

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

James Cullinan,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 12AP-208
	:	(C.C. No. 2011-11513)
Ohio Department of Job and Family	:	
Services,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on October 18, 2012

Tyack, Blackmore, Liston & Nigh Co., L.P.A., and Jonathan T. Tyack, for appellant.

Michael DeWine, Attorney General, Randall W. Knutti and Christopher P. Conomy, for appellee.

APPEAL from the Court of Claims of Ohio

CONNOR, J.

{¶ 1} Plaintiff-appellant, James Cullinan ("appellant"), appeals from a judgment of the Court of Claims of Ohio, which dismissed his complaint against defendant-appellee, the Ohio Department of Job and Family Services ("ODJFS"), for lack of subject-matter jurisdiction. For the following reasons, we affirm.

{¶ 2} Appellant divorced in 1999 and was ordered to pay child support in the total amount of \$1,330.78 per month. Appellant made said payments directly from his bank account. The payments were sent to ODJFS through the Franklin County Child Support Enforcement Agency. In November 2004, ODJFS issued a wage withholding order to

appellant's employer ordering that a second child support payment, in the amount of \$1,330.78, be directly withdrawn from appellant's paycheck by his employer. Appellant was apparently unaware that his employer was taking a second support payment directly from his pay, pursuant to the withholding order. From November 2004 until the emancipation of appellant's daughter, which subsequently terminated the child support order in June 2010, ODJFS incorrectly collected double child support payments each month. All of the funds collected were disbursed to either appellant's ex-wife or various entities, except for certain funds retained by ODJFS as payment for the processing charge.

{¶ 3} On September 30, 2011, appellant filed a complaint in the Court of Claims asserting claims for conversion, equitable restitution, and constructive trust/breach of fiduciary duty based upon ODJFS's over-collection of child support payments. On November 21, 2011, ODJFS filed a motion to dismiss for lack of jurisdiction. Appellant filed a memorandum contra on December 5, 2011.

{¶ 4} On February 17, 2012, the Court of Claims issued a judgment entry dismissing appellant's complaint pursuant to Civ.R. 12(B)(1). Because appellant was seeking to recover the return of specific funds wrongfully collected or held by ODJFS, the Court of Claims determined the complaint was an action for equitable restitution seeking equitable relief and, therefore, the court was without subject-matter jurisdiction to hear the action. This timely appeal now follows in which appellant asserts a single assignment of error for our review:

I. The Court of Claims erred in granting the Motion to Dismiss filed by Appellee-Defendant, The Ohio Department of Job and Family Services.

{¶ 5} The standard of review for a judgment dismissing a complaint for lack of subject-matter jurisdiction is *de novo*. *Windsor House, Inc. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 09AP-584, 2010-Ohio-257, ¶ 8. To dismiss a complaint pursuant to Civ.R. 12(B)(1), it must be determined whether the plaintiff has alleged any cause of action which the court has the authority to decide. *Crestmont Cleveland Partnership v. Ohio Dept. of Health*, 139 Ohio App.3d 928 (10th Dist.2000).

{¶ 6} Courts of common pleas generally have jurisdiction over, *inter alia*, civil disputes with more than \$500 in controversy. *Measles v. Indus. Comm. of Ohio*, 128

Ohio St.3d 458, 2011-Ohio-1523, ¶ 7; *see also* R.C. 2305.01 and 1907.03. The Court of Claims, on the other hand, is a court of limited jurisdiction having exclusive, original jurisdiction over claims brought against the state as a result of the state's waiver of immunity under R.C. 2743.02. *Columbus Green Bldg. Forum v. State*, 10th Dist. No. 12AP-66, 2012-Ohio-4244, ¶ 15. The Court of Claims has exclusive, original jurisdiction over civil actions filed against the state for money damages sounding in law. *Id.* at ¶ 16, citing *Friedman v. Johnson*, 18 Ohio St.3d 85, 87 (1985), citing *Boggs v. State*, 8 Ohio St.3d 15, 17 (1983); *Measles* at ¶ 7.

{¶ 7} However, the Court of Claims does have jurisdiction over actions for equitable relief in limited circumstances. *Columbus Green Bldg. Forum* at ¶ 16. Where a claimant in an action over which the Court of Claims has jurisdiction also asserts a claim against the state for equitable relief arising out of the same circumstances, the Court of Claims has exclusive, original jurisdiction to determine the equitable claim and the legal claim. *Id.*

{¶ 8} Appellant argues his complaint alleges claims both at law and in equity, and because a claim for equitable relief that arises out of the same circumstances as a claim for money damages can properly be heard in the Court of Claims, dismissal of his complaint was improper. Appellant argues that although the complaint alleges claims for equitable restitution, it also contains a claim for money damages at law under a theory of conversion. Appellant contends his claims go beyond merely seeking equitable restitution, since the over-collected child support payments are no longer in the possession of ODJFS and have been passed on to appellant's ex-wife and others. As a result, appellant argues the funds were in fact "converted" and the requested recovery of said funds actually represents a claim for money damages.

{¶ 9} Appellant also cites to *Drain v. Kosydar*, 54 Ohio St.2d 49 (1978) as support for his position that the wrongful collection of money by the state can establish a tort claim of conversion within the jurisdiction of the Court of Claims. In addition, appellant attempts to distinguish the instant case from the two cases relied upon by the Court of Claims in support of its decision: *Santos v. Ohio Bur. of Workers' Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28, and *Interim HealthCare of Columbus, Inc. v. Ohio Dept. of Admin. Servs.*, 10th Dist. No. 07AP-747, 2008-Ohio-2286.

{¶ 10} ODJFS, on the other hand, cites to *Santos* and argues that because appellant's complaint seeks the return of specific funds wrongfully collected and/or held by ODJFS, and nothing more, it is an action in equity not properly before the Court of Claims. ODJFS asserts that appellant's characterization of the claim as one for "conversion" does not transform it into a legal claim. ODJFS also cites to our recent decision in *Dunlop v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 11AP-929, 2012-Ohio-1378, in which we found the plaintiff's claim seeking reimbursement of funds wrongly collected for child support to be a claim for equitable restitution and not within the subject-matter jurisdiction of the Court of Claims.

{¶ 11} Upon review, we find the relevant facts and circumstances of this case to be virtually identical to those found in *Dunlop*, and we further find *Dunlop* to be controlling authority here. In addition, we reject appellant's request to overrule our decision in *Dunlop*, as we believe our reasoning was sound.

{¶ 12} In *Dunlop*, the plaintiff filed suit against ODJFS in the Court of Claims alleging, inter alia, claims for conversion, equitable restitution, constructive trust on fraud, and breach of fiduciary duty. *Dunlop* alleged that ODJFS collected child support payments in excess of those ordered due to an error made by his employer, and then distributed some of those overpayments to his ex-wife, as well as to the state and the federal government, while also keeping some overpayments. The Court of Claims dismissed *Dunlop*'s lawsuit, finding that it lacked jurisdiction to hear the case because the claims were purely equitable.

{¶ 13} On appeal, we affirmed the decision of the Court of Claims, finding it lacked subject-matter jurisdiction to decide the case. In doing so, we relied upon *Santos* and *Interim HealthCare*. In *Santos*, the Supreme Court of Ohio determined that an action for reimbursement of monies unlawfully withheld is one seeking equitable relief, not money damages. And in *Interim HealthCare*, we decided that where a plaintiff is seeking payment it should have received pursuant to statute, the relief sought is not money damages. Consequently, we found the plaintiff in *Dunlop* was seeking equitable restitution, as he was seeking the recovery of specific money, rather than compensation for an injury to his person, property, or reputation. *Id.* at ¶ 16. Stated differently, we

found Dunlop was not seeking "general substitution compensation" but rather "the very thing to which he claims he was entitled." *Id.*

{¶ 14} Additionally, we specifically determined that simply because ODFJS had distributed most of Dunlop's child support payments, rather than retaining the funds, that fact did not render *Santos* and *Interim HealthCare* inapplicable. Therefore, we found the claims to be ones for equitable restitution and not maintainable in the Court of Claims. Furthermore, in addressing a motion for reconsideration in *Dunlop*, we distinguished the circumstances in *Drain* from those in *Dunlop*, finding the plaintiffs in *Drain* were seeking legal recourse for damages suffered after the state improperly confiscated funds pursuant to a court order (an action at law), while the plaintiff in *Dunlop* sought a refund of money paid directly to and retained and disbursed by the state (an action in equity).

{¶ 15} The same reasoning applied in *Dunlop* is equally applicable to the case here. Appellant's complaint does not assert a claim for money damages sounding in law. Therefore, we find dismissal of the complaint due to lack of subject-matter jurisdiction was proper. Accordingly, we overrule appellant's single assignment of error and affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

BROWN, P.J., and SADLER, J., concur.
