately, however, we do not address Joseph Chevrolet's specific arguments on appeal concerning the Civ.R. 12(B)(6) motion or the merits of the wrongful-repossession claim. Our review of the complaint leads to the conclusion that Ms. Tchelidze set forth a claim for replevin or for equitable relief. Because of this, the small-claims court lacked subject-matter jurisdiction over the action and should have dismissed the action for that reason.

{¶6} “ ‘Subject matter jurisdiction of a court connotes the power to hear and decide a case upon its merits’ and ‘defines the competency of a court to render a valid judgment in a particular action.’ ” *Cheap Escape Co., Inc. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶ 6, quoting *Morrison v. Steiner*, 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972). A defect in subject-matter jurisdiction cannot be waived or forfeited, *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, nor may the parties confer subject-matter jurisdiction on a court by agreement. *Cheap Escape* at ¶ 22. Appellate courts may sua sponte

consider subject-matter jurisdiction even if the issue was not raised in the lower courts. *Basinger v. York*, 2012-Ohio-2017, 969 N.E.2d 797, ¶ 6 (4th Dist.). See *Polakova v. Polak*, 107 Ohio App.3d 745, 749, 669 N.E.2d 498 (1st Dist.1995).

{¶7} Small claims divisions are statutorily created, R.C. 1925.01, and their subject-matter jurisdiction is enumerated by R.C. 1925.02, which provides in relevant part as follows: “[e]xcept [for circumstances not relevant here], a small claims division \* \* \* has jurisdiction in civil actions for the recovery of taxes and money only, for amounts not exceeding three thousand dollars, \* \* \* [and] does not have jurisdiction in \* \* \* replevin \* \* \* actions.” R.C. 1925.02(A)(1) and (2).

{¶8} Thus, a small claims division does not have subject-matter jurisdiction over replevin actions. *Alb USA Auto, Inc. v. Modic*, 8th Dist. Cuyahoga No. 98914, 2013-Ohio-1561, ¶ 11. “Replevin is a remedy and a civil action by which the owner or one who has a general or special interest in specific and identifiable personal property and the right to its immediate possession seeks to recover the possession of such property.” (Citation omitted.) *Jedlicka v. Good Mechanical Auto Co.*, 21 Ohio App.3d 19, 486 N.E.2d 121 (8th Dist.1984). See R.C. 2737.01 et seq.; *Basinger* at ¶ 7; *Superior Piping Contrs., Inc. v. Reilly Indus., Inc.*, 8th Dist. Cuyahoga No. 90751, 2008-Ohio-4858, ¶ 37.

{¶9} In a replevin action, the primary relief sought is the return of the property, and the recovery of damages, if sought, is only incidental to the recovery of possession. *Jedlicka* at 21; *Basinger*, 2012-Ohio-2017, 969 N.E.2d 797, at ¶ 7; see *Dept. of Natural Resources, Div. of Wildlife v. Prescott*, 42 Ohio St.3d 65, 67, 537 N.E.2d 204 (1989) (“A writ of replevin \* \* \* is a remedy sought in a civil action contesting the right to possession of personal property.”).

{¶10} In this case, Ms. Tchelidze’s complaint conveyed that she had brought the action because Joseph Chevrolet was holding her truck and she wanted the court’s assistance in obtaining the return of her truck and continuing with her financing agreement.

{¶11} A fair reading of her statement leads to the conclusion that the nature of her action was to recover her property allegedly wrongfully detained by Joseph Chevrolet and/or to force Joseph Chevrolet to accept Ms. Tchelidze’s payments. But such relief is clearly outside of the statutory jurisdiction of the small claims division of the municipal court, which is limited to the recovery of money. *See* R.C. 1925.02(A)(1).

{¶12} Ultimately, Ms. Tchelidze brought a claim for either replevin or equitable relief, and she maintained her request for the court’s assistance in obtaining the return of the property throughout the proceedings below. These types of claims are not within the statutory jurisdiction of the small claims division. *See Modic*, 8th Dist. Cuyahoga No. 98914, 2013-Ohio-1561, at ¶ 11; *Huff v. All Am. Basement Waterproofing & Home Servs., Inc.*, 190 Ohio App.3d 612, 2010-Ohio-6002, 943 N.E.2d 626, ¶ 45 (5th Dist.); *Schregardus v. Croucher*, 56 Ohio App.3d 174, 565 N.E.2d 880 (8th Dist.1989) (holding that municipal courts and their small claims divisions lack subject-matter jurisdiction over actions that are “principally equitable in nature.”). Although Ms. Tchelidze did not use technical terms, and did not identify the action as such, she was not required to do so in the small-claims complaint. *See* R.C. 1925.04(B). The trial court lacked subject-matter jurisdiction over the action.

{¶13} If an initial pleading seeks relief from a court beyond what is authorized by statute, the court must dismiss the action under Civ.R. 12(H)(3), which

provides that “[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” *See State ex rel. Natl. Emp. Benefit Servs., Inc. v. Cuyahoga Cty. Court of Common Pleas*, 49 Ohio St.3d 49, 50, 550 N.E.2d 941 (1990). Civ.R. 12(H)(3) applies in small-claims court proceedings, *Basinger*, 2012-Ohio-2017, 969 N.E.2d 797, at ¶ 8, although not all of the civil rules do. *See* R.C. 1925.16 and Civ.R. 1(C).

{¶14} Instead of dismissing the action, the trial court erroneously converted Ms. Tchelidze’s claim to one for wrongful repossession and awarded damages to conform to its subject-matter jurisdiction. *See Modic*, 8th Dist. Cuyahoga No. 98914, 2013-Ohio-1561 (holding that the small claims court lacked subject-matter jurisdiction under R.C. 1925.02 over a replevin action in which a secured creditor sought the return of a vehicle, and the court erred by converting the suit to a conversion action and reducing the claim the conform to its subject-matter jurisdiction).

{¶15} Under these circumstances, the trial court should have dismissed the action for lack of subject-matter jurisdiction. *See Basinger* at ¶ 8; *Modic* at ¶ 15.

### III. Conclusion

{¶16} Accordingly, we hold that the Hamilton County Municipal Court, Small Claims Division, had no jurisdiction over this action. Therefore, we vacate the trial court’s judgment and remand the cause to the trial court with instructions to dismiss the action pursuant to Civ.R. 12(H)(3).

Judgment vacated and cause remanded.

HENDON, P.J., and MOCK, J., concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.