

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

CROSS COUNTY DEVELOPMENT CO.,	:	APPEAL NOS. C-190503 C-190590
Plaintiff-Appellee,	:	TRIAL NO. A-1901789
vs.	:	<i>JUDGMENT ENTRY.</i>
MIKE GRIFFIN,	:	
Defendant-Appellant,	:	
and	:	
CINCINNATI CUSTOM & COLLISION PROFESSIONALS AND TINT MASTERS, et al.,	:	
Defendants.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In June 2019, the Hamilton County Court of Common Pleas entered a judgment against defendant-appellant Mike Griffin, proceeding pro se, on a forcible-detainer claim by his landlord, plaintiff-appellee Cross County Development Co. (“Cross County”). Cross County alleged that Griffin had failed to pay rent owed under two commercial leases. Griffin asserted counterclaims that the trial court rejected. The trial court also issued a writ of restitution. Griffin appealed from the judgment on the forcible-detainer claim but later dismissed the appeal.

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Subsequently, the trial court entered judgment for Cross County on remaining claims for damages, quiet title, and slander of title. Griffin appeals that July 26, 2019 judgment in the appeal numbered C-190503.

In August 2019, Griffin filed a motion to vacate both judgments in the case, claiming they were “void.” The trial court denied that motion, and Griffin appeals from that order in the appeal numbered C-190590. This court sua sponte consolidated the appeals and, after initially dismissing the appeals, reinstated them in February 2020 when Griffin filed a brief.

Griffin presents six assignments of error for review, but failed to separately argue the fifth and sixth assignments in the brief, as required under App.R. 16(A). For this reason we disregard the fifth and sixth assignments of error. *See* App.R. 12(A)(2).

Griffin’s first assignment of error, as we understand it, challenges both the trial court’s denial of his motion to set aside the judgments as void and the judgment entered for the landlord on the damages, quiet-title, and slander-of-title claims. According to Griffin, “Cross County Development Co.,” the named plaintiff in this case, is the “fictitious name” of “Cross County Development L.L.C.,” and that because “Cross County Development L.L.C.” failed to prove that it had registered that name with the Ohio Secretary of State as contemplated by R.C. 1329.10(B), the judgments are void.

The use of a fictitious name does not create a separate legal entity, but is merely descriptive of a person or business entity that does business under another but potentially deceptive name. *See Woods v. Marcano*, 2018-Ohio-4324, 122 N.E.3d 633, ¶ 17 (8th Dist.); *Duris Ents. v. Moore*, 9 Ohio App.3d 99, 100, 458 N.E.2d 451 (10th Dist.1983). A penalty for failure to comply with R.C. 1329.01(C), the statute requiring the registration of a fictitious name, is a bar from maintaining an action on contracts made in the fictitious business name until the name is registered. *See* R.C. 1329.10(B);

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Frate v. Al-Sol, Inc., 131 Ohio App.3d 283, 287-88, 722 N.E.2d 185 (8th Dist.1999). A defendant must timely challenge the plaintiff's capacity to sue by "a specific negative averment" in a responsive pleading or the issue is waived. See Civ.R. 9(A); Civ.R. 12(H); *Frate* at 287-88; *Cafe Miami v. Domestic Uniform Rental*, 8th Dist. Cuyahoga No. 87789, 2006-Ohio-6596, ¶ 16-17. If established, the defect merely renders the court of common pleas without jurisdiction over that particular case, rendering the judgment voidable. See *Ebner v. Caudill*, 93 Ohio App.3d 785, 787-788, 639 N.E.2d 1231 (10th Dist.1994). It does not affect the subject-matter jurisdiction of that court in an eviction action, such that the judgment would be void. See *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 19 (2014); *Seventh Urban, Inc. v. Univ. Circle Property Dev., Inc.*, 67 Ohio St.2d 19, 21-24, 423 N.E.2d 1070 (1981); see also R.C. 1923.01(A) (specifically providing a court of common pleas jurisdiction in forcible entry and detainer actions).

Here, Griffin raised the issue in a June 2019 Civ.R. 60(B) motion to set aside the judgment on the claim for forcible detainer. The trial court denied that motion and Griffin failed to appeal. Because the same issue was decided in the eviction stage of the proceedings, the issue preclusion aspect of the doctrine of res judicata prevents this court from revisiting the issue. See *Pflanz v. Sinclair*, 1st Dist. Hamilton No. C-170172, 2018-Ohio-734, ¶ 13. Even if issue preclusion does not apply, Griffin did not timely raise the issue in his answer and actually filed counterclaims against "Cross County Development L.L.C." Further, assuming that "Cross County Development Co." is a fictitious name as contemplated under R.C. 1329.10(B), Griffin fails to direct this court to any evidence in the record demonstrating that the name was not registered as a fictitious name. For all of these reasons, we overrule the first assignment of error.

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In the second assignment of error, Griffin argues the trial court erred by “ignoring [his] novation claims for lease payment modifications.” In his third assignment of error, Griffin argues the trial court erred “by failing to order Plaintiff to prove ownership after being presented with certified proof that the Plaintiff had sold its property [to a third-party] and was not a real party in interest.” Griffin does not identify the judgment he is challenging in these assignments of error but, based on his arguments, we conclude he is challenging the merits of the June 2019 judgment for Cross County on the forcible-detainer claim. This court lacks jurisdiction to review the merits of the claimed errors because Griffin dismissed his appeal of that judgment.

In this fourth assignment of error, Griffin argues the trial court erred by “granting summary judgment.” We review the grant of summary judgment de novo, applying the standards set forth in Civ.R. 56. The record shows the trial court granted summary judgment to Cross County on its damages, quiet title, and slander of title claims, but Griffin fails to cite any evidence in the record that demonstrates Cross County was not entitled to summary judgment on those claims. Consequently, we overrule the assignment of error.

Accordingly, we affirm the trial court’s judgments.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MYERS, P.J., CROUSE and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on December 2, 2020,p
per order of the court _____.
Presiding Judge