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COURTS OF RECORD—COUNTY COURT JURISDICTION—
§§4507.16, 4507.34, 1911.14, 1911.15, PRECEDENCE OVER 2309.41,
1909.07, 2323.12-2323.13.

SYLLABUS:

1. Since effective January 1, 1963, county courts shall be considered courts of record for all purposes of law, as of that date, a judge of a county court will be authorized to suspend or revoke drivers licenses within the scope of Sections 4507.16 and 4507.34, Revised Code.

2. The fact that a county court will thus become a court of record will not entitle such a court to a bailiff or court reporter, there being no statutory authority for the same.

3. Both before and after January 1, 1963, the return day in a county court is fixed by rule of court under Section 1911.011, Revised Code, and is not governed by Section 2703.05, Revised Code.

4. The special provisions of Sections 1911.011, 1911.14 and 1915.05, Revised Code, pertaining to procedure in county courts take precedence over the provisions of Section 2309.41, Revised Code, dealing in general with pleadings in courts of record, and the fact that county courts become courts of record as of January 1, 1963, will not require that a written answer be filed in a county court to properly contest a civil action.

5. Under authority of Sections 1909.07, 2323.12, and 2323.13, Revised Code, a confession of judgment on a cognovit note may be taken in a county court in an amount within its jurisdiction.

6. The fact that a county court will become a court of record as of January 1, 1963 does not require that such court shall have terms as does a court of common pleas pursuant to Section 2301.05, Revised Code.

Columbus, Ohio, December 28, 1962

Hon. Tom Richards, Prosecuting Attorney
Carroll County, Carrollton, Ohio

Dear Sir:

In your request for my opinion you set forth questions pertaining to procedure in a county court on and after January 1, 1963, said questions reading as follows:

“1. Does the Judge of the County Court have authority to revoke driver’s license in certain motor vehicle violations?

“2. Is the County Court entitled to a Bailiff and a Court Reporter?

“3. Will answer and return day of pleadings be the same as in Common Pleas Court?”

“4. Must a Defendant file a written answer or other pleading in order to properly contest a civil action?”

“5. Can a cognovit judgment be taken in County Court in an amount within its jurisdiction?”

“6. Will the County Court be set in terms of Court the same as Common Pleas?”

Section 1907.012, Revised Code, provides that, effective January 1, 1963, county courts shall be considered courts of record for all purposes of law. It is this provision which apparently prompted the above questions.

1. As to revocation of a driver's license, Section 4507.16, Revised Code, provides :

“The trial judge of any court of record shall, in addition to, or independent of all other penalties provided by law or by ordinance, suspend for any period of time not exceeding three years or revoke the license of any person who is convicted of or pleads guilty to any of the following :

“(A) Manslaughter resulting from the operation of a motor vehicle ;

“(B) Operating a motor vehicle while under the influence of intoxicating liquor or narcotic drug ;

“(C) Perjury or the making of a false affidavit under sections 4507.01 to 4507.39, inclusive, of the Revised Code, or any other law of this state requiring the registration of motor vehicles or regulating their operation on the highway ;

“(D) Any crime punishable as a felony under the motor vehicle laws of this state or any other felony in the commission of which a motor vehicle is used ;

“(E) Failing to stop and disclose identity at the scene of the accident when required by law to do so.

“After an operator's or chauffeur's license has been suspended or revoked, the trial court shall cause the offender to deliver to the court such license, and the court or clerk of such court shall, if such license has been suspended, or revoked in connection with any of the hereinbefore mentioned crimes, forthwith forward to the registrar such license together with notice of the action of the court.” (Emphasis added)

Further, Section 4507.34, Revised Code, reads as follows :

“Whenever a person is found guilty under laws of this state or any ordinance of any political subdivision thereof, of operating

a motor vehicle in violation of such laws or ordinances, relating to reckless operation, *the trial court of any court of record may* in addition to or independent of all other penalties provided by law, suspend for any period of time or revoke the license to drive of any person so convicted or pleading guilty to such offenses for such period as it determines, not to exceed one year.”

(Emphasis added)

Accordingly, on and after January 1, 1963, where a person is convicted of or pleads guilty to one of the crimes listed in Section 4507.16, *supra*, in a county court, the judge of the county court shall in addition to, or independent of all other penalties provided by law or by ordinance, suspend for any period of time not exceeding three years or revoke the operator's or chauffeur's license of such person; and on and after that date, where a person is convicted or pleads guilty to reckless operation of a motor vehicle, in a county court, the judge of the county court may suspend or revoke the person's driver's license for a period not to exceed one year.

2. The second question asks whether as of January 1, 1963, a county court will be entitled to a bailiff and a court reporter.

I have found no provision of law which provides for a bailiff in a county court, either before or after January 1, 1963, and without such a provision, I can only conclude that the county court will not be entitled to a bailiff as of that date.

As to a court reporter, provision is made for a court reporter in the court of common pleas (Section 2301.18, Revised Code), in the court of appeals (Section 2501.16, Revised Code), in the probate court (Section 2101.08, Revised Code), and in the supreme court (Section 2503.29, Revised Code), but I have been unable to find any authority for the appointment of a court reporter in a county court.

I therefore answer the second question in the negative.

3. Coming to the question as to answer and return day, Section 1911.011, Revised Code, reads, in part, as follows:

“Civil actions and proceedings in a county court shall be commenced by filing a petition upon which summons or writ shall be issued by the clerk of the county court. A form of summons or writ shall be prescribed by rule of court. The procedure in a civil case in the county court shall be in accordance with the following provisions:

“(A) *The return day shall be fixed by rule of court, and the summons or writ shall, unless accompanied with an order to arrest, be served at least three days before the time of appearance.*

“* * * * * * * * * * * * * * *”

(Emphasis added)

Also to be considered is Section 1911.012, Revised Code, which states in part:

“Writs and process in a county court shall be served, returned, and publication made in the manner provided for services, return, and publication of summons, writs, and process in the court of common pleas.

“* * * * * * * * * * * * * * *”

As to “return day” in the court of common pleas, Section 2703.05, Revised Code, provides:

“When the time for bringing parties into court is not fixed by statute, the summons shall be returnable on the second Monday after its date. When it is issued to any other county, it may be made returnable, at the option of the party having it issued, on the third or fourth Monday after its date. The day of the month on which it is returnable must be stated therein.”

While Section 1911.012, *supra*, would apparently make the provisions of Section 2703.05, *supra*, pertaining to return of summons, applicable to actions in a county court, Section 1911.011, *supra*, specifically states that the return day shall be fixed by rule of court. In this regard, I am of the opinion that the specific statute should govern, and I conclude that the return day in a county court should be fixed by rule of court and is not governed by Section 2703.05, *supra*.

As to answer day, Section 1911.011, *supra*, provides that civil actions and proceedings in a county court shall be commenced by filing a petition, but the laws pertaining to county courts do not make specific provision for the filing of other pleadings. In fact, under the present law it appears that no other pleadings are filed.

When the county court law was originally enacted (127, Ohio Laws, 1039, effective January 1, 1958), the procedure provided was identical to that followed by the former justices of the peace. Action was commenced by a writ of summons describing the cause of action and setting place and time for appearance (Sections 1911.01 and 1911.03, Revised Code). The

parties then would appear before the judge (Section 1911.14, Revised Code), and the judge would render judgment (Section 1915.05, Revised Code).

In 1959 (128, Ohio Laws, 823, 845), Section 1911.011, *supra*, was enacted and provision was made for the filing of a petition instead of a writ of summons. Sections 1911.01 and 1911.03, *supra*, were repealed. At the same time, however, Section 1911.14, *supra*, providing for appearance before the judge, and Section 1915.05, *supra*, providing for the rendering of judgment after hearing, remain unchanged.

As to pleading in a court of record, Section 2309.01, Revised Code, reads as follows:

“The forms of pleading in civil actions in courts of record, and the rules by which their sufficiency shall be determined, are those prescribed in sections 2309.02 to 2309.70, inclusive, of the Revised Code.”

Section 2309.41, Revised Code, which by Section 2309.01, *supra*, is applicable to courts of record, reads as follows:

“The answer or demurrer to the petition shall be filed on or before the third Saturday, the reply or demurrer to the answer, on or before the fifth Saturday, and the demurrer to the reply, on or before the seventh Saturday, after the return day of the summons or service by publication. The answer or demurrer of a defendant to an answer demanding affirmative relief shall be filed on or before the third Saturday, the reply or demurrer thereto on or before the fifth Saturday, and the demurrer to the reply, on or before the seventh Saturday, after such answer is filed.”

The question thus arises as to whether the procedure of Sections 1911.011, 1911.14 and 1915.05 may be followed in view of the fact that courts of record follow the procedure of Section 2309.41, *supra*, in which times for filing answers, demurrers, and replies are specified.

While it might be possible to arrange a method whereby the steps of both procedures could be utilized, such would necessarily be confusing and, because such arrangement would be only by rule of court, there would be a lack of uniformity about the state. I thus feel that an attempt to use both procedures would not be appropriate.

As to which procedure should be followed, I believe that the special provisions of Sections 1911.011, 1911.14 and 1915.05, dealing specifically

with county courts, must take precedence over the provisions of Section 2309.41, dealing in general with courts of record, and that the fact that county courts become courts of record as of January 1, 1963, will not affect this conclusion.

I am aware that intent of the legislature is not entirely clear as to this point, but can only suggest that legislative action to clarify the question might be taken in the next session of the legislature (January, 1963).

4. In view of my answer to the third question, I answer the fourth question by stating that as of January 1, 1963, a defendant will not be required to file a written answer or other pleading to properly contest a civil case; to so contest a case, he has only to make an appearance as required by Section 1911.14, *supra*.

5. The fifth question deals with a cognovit judgment, and here I assume that you are referring to the case where a debtor authorizes a confession of judgment by an attorney.

Regarding confession of judgment, Section 1909.07, Revised Code, provides:

“If a debtor appears before a judge of a county court, without process, and confesses that he is indebted to a creditor, on the application of such creditor, such judge shall render judgment on such confession against the debtor for a sum not exceeding five hundred dollars.”

Also, Section 2323.12, Revised Code, reads as follows:

“A person indebted, or against whom a cause of action exists, may personally appear in a court of competent jurisdiction, and, with the assent of the creditor, or person having such cause of action, confess judgment; whereupon judgment shall be entered accordingly.

“The debt or cause of action shall be briefly stated in the judgment, or in a writing to be filed as pleadings in other actions.

“Such judgment shall authorize the same proceedings for its enforcement as judgments rendered in actions regularly brought and prosecuted. The confession shall operate as a release of errors.”

And Section 2323.13, Revised Code, states:

“An attorney who confesses judgment in a case, at the time of making such confession, must produce the warrant of attorney

for making it to a court before which he makes the confession; and the original or a copy of the warrant shall be filed with the clerk.”

I believe that both Section 1909.07 and Section 2323.12, *supra*, permit a debtor to confess judgment in a county court. Further, where the debtor so authorizes, an attorney may confess judgment for the debtor. See *Bulkley v. Greene*, 98 Ohio St., 55, at 60. Since a county court has concurrent jurisdiction with the court of common pleas in actions for the recovery of sums over three hundred and not exceeding five hundred dollars, a confession of judgment could not exceed five hundred dollars in a county court, and this is recognized in Section 1909.07, *supra*.

It is true that most cognovit notes authorize confession of judgment only in a court of record, but as seen earlier a county court is a court of record as of January 1, 1963.

Answering your fifth question, therefore, a cognovit judgment may be taken in a county court in an amount within the jurisdiction of the court.

6. Regarding the term of court of the court of common pleas, it is stated in 14 Ohio Jurisprudence 2d, 500, Section 85:

“Not less than three terms of the Common Pleas Court shall be held in any county each year. It is also provided that on the third Tuesday of October in each year the Common Pleas Court of each county shall issue a written order to the clerk thereof fixing the day of commencement of each term of court in such court in such county for the next judicial year, which shall commence on the first day of January.

“* * * * *

(Citing Section 2301.05, Revised Code)

I have found no provision of law which would cause the county court to be set in terms of court the same as the court of common pleas, and in the absence of such, can only answer the sixth question in the negative.

In summary, it is my opinion and you are advised:

1. Since effective January 1, 1963, county courts shall be considered courts of record for all purposes of law, as of that date, a judge of a county court will be authorized to suspend or revoke drivers licenses within the scope of Sections 4507.16 and 4507.34, Revised Code.

2. The fact that a county court will thus become a court of record will not entitle such a court to a bailiff or court reporter, there being no statutory authority for the same.

3. Both before and after January 1, 1963, the return day in a county court is fixed by rule of court under Section 1911.011, Revised Code, and is not governed by Section 2703.05, Revised Code.

4. The special provisions of Sections 1911.011, 1911.14 and 1915.05, Revised Code, pertaining to procedure in county courts take precedence over the provisions of Section 2309.41, Revised Code, dealing in general with pleadings in courts of record, and the fact that county courts become courts of record as of January 1, 1963, will not require that a written answer be filed in a county court to properly contest a civil action.

5. Under authority of Sections 1909.07, 2323.12, and 2323.13, Revised Code, a confession of judgment on a cognovit note may be taken in a county court in an amount within its jurisdiction.

6. The fact that a county court will become a court of record as of January 1, 1963 does not require that such court shall have terms as does a court of common pleas pursuant to Section 2301.05, Revised Code.

Respectfully,

MARK McELROY

Attorney General