

Venue, Subject Matter Jurisdiction, and Summary Ejectment

I'm writing today about a seemingly simple question: When a tenant lives in one county and rental property is located in a different county, where should a summary ejectment action be filed?

Obviously, most summary ejectment actions involve a tenant who resides ON the rental property, but this is not always the situation. Sometimes, tenants have vacated residential rental property and moved to a new county. Also, in non-residential leases, tenants quite often live in a different county. After researching and thinking about this issue at considerable length, I've come to a new and different understanding of the law relevant to this question, which I want to share with you today.

Let's begin with a quick review of basic principles. *Venue* is the legal term for the county in which a lawsuit should be heard. [Lovegrove v. Lovegrove](#), 237 NC 307 (1953). [GS Ch. 1, Article 7](#) sets out a number of specific rules for venue depending on the type of dispute presented by a case as well as a general rule for all other cases. Actions to terminate a leasehold interest and regain possession of rental property are governed by one of the specific rules. [Snow v. Yates](#), 99 NC App. 317 (1990). The proper venue for those cases is the county in which the property is located. [GS 1-76](#).

When an action is filed in an improper venue, the court is required to remove the action to the proper venue upon defendant's request, assuming the defendant follows the correct procedure in asking for removal. If the defendant fails to make an appropriate request, however, the objection is waived. [GS 1-83](#). In this regard, the appellate courts have reminded us in several cases that *venue* is entirely different from a court's *subject matter jurisdiction*. See, e.g., *Gardner v. Gardner*, 43 NC App 678 (1979), *aff'd* 300 NC 715 (1980). While venue relates to the county where a case may be heard, subject matter jurisdiction refers to a court's authority to decide a particular case. The legal requirement that a court be vested with legal authority in order to act is, unlike venue, not subject to waiver by a party. *Id.*

In the statutes governing procedure in small claims cases, these two concepts are less distinct. A small claims magistrate is vested with subject matter jurisdiction to determine a case when the case is *assigned* to the magistrate by the chief district court judge. The chief district court judge's authority to assign a case derives from [GS 7A-211](#). But that authority is not unlimited. A case must meet the statutory requirements in order to be eligible for assignment. One requirement is that at least one defendant must reside in the county. Across the state, orders of assignment on file in clerks' offices incorporate this requirement in directing clerks about what actions should be calendared for small claims court. If a clerk mistakenly puts a case on a small claims docket even though it does not meet the requirements in the order of assignment, the case has not been "assigned," and any judgment entered is void. [GS 7A-212](#).

This is initially confusing. A rule requiring that a case be filed in the county in which the defendant

resides is traditionally a rule of venue, not a jurisdictional prerequisite. More puzzling still is a statute that follows. [GS 7A-221](#), which sets out a procedure very similar to that described in GS 1-83, provides that objections to venue are waived unless the defendant files a written challenge “prior to the date set for trial.” Upon such an objection being filed, the statute says, assignment to the magistrate is suspended, and the challenge is heard by either the chief district court judge or that judge’s designee. If venue is found to be improper, the statute provides that the action is transferred to district court in the proper county, “and is not thereafter assigned to a magistrate.” Id.

I must confess, I have long read the reference to venue in this statute to refer to the jurisdictional requirement that at least one defendant reside in the county. My assumption was that a defendant wishing to challenge the court’s subject matter jurisdiction by demonstrating legal residence in another county would do so by following the procedure set out in the statute. This reading seemed reasonable, but I was uncomfortable with several of its implications, including the statement that failure to make a timely challenge would result in the defendant’s waiver of this objection. A much better reading, it now seems to me, is that *venue* in GS 7A-221 refers to the rules set out in GS 1A, Art. 7. The consequence of this reading, however, is that the “cheap, fast, and easy” small claims procedure by which landlords can evict tenants who have breached their lease is considerably less likely to be available to non-residential landlords. Let’s look at some scenarios to understand why.

Imagine that Tommy Tenant, who lives in Durham County, rents office space in Wake County from Louis Landlord. When Tommy misses a rent payment, Louis wants to evict him. What happens next may vary depending on where Louis files the summary ejection action.

If Louis files in Durham County Small Claims Court: Because Tommy Tenant is a resident of Durham County, this case is eligible for assignment to small claims court, and that court has subject matter jurisdiction. Because the property is located in Wake County, however, venue is improper pursuant to GS 1-76. The procedure for challenging venue is set out in GS 7A-221. If Tommy files a written objection raising this issue before the day of trial, that motion will be heard by the chief district court judge or that judge’s designee. Because venue is improper and has been properly challenged, the case will be transferred to Wake County District Court for determination.

Same facts, but Tommy does not make a timely objection: Tommy has waived the right to challenge venue. The judgment entered by the Durham County magistrate is valid pursuant to GS 1-83.

If Louis files in Wake County Small Claims Court: Because Tommy is not a resident of Wake County, the Wake County small claims magistrate has no subject matter jurisdiction to hear this case. Assuming Tommy’s Durham County residence appears on the face of the complaint, the clerk should carry out the order of assignment from the chief district court judge by refusing to calendar the case as a small claims action. If the case mistakenly appears on the small claims calendar, the magistrate should return it to the clerk so that it may, in accordance with GS 7A-215,

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proceed as a Wake County district court case.

I hope this discussion of venue, subject matter jurisdiction, and summary ejectment is useful to you, and I'm interested in hearing what you think. If you have thoughts on the matter, I hope you'll email me at lewandowski@sog.unc.edu.