

STATE OF MICHIGAN
IN THE COURT OF APPEALS

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff-Appellee,

vs

KATHERINE LINDSEY HENRY,


Defendant-Appellant,

COURT OF APPEALS NO: 356828

CIRCUIT COURT NO: 21-64004-AR

LOWER COURT NO: 203569SM

MOLLY S. SCHIKORA (P46997)
Assistant Prosecuting Attorney
113 Chestnut Street
Allegan, Michigan 49010
(269) 673-0280

KATHERINE L. HENRY
Defendant in Pro Per
7194 Michael Drive
Hudsonville, Michigan 49426


**PLAINTIFF-APPELLEE'S ANSWER TO DEFENDANT-
APPELLANT'S APPLICATION FOR LEAVE TO APPEAL**

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I. COUNTERSTATEMENT OF FACTS

Defendant-Appellant is charged with one count of Trespass, contrary to MCL 750.552, by appearance ticket. The citation alleges that Defendant committed the present offense at 4451 in Leighton Township, Allegan County on November 3, 2020. The ticket was filed in the 57th District Court.

No proofs have been taken in the case at this juncture. This is an interlocutory appeal by Defendant-Appellant alleging that the district court lacks subject matter jurisdiction to hear this case. The lower court denied “Defendant’s Motion to Dismiss the Complaint (a.k.a. Motion for Summary Disposition)” on February 5, 2021. The Honorable William A. Baillargeon presided. The lower court held that the MCR 2.116 pertained to civil, not criminal matters. As to the merits of the case, the lower court took no position, leaving the matter for consideration by the trier of fact. Motion transcript of February 4, 2021 at 23-25.

Defendant-Appellant filed an untimely application for leave to appeal in the 48th Judicial Circuit. The circuit court denied the application based on it being untimely.

II. STATEMENT OF JURISDICTION

Plaintiff-Appellee agrees that because the circuit court denied Defendant-Appellant's untimely interlocutory application for leave to appeal, further pursuit of interlocutory appeal is to the Court of Appeals. MCR 7.203(B)(1).

III. STATEMENT OF QUESTION PRESENTED

Defendant-Appellant filed a pretrial motion to dismiss (for “summary disposition”) in this misdemeanor file. Did the lower court err in determining that the People should be left to their proofs at trial?

Defendant-Appellant answers: “Yes”

Plaintiff-Appellee answers: “No”

The lower court answered: “No”

IV. ARGUMENT

The lower court correctly denied Defendant-Appellant's motion to dismiss.

A. Standard of Review

An appellate court reviews a decision on a motion for summary disposition de novo "to determine if the moving party is entitled to judgment as a matter of law."

Maiden v Rozwood, 401 Mich 109, 118 (1999).

A claim of lack of subject-matter jurisdiction is reviewed de novo. *People v Harris*, 224 Mich App 597, 599 (1997).

The appeals court reviews a trial court's decision on a motion to dismiss charges against a defendant for an abuse of discretion. *People v Pariovecchio*, 319 Mich App 237, 239-240 (2017). The lower court's findings of fact are reviewed for clear error. *People v Vansickle*, 303 Mich App 111, 114 (2013). Appellate courts review de novo questions of law. *People v Gaines*, 306 Mich App 289, 304 (2014).

B. Analysis

Defendant-Appellant asserts lack of subject matter jurisdiction as the basis for her motion for summary disposition brought under Michigan Court Rule 2.116. In the present case, Defendant-Appellant is charged by appearance ticket with one count of Trespass contrary to MCL 750.552. This crime is a misdemeanor punishable by up to 30 days in jail and/or a fine of up to \$250.00. The 57th District Court has subject matter jurisdiction over the proceeding.

"Subject matter jurisdiction concerns a court's abstract power to try a case of the kind or character of the one pending and *is not dependent on the particular facts*

of the case.’ *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011) (quotation marks, citations, and some emphasis omitted).” *People v Henry (Aft. Rem.)*, 305 Mich App 127, 159 (2014). Under MCL 600.8311(a), the district court has jurisdiction including over “[m]isdemeanors punishable by a fine or imprisonment not exceeding 1 year, or both.”

Presumably, Defendant-Appellant employs “lack of subject matter jurisdiction” in a non-technical, hyperbolic sense and Defendant-Appellant is merely referencing the district court as a Kangaroo Court. Her arguments go to the merits of her motion to dismiss and the district court’s denial, and Plaintiff-Appellee’s responses will be tailored to that claim.

Michigan Court Rule (MCR) 2.116 falls within the “Civil Procedure” chapter. Under MCR 6.001, civil rules of procedure apply in criminal cases unless otherwise provided by rule or by statute or if the civil rule obviously does not apply. Discovery rules, including the taking of depositions, for example, do not apply in criminal cases. MCR 6.001(D). Regardless, there is overlap between relevant criminal law and some of the grounds allowing for relief under MCR 2.116(C). However, resolution of motions to dismiss in criminal cases are clearly not resolved by resort to the procedure set forth in MCR 2.116. For example, MCR 2.116 references mutual opportunities for relief. The prosecution in a criminal case clearly would not be entitled to judgment as a matter of law based on a pretrial motion. In addition, MCR 2.116 also references “affidavits, depositions, admissions, or other

documentary evidence” to support claims for relief. Depositions, for example, are unavailable as criminal discovery.

While Plaintiff-Appellee was not able to find any examples of case law referencing the use of motions for summary disposition in criminal proceedings, motions to dismiss are another matter. For example, questions of subject matter jurisdiction may be raised at any time. Courts need not weigh proof to determine whether a court has subject matter jurisdiction. Further, jurisdiction of a court to proceed is an “absolute requirement.” *People v Washington*, 321 Mich App 276, 285-286 (1917). As stated previously, the district court has subject matter jurisdiction.

Motions to dismiss on the merits of the case are different, especially in misdemeanor cases where there is no preliminary examination. MCR 6.110. In criminal cases, only legally admissible evidence may serve as a basis for a motion to dismiss. *People v Kenan*, 144 Mich App 201 (1985).

In *Kenan* the defendant had been bound over to circuit court following preliminary examination on charges of drug possession. At circuit court pretrial, his attorney presented a letter from the defendant’s doctor indicating that he had prescriptions for the drugs in question. The prosecutor objected on the grounds that consideration of the validity of the prescriptions was for the trier of fact. The Court of Appeals agreed. *Id* at 204.

In *People v Talaba*, unpublished per curiam opinion of the Court of Appeals, issued July 19, 2018, (Docket No. 339688), the Court of Appeals held as follows: “As we noted in *Kenan*, 114 Mich App at 204, the proper procedure would have been for

the trial court to hold an evidentiary hearing, or alternatively to allow the charge to proceed to a trial at which the parties could present evidence. Therefore, the trial court erred when it granted defendant's motion to dismiss the fraudulent access to a computer charge. This was a plain error that affected the outcome of the proceedings. See *Carines*, 460 Mich at 763.” (footnote omitted) *Id.* at 4.

Despite being a licensed attorney, Defendant has no blanket immunity from the prosecution. If she meets the definition of an “officer” for purposes of MCL 600.1825, a question of fact exists as to her actual service at the time of her arrest, and, if serving, whether she engaged in breach of peace, one of the exception of privilege from arrest.

In *Flanagan v US*, 495 US 259 (1984), the US Supreme Court noted the compelling policy favoring limitation of appeals of non-final judgments. Notably, departure from the policy includes that the appeal must resolve an issue distinct from the merits of the case. *Id.* at 265. In the present case, Defendant’s assertions are inextricably tied up with the merits.

Defendant’s arguments are fact driven and go to the merits of the case. As such, it is appropriate for them to be considered in their proper context at trial via motion for directed verdict or by the trier of fact.

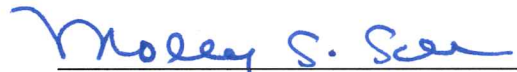
V. CONCLUSION

The trial court correctly found that Defendant was not entitled to judgment as a matter of law, leaving Defendant to seek her remedies through trial and/or by employing her civil remedies. No legally admissible evidence was presented at the hearing on February 4 to establish that Defendant is entitled to dismissal as a matter of law.

WHEREFORE, Petitioner-Appellee respectfully requests that this Honorable Court deny Defendant-Appellant's application for leave to appeal.

Dated: April 20, 2021

Respectfully submitted,



Molly S. Schikora (P46997)
Assistant Prosecuting Attorney

MSS/plc