

1997 Ohio App. LEXIS 4094, *

MICHAEL LEITSCHUH, Plaintiff-Appellee v. VERNON ALLEN, Defendant-Appellant

C.A. Case No. 16392

COURT OF APPEALS OF OHIO, SECOND APPELLATE DISTRICT, MONTGOMERY
COUNTY

1997 Ohio App. LEXIS 4094

September 12, 1997, Rendered

PRIOR HISTORY: [*1] T.C. Case No. 96-CVI-2651.

DISPOSITION: Judgment of the trial court is Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant former employer challenged a judgment of the Kettering Municipal Court, Small Claims Division (Ohio), which awarded appellee former employee damages arising from unpaid wages.

OVERVIEW: The employee's claim originally listed a demand for \$ 11,100, and the employer sought to have the case dismissed at the hearing because that amount exceeded the jurisdictional limit of \$ 2000 for small claims cases. Recognizing that the listed amount was a typographical error, the magistrate permitted the claim to be amended, and the demand was reduced to \$ 1100. On appeal, the employer claimed that the small claims court did not have jurisdiction to amend the claim because the listed amount took the case out of the jurisdiction of the small claims court. In affirming the small claims court's judgment, the court held that the small claims court did not err in allowing the employee's original claim to be amended. The court found that a pleading could be amended by the insertion of jurisdictional averments. That rule was a liberal and salutary one that would be steadily adhered to in the furtherance of substantial justice and in avoiding pointless circuitry of action.

OUTCOME: The court affirmed the trial court's judgment in the employee's favor.

CORE TERMS: municipal, wages, door, exceeded, general rule, dispositive, jurisdictional limit, assignment of error, jurisdictional, monetary, unpaid, remit

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HN1  [Ohio Rev. Code Ann. § 1925.09](#) gives the small claims courts the power to amend any claim before judgment. [More Like This Headnote](#)

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HN2  Ohio Gen. Code § 1579-202 reads: When the amount due to either party exceeds the sum for which the municipal court is authorized to enter judgment, such party may remit the excess, and judgment may be entered for the residue. [More Like This Headnote](#)

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HN3  [Ohio Rev. Code Ann. § 1925.16](#) makes clear that all sections of the Code within Chapter 1901, the statutes governing municipal courts, apply to small claims courts to the extent that they are not inconsistent with the sections of Chapter 1925, the statutes specifically governing the small claims divisions. [More Like This Headnote](#)

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HN4  Without effecting a substantial change in its nature, a pleading may be amended by the insertion of jurisdictional averments. This rule is a liberal and salutary one that should be steadily adhered to in the furtherance of substantial justice and in avoiding pointless circuitry of action. [More Like This Headnote](#)

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PAUL CROUSHORE, Atty. Reg. # 0055524, Columbus, Ohio, Attorney for Defendant-Appellant.

JUDGES: BROGAN, J. YOUNG, P.J., and GRADY, J., concur.

OPINIONBY: BROGAN

OPINION: OPINION

BROGAN, J.

Appellant Vernon Allen appeals from a judgment of the Kettering Municipal Court, Small Claims Division awarding appellee Michael Leitschuh \$ 1,100 plus interest. Appellant contends that the small claims court exceeded its jurisdiction and judgment should be reversed and the case remanded with instructions to dismiss.

The appeal arises from a dispute over unpaid wages. Appellant Allen was the sole proprietor of a business known as Moraine Door Sales. After Allen suffered a heart attack, his employees took over the day-to-day operations of the business. At that time, Michael Leitschuh went to work for Moraine Door Sales as a salesperson. He received a salary and commission for his services. During his employment, he was given a garage door by the acting management. He also ordered and received another door from the company.

When Allen [*2] recovered and returned to the operation of his business, he discovered discrepancies in the company's books and other problems with how the business was run during his absence. The employees entrusted with running the business during that time were fired. Allen's accountant also confronted Leitschuh over the two doors that he had received, and Leitschuh agreed to pay for them. After that confrontation, Leitschuh continued to work for Allen for two weeks but was not paid. Leitschuh then filed a claim in the small claims court for his uncollected wages.

Leitschuh's claim originally listed a demand for \$ 11,100. Allen sought to have the case dismissed at the hearing because that amount exceeded the jurisdictional limit of \$ 2,000 for cases in the small claims division. Recognizing that the listed amount was a typographical error, the magistrate permitted the claim to be amended and the demand was reduced to \$ 1,100. The magistrate then heard the case. During the hearing, the parties disputed whether Leitschuh had paid for the two doors. It was undisputed, however, that Allen had not paid Leitschuh his wages for the two weeks of his employment. The magistrate awarded Leitschuh \$ 1,100 [*3] for his unpaid wages. The magistrate's report was then adopted and judgment entered by the court on August 21, 1997.

In his sole assignment of error, appellant contends that the small claims court lacked jurisdiction to amend the claim and, therefore, to enter a judgment. Appellant argues that the court had no power to do anything but dismiss the claim because the original demand asked for an amount which placed the case outside the monetary limits of small claims division's jurisdiction.

We begin by noting that ^{HN1} [R.C. 1925.09](#) gives the small claims courts the power to amend any claim before judgment. That statute, however, does not address whether a complaint can be amended if, before the amendment, the claim places the case outside the jurisdiction of the court. A similar issue was directly addressed by the Ohio Supreme Court in [State ex rel. Talaba v. Moreland \(1936\), 132 Ohio St. 71, 5 N.E.2d 159](#). In that case, a complaint was filed in the Alliance Municipal Court demanding an amount only slightly in excess of the then \$ 1,000 jurisdictional limit of municipal courts. The municipal court permitted the amount demanded to be amended and its judgment was affirmed by the Supreme Court. [*4] [Id. at 72-73](#).

In its analysis, the Supreme Court first examined the statutory jurisdiction of the Municipal Court. The Court turned to ^{HN2} G.C. 1579-202 which read:

When the amount due to either party exceeds the sum for which the municipal court is authorized to enter judgment, such party may remit the excess, and judgment may be entered for the residue. . . .

The Court read that statute as permitting the amendment of claims to bring them within the jurisdiction of the municipal court. The Court noted that the statute placed no restrictions on how or when parties may exercise their power to remit the excess of claimed damages. *Id.* at 73. Thus, such a remission could take the form of an amended complaint. *Id.* at 73-74.

Under the [Revised Code, section 1901.22 \(F\)](#) grants this same power to parties in municipal court with language that duplicates the General Code provision nearly verbatim. Moreover, ^{HN3} [R.C. 1925.16](#) makes clear that all sections of the Code within Chapter 1901, the statutes governing municipal courts, apply to small claims courts to the extent that they are not inconsistent with the sections of Chapter 1925, the statutes specifically governing the small [*5] claims divisions. As there do not appear to be any sections within Chapter 1925 that are inconsistent with 1901.22 (F), that statute should apply to the small claims courts as well as the municipal courts. Therefore, because the *Moreland* decision appears to be the authoritative interpretation of [R.C. 1901.22\(F\)](#), and because that statute applies to the small claims court, we find the rule of *Moreland* dispositive in the present case. Consistent with *Moreland* and the relevant jurisdictional statutes, the small claims court did not err in allowing the appellee's original claim to be amended.

This conclusion is further supported by the fact that the *Moreland* court did not rely wholly on statutory analysis. The Court explained that:

aside from the particular controlling statute here involved, by the great weight of authority it is the general rule that ^{HN4} without effecting a substantial change in its nature, a pleading may be amended by the insertion of jurisdictional averments. . . . This rule is a liberal and salutary one that should be steadily adhered to in the furtherance of substantial justice and in avoiding pointless circuitry of action.

[Moreland, supra, \[*6\] at 74.](#) Following this rule, Ohio courts have permitted the amendment of complaints to bring them within a court's jurisdiction. See, e.g., [Jackman v. Jackman \(1959\), 110 Ohio App. 199, 204, 160 N.E.2d 387.](#)

Nowhere is the value of such a rule more evident than in the setting of a small claims court. "The small claims divisions of municipal and county courts are intended to provide a forum for persons with relatively small, uncomplicated claims to seek redress without the need for attorney representation." [Klemas v. Flynn \(1993\), 66 Ohio St. 3d 249, 252, 611 N.E.2d 810.](#) This intention would be needlessly subverted if courts were incapable of correcting errors in the claims of litigants and litigants were forced to refile their claims to correct errors. In this case, where the error at issue was merely typographical, the general rule permitting such amendments would seem to apply with particular force.

Appellant relies on [State ex rel. Emp. Benefit Serv. v. Cuyahoga County Court of Common Pleas \(1990\), 49 Ohio St. 3d 49, 550 N.E.2d 941,](#) for the proposition that the judgment of the small claims court is void. In that case, the Supreme Court held

that a municipal court lacked the power to transfer a case to the common pleas [*7] court where the demand exceeded the monetary limits on the municipal court's jurisdiction. That case is easily distinguished from the present case in that it did not involve any attempt to amend a defective complaint. The rule of *Moreland* is more clearly dispositive of the case at hand.

For these reasons, we find that the small claims court acted within its jurisdiction in amending the claim and entering judgment thereon. Appellant's assignment of error is overruled.

Judgment of the trial court is Affirmed.

YOUNG, P.J., and GRADY, J., concur.