

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

624 Broadway, LLC and
Nations, LLC,
Appellants-Plaintiffs,

v.

Gary Housing Authority,
Appellee-Defendant

March 23, 2021

Court of Appeals Case No.
20A-SC-1021

Appeal from the
Lake Superior Court

The Honorable
Aleksandra Dimitrijevic, Judge

Trial Court Cause No.
45D12-1910-SC-6885

Vaidik, Judge.

Case Summary

- [1] 624 Broadway, LLC (“Broadway”) and Nations, LLC (“Nations”) appeal the trial court’s entry of judgment for Gary Housing Authority (“GHA”) in a dispute over property possession, asserting the court lacked subject-matter jurisdiction. We agree and reverse and remand.

Facts and Procedural History

- [2] In January 2019, Broadway purchased the property at 624 Broadway Avenue in Gary. Nations, a restaurant, then leased the building from Broadway. In September, GHA obtained title to the property via eminent domain. On October 16, Broadway, represented by counsel, sued GHA in the Civil Division of Lake Superior Court, challenging the eminent-domain process.¹ A few days later, GHA indicated to Broadway it intended to take “possession of the property” within the week despite the pending litigation and requested Broadway cooperate with the “transition.” Appellants’ App. Vol. II pp. 40, 41. This prompted Broadway and Nations, pro se, to file another suit against GHA, this time in the County Division of Lake Superior Court on the small-claims docket, asking the court to issue an emergency possessory order to prevent GHA from “engag[ing] in wrongful eviction.” *Id.* at 9. The following month, GHA filed an answer and counterclaim in the small-claims court, denying

¹ The case is still pending in the Civil Division of Lake Superior Court.

Broadway and Nations’ allegations and requesting the court grant it “immediate possession” of the property and eject Broadway and Nations. Appellee’s App. Vol. II p. 74. GHA also asserted the property was worth approximately \$75,000.

[3] A hearing was held on December 3, when Broadway and Nations had obtained counsel. Broadway and Nations submitted an “oral motion” asking the court to transfer and consolidate this case with the pending Civil Division case or to dismiss this case due to lack of subject-matter jurisdiction. Tr. Vol. III pp. 4, 8. GHA argued Broadway and Nations, as the plaintiffs, chose where to sue and any dismissal or transfer would prejudice GHA by further delaying proceedings. Broadway and Nations acknowledged they had filed the case in small-claims court but asserted this was a mistake because they did not have counsel at the time. The court took the matter under advisement.

[4] In January 2020, the court found GHA to be “the legal owner of the property” and ordered Broadway and Nations to vacate. Appellants’ App. Vol. II p. 8. The court also rejected Broadway and Nations’ claim that it did not have subject-matter jurisdiction, finding Broadway and Nations “initiated [the] claim” and cannot now argue the court “has no jurisdiction over said claim.” *Id.* Broadway and Nations filed a motion to correct error, which was denied in April 2020.

[5] Broadway and Nations now appeal.

Discussion and Decision

[6] Broadway and Nations argue “the trial court erred by ruling on this case when it lacked subject matter jurisdiction[.]” Appellants’ Br. p. 13. We agree. “To have subject matter jurisdiction, either the Indiana Constitution or a statute must confer authority upon a court.” *Hoang v. Jamestown Homes, Inc.*, 768 N.E.2d 1029, 1032 (Ind. Ct. App. 2002) (citation omitted), *trans. denied*. If a court lacks subject-matter jurisdiction, any judgment it makes is void. *Id.* Because void judgments may be attacked directly or collaterally at any time, the issue of subject-matter jurisdiction may be raised at any point by a party or by the court sua sponte. *Vic’s Antiques and Uniques, Inc. v. J. Elra Holdingz, LLC*, 143 N.E.3d 300, 309 (Ind. Ct. App. 2020), *trans. denied*. Parties cannot confer subject-matter jurisdiction on a court by consent, nor can the issue be waived. *Fox v. Nichter Const. Co.*, 978 N.E.2d 1171, 1180 (Ind. Ct. App. 2012), *trans. denied*. We review questions of subject-matter jurisdiction de novo. *Vic’s Antiques*, 143 N.E.3d at 309.

[7] Indiana Code section 33-29-2-4 “defines the jurisdiction of the small claims docket of Indiana’s superior courts.” *Id.* The version of the statute in effect during the trial court’s proceedings granted the “small-claims docket” jurisdiction to hear these cases:

(1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than six thousand dollars (\$6,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim

that exceeds six thousand dollars (\$6,000) in order to bring it within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed six thousand dollars (\$6,000).

(3) Emergency possessory actions between a landlord and tenant under IC 32-31-6.

Ind. Code § 33-29-2-4.² GHA contends the case is within the small-claims court's jurisdiction under subsection (3) because GHA's counterclaim requested Broadway and Nations be ejected from the property, and an ejectment action "is a possessory action[.]" Appellee's Br. p. 19. However, subsection (3) requires not only a possessory action, but also a landlord-tenant relationship. GHA does not argue it held a landlord-tenant relationship with Broadway and Nations, nor do we see one. Broadway and Nations did not occupy the property with GHA's consent, nor was there an exchange of consideration. *See* Ind. Code § 32-31-3-10 (stating a tenant is one who occupies a unit with landlord's consent and in exchange for consideration). While the parties may frame the case as an emergency possessory action, that alone does not place it within a small-claims court's jurisdiction. *See Vic's Antiques*, 143 N.E.3d at 308 (small-claims court did not have jurisdiction over eviction case where the relationship between the parties was not that of a landlord and tenant). Because

² The statute's monetary limitation has since been increased to \$8,000, effective July 1, 2020.

there was no landlord-tenant relationship—and none of the other categories in Section 33-29-2-4 apply—the small-claims court did not have jurisdiction.

[8] GHA further argues the jurisdictional limits imposed by Section 33-29-2-4 “do not apply in the Lake Superior Court” because that section applies only to “each superior court that has a standard small claims and misdemeanor division,” which “Lake Superior Court does not have.” Appellee’s Br. p. 17 (formatting altered). We disagree.

[9] Lake County has one superior court with broad general jurisdiction. Ind. Code § 33-33-45-3; *see also In re Adoption of J.T.D.*, 21 N.E.3d 824, 828 (Ind. 2014). This jurisdiction can be limited by statute. *See* Ind Code § 33-33-45-6 (giving the Juvenile Division of the Lake Superior Court “exclusive jurisdiction” over certain cases involving children). Section 33-29-2-4 limits the jurisdiction of certain superior courts and applies to “each superior court that has a standard small claims and misdemeanor division.” Ind. Code § 33-29-2-1. A small claims and misdemeanor division has a small-claims docket and a minor-offenses and violations docket. Ind. Code § 33-29-2-2. Lake Superior Court has separate divisions and allocates cases among the divisions according to its local rules. The County Division includes a docket for small-claims cases and minor offenses and violations. *See* Lake County Local Rule 45-A.R.1-01(15) (“The County Division shall have exclusive original jurisdiction of all Small Claims Cases”); Lake County Local Rule 45-C.R.2.2-1(A)(2)) (stating “ordinance violations, infractions and misdemeanors” filed in the Lake Superior Court “shall be filed in the County Division”). As such, it has a small-claims and

misdemeanor division, and the small-claims docket of Lake Superior Court is within the purview of Section 33-29-2-4. And because this case was filed on the small-claims docket, Section 33-29-2-4's jurisdictional limitations apply.

[10] For these reasons, we reverse the trial court's judgment and remand with instructions to dismiss the small-claims suit. Any remaining issues can be handled in the pending civil case.

[11] Reversed and remanded.

Brown, J., and Pyle, J., concur.