

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Jack Utzinger, :
 :
Plaintiff : Civil Action 2:14-cv-00316
 :
v. : Judge Marbley
 :
Circleville Service Center, : Magistrate Judge Abel
Pickaway/Franklin Co. Farm Service
Agency, :
Defendant :

Order

The preliminary pretrial conference scheduled for May 8, 2014 at 10:30 a.m. is CANCELED.

Plaintiff Jack Utzinger brought this action in the Circleville Municipal Court, Small Claims Division. He seeks a judgment in the amount of \$745.00 against the United States Department of Agriculture's Farm Service Agency because the FSA denied his application for a Direct and Counter-Cyclical Program payment in that amount for the 2013 crop year. FSA removed Utzinger's action to this court under 28 U.S.C. § 1442.

On April 7, 2014, defendant filed a motion to dismiss (doc. 3). That motion argues that neither the Circleville Municipal Court nor this federal court has subject matter jurisdiction to hear plaintiff Jack Utzinger's claim against the Farm Service Agency. The United States maintains that if Utzinger has a right to bring this claim, it would be in an administrative action under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* The Administrative Procedure Act provides that federal courts have exclusive jurisdiction over lawsuits against the United States that challenge agency action. 5 U.S.C. § 702. The United States appears to argue that since Utzinger filed this lawsuit in the

Circleville Municipal Court and does not allege he has ever pursued a claim under the Administrative Procedure Act, this court lacks subject matter jurisdiction to hear his claim.

Since the arguments made by the United States, if accepted by the district judge, would end this lawsuit, the notice for a May 8 Rule 16 scheduling conference is VACATED. If the court denies the April 7 motion to dismiss, Mr. Utzinger and counsel for the FSA are DIRECTED to call my office (614.719.3370) within 7 days of that decision to re-schedule the preliminary pretrial conference.

s/Mark R. Abel
United States Magistrate Judge