

RENDERED: August 21, 1998; 2:00 p.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court Of Appeals

No. 96-CA-002514-MR

WILLIAM P. BROWN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE GEOFFREY P. MORRIS, JUDGE  
ACTION NO. 95-CI-6677

KENTUCKY BOARD OF AUCTIONEERS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, GUIDUGLI and JOHNSON, Judges.

JOHNSON, JUDGE: William F. Brown (Brown) appeals from a Jefferson Circuit Court memorandum and order entered August 7, 1996, which dismissed Brown's case against the Kentucky Board of Auctioneers (the Board) and Lavon O'Dell (O'Dell) for lack of jurisdiction. We affirm the trial court.

On an unstated date, Brown attended an automobile auction where O'Dell was the auctioneer and he bid \$550 on a 1978 Chrysler Newport which was the highest bid. Brown was unable to obtain a title from the seller of the car and he filed a complaint with the Board against O'Dell regarding the automobile title.<sup>1</sup>

The Board conducted a hearing on November 15, 1995, and found as follows:

[T]his Board has no difficulty in concluding, the obligation existed for the previous owner to transfer the vehicle to the complainant. The Board notes that a possible course of action for an auctioneer in this sort of situation is obtaining pre-signed copies of titles on automobiles to be sold at public auction so that the auctioneer may see to the transfer even should the seller change his mind after the sale. Whether or not this is prudent is one thing. Whether it is the law is another. This Board cannot say that existing law requires any such guaranteed performance on the part of an auctioneer licensee. Nor can the auctioneer be held responsible for the fact that either no contract or an inadequate contract existed between the consignor and the consignee in this sale. In other words while this Board may feel that this licensee could have done more to insure that title had passed, as a matter of law he was not required to absolutely guarantee that it would. Indeed if the consignor had lived up to his obligation the car would have been transferred.

It does appear that licensee O'Dell erred in his judgment in aiding and assisting an

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<sup>1</sup> The Board's record of the proceedings in this case was never certified to the trial court and we do not have any record from the administrative proceedings other than the Board's findings.

unlicensed person, Mr. Sam Parker, who had conducted on a regular basis personal property sales at this auction site and who did not possess an auction house operator's license. It should have been apparent to licensee O'Dell that Mr. Parker should have been a licensed person and Mr. O'Dell should have refused to aid and abet this unlicensed operation in the sale of such private property. Accordingly the Board does find as follows:

(1) The licensee violated one or more provisions of Chapter 330 of the Kentucky Revised Statutes.

(2) Because we cannot say that the violation caused the failure of transfer, the Board cannot attribute this failure to the auctioneer and therefore no recovery under the recovery fund can or should be authorized by this Board.

O'Dell was subsequently fined \$200 for the violation of aiding and abetting a person acting in an unlicensed capacity.

On November 29, 1995, Brown filed suit in Jefferson Circuit Court against the Board and O'Dell which made several allegations, one of which was that the Board "failed in its statutory duty to find in its Findings of Fact and Order, relief mandated by [Kentucky Revised Statutes] KRS 330.192"<sup>2</sup> and that the trial court had jurisdiction to make a money award pursuant to KRS 330.192(3).<sup>3</sup> Brown demanded a trial de novo, a finding

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<sup>2</sup> Brown did not state a claim against O'Dell in his complaint.

<sup>3</sup> KRS 330.192(3)(a) and (b) state as follows:

(a) In the event that a licensee is found guilty of one (1) or more provisions of KRS 330.110 or of violating one (1) or more of the administrative

(continued...)

that the Board failed to perform its statutory duties and an award of \$20,000. The Board claimed that the matter should be dismissed for lack of jurisdiction. The Board based this dismissal motion upon Brown's failure to meet the statutory requirements which give the circuit court jurisdiction to grant monetary damages. O'Dell sought dismissal based upon Brown's failure to state a claim upon which relief could be granted.

The Jefferson Circuit Court conducted a hearing on March 18, 1996. The Board's dismissal motion was included in its answer and the trial court ordered the Board to file a separate motion to dismiss and to attach a memorandum of law. The Board filed its motion and argued that Brown's demand for monetary damages under KRS 330.192(3) must fail because Brown did not comply with the statute in that Brown not prove that O'Dell's violation caused a monetary loss, Brown failed to file a proof of

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<sup>3</sup>(...continued)

regulations of the board, and if the amount of the money lost by the aggrieved party or parties is in dispute or cannot be determined accurately, then the amount of damages shall be determined by a Circuit Court in the county where the alleged violation took place, provided that the board has previously determined that a violation of the license laws or of the administrative regulations has occurred and a final order has been entered.

(b) If such an order has been entered and the license rights of the licensee have been finally adjudicated, then the local Circuit Court shall make a finding as to the monetary damages growing out of the aforesaid violation or violations.

loss form, and Brown failed to exhaust all other remedies. Brown's one-page response to the motion merely reiterated his claim that jurisdiction was based upon KRS 330.192.<sup>4</sup> On August 7, 1996, the trial court dismissed Brown's case. The trial court cited KRS 330.192(3)(a) and (b), supra, then stated as follows:

In the present action, there are no monetary damages growing out of the violation found by the Board. In the Findings, the Board specifically provides that the failure of the owner of the automobile to transfer it to Mr. Brown had absolutely no bearing on the fact that Mr. O'Dell was found to have violated KRS 330.110(6) in dealing with Mr. Parker. Thus, this Court has no jurisdiction as there is no amount of damages which is in dispute [sic] as a result of the Findings of the Board.

This appeal followed.

On September 6, Brown filed his notice of appeal which stated that the appellees were the Board and O'Dell. Both appellees filed a motion to dismiss with this Court. O'Dell argued that he should be dismissed as a party to the appeal because "the Judgment and Order appealed from . . . does not dismiss against the Defendant/Appellee Lavon O'Dell . . . ." The Board argued in its motion to dismiss that the trial court's order was not final and appealable since the trial court did not dismiss against all parties (referring to O'Dell) as required in Kentucky Rules of Civil Procedure (CR) 54.02. By order entered

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<sup>4</sup> KRS 330.160 clearly outlines the procedure to appeal to the circuit court when the Board refuses to grant a license or when it revokes or suspends a license. However, Brown seeks monetary damages from the Board pursuant to the Auctioneer's Education, Research and Recovery Fund, KRS 330.192.

on November 13, 1996, this Court granted O'Dell's motion to dismiss him as a party to the appeal and denied the Board's motion to dismiss for lack of finality. As a preliminary matter, the Board has requested that this Court reconsider the Board's motion to dismiss for lack of finality.

The Board argues the dismissal order was nonfinal as outlined in CR 54.02 which states, in pertinent part, as follows:

(1) . . . when multiple parties are involved, the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

By its very language, CR 54.02 deals with a trial court's adjudication of rights and liabilities of parties, which necessarily implies that the trial court has power to adjudicate those rights.

"Lack of jurisdiction over the subject matter of course goes to the right of the court to proceed at all in an action . . . ." Kentucky Practice, Rules of Civil Procedure Annotated, Kurt A. Phillips, Rule 12.02, § 7(a). Without subject-matter jurisdiction, the court does not have the power to adjudicate any

right or liability of any party. See Wolfenbarger v. Commonwealth, Ky.App., 936 S.W.2d 770, 772 (1996), and Gordon v. NKC Hospital, Inc., Ky., 887 S.W.2d 360, 362 (1994). In this case, when the trial court declared that it lacked subject-matter jurisdiction, it recognized that it did not have the power to adjudicate any right of any party, i.e., the dismissal of parties. We conclude that the trial court's order was final and appealable and this Court has jurisdiction of this matter.

We must next determine if indeed the trial court lacked subject-matter jurisdiction. The issue of jurisdiction is a question of law and as such the trial court's decision is reviewed de novo. The Supreme Court stated as follows regarding circuit court jurisdiction of administrative appeals:

There is no appeal to the courts from an action of an administrative agency as a matter of right.<sup>5</sup> When grace to appeal is

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<sup>5</sup> Jurisdiction can also obtain pursuant to American Beauty Homes Corporation v. Louisville and Jefferson County Planning and Zoning Commission, Ky., 379 S.W.2d 450 (1964). In American Beauty Homes at 456 (emphasis original), the Court stated:

Basically, judicial review of administrative action is concerned with the question of arbitrariness. On this ground the courts will assume jurisdiction even in the absence of statutory authorization of an appeal.

. . .

[These] three grounds of judicial review, (1) action in excess of granted powers, (2) lack of procedural due process, and (3) lack of substantial evidentiary support, effectually delineate [the Court's] necessary and permissible scope.

(continued...)

granted by statute, a strict compliance with its terms is required. Where the conditions for the exercise of power by a court are not met, the judicial power is not lawfully invoked. That is to say, that the court lacks jurisdiction or has no right to decide the controversy.

Board of Adjustments of City of Richmond v. Flood, Ky., 581

S.W.2d 1, 2 (1978). "Where a statute prescribes the method for taking an appeal from an administrative action and the time in which the appeal must be taken, these requirements are mandatory and must be met in order for the circuit court to obtain jurisdiction to hear the case." Frisby v. Board of Education of Boyle County, Ky.App., 707 S.W.2d 359, 361 (1986).

Brown argues that KRS 330.192(3) provides jurisdiction for the circuit court to determine monetary damages. KRS 330.192(3) states that the circuit court may determine the amount of money damages if the damages amount cannot be determined or are in dispute. However, the statute also requires that "the monetary damages grow[] out of the aforesaid violation or violations." Id. at (b). Section (c) refers to money "paid to the aggrieved party due to the violation of the licensee." The trial court noted that the Board did not find that O'Dell was responsible for Brown's monetary loss. There must be an amount in dispute due to the violation before a circuit court has

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<sup>5</sup>(...continued)

However, Brown failed to allege any of the above grounds for jurisdiction and therefore the circuit court could only obtain jurisdiction of this case upon Brown's strict statutory compliance.



statutory authority to act. We agree with the trial court that it had no jurisdiction unless the Board determined that Brown's damages were caused by O'Dell's violation. We conclude that the trial court's dismissal of Brown's claim was proper.<sup>6</sup>

For the foregoing reasons, we affirm the order of dismissal of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Hon. James Henry Brown  
Louisville, KY

BRIEF FOR APPELLEE:

Hon. Herbert Van Arsdale, II  
Louisville, KY

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<sup>6</sup> Brown also failed to comply with KRS 330.192(3)(f) which required filing a proof of loss claim within six months of the damages accruing in order to receive money from the recovery fund.