[Cite as *Cleveland v. Dailey*, 2019-Ohio-4267.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

CITY OF EAST CLEVELAND ET AL., :

Petitioners, :

No. 108873

v. :

RANDOLPH DAILEY, ET AL., :

Respondents. :

JOURNAL ENTRY AND OPINION

JUDGMENT: PETITION DISMISSED
DATED: October 17, 2019

Petition for Declaratory Judgment
Motion No. 531014
Order No. 532156

Appearances:

Willa M. Hemmons, Law Director City of East Cleveland, *for petitioner*.

Hilow & Spellacy LLC, Henry J. Hilow and Kevin Spellacy, *for respondent*.

EILEEN T. GALLAGHER, P.J.:

{¶ 1} The city of East Cleveland has filed a "petition for declaratory judgment," an action over which a court of appeals does not have jurisdiction. For

this reason, the petition is dismissed. Further, we deny the motions for sanctions filed by respondents Patricia Coleman and Randolph Dailey.

I. Factual and Procedural History

{¶ 2} On August 2, 2019, *E*. Cleveland filed a "petition for declaratory judgment," naming itself, and in their official capacities, Law Director Willa Hemmons and Mayor Brandon L. King, as petitioners. The petition also named Dailey and Coleman as respondents. Dailey and Coleman were charged in underlying criminal cases, *E. Cleveland v. Dailey*, East Cleveland M.C. 15 CRB 00623, and *E. Cleveland v. Coleman*, East Cleveland M.C. 15 CRB 00625. The petition alleges that during the trial in Coleman's case, the trial judge made evidentiary rulings contrary to East Cleveland's wishes. Coleman's case ended in a not guilty verdict. East Cleveland asserts that because it does not have a right to appeal these adverse evidentiary rulings, this declaratory judgment action is its only means of reviewing and correcting the trial court's evidentiary rulings for Dailey's upcoming trial.

{¶ 3} Coleman filed a timely motion to dismiss on August 12, 2019, claiming that she has no interest in this action, and requesting that sanctions be imposed against East Cleveland. Dailey filed an untimely motion to dismiss on September 6, 2019, which was accepted by this court.[1] East Cleveland timely opposed the motions to dismiss.

---

[1] Original actions in a court of appeals are civil in nature, and the Ohio Rules of Civil Procedure apply, unless inapplicable. *See State ex rel. Spirko v. Judges of Court of Appeals, Third Appellate Dist.*, 27 Ohio St.3d 13, 15, 501 N.E.2d 625 (1986). Civ.R. 12(A) and

II. Law and Analysis

A. Jurisdiction for Declaratory Judgment Actions

{¶ 4} A case may be dismissed for failure to state a claim when, construing all factual allegations in the complaint as true and all reasonable inferences drawn in favor of the nonmoving party, it appears beyond doubt that the plaintiff can prove no set of facts entitling them to relief. *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, 849 N.E.2d 268, ¶ 11, citing *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975). Further, a court may sua sponte dismiss a complaint where the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint. *State ex rel. Bruggeman v. Ingraham*, 87 Ohio St.3d 230, 231, 718 N.E.2d 1285 (1999). A lack of subject matter jurisdiction may be raised sua sponte by the court at any stage in the proceedings. *Fox v. Eaton Corp.*, 48 Ohio St.2d 236, 238, 358 N.E.2d 536 (1976). There is no requirement that any of the parties raise the issue of whether a court lacks subject matter jurisdiction prior to examining the issue. *Dorsey v. Ford Motor Co.*, 8th Dist. Cuyahoga No. 75636, 2000 Ohio App. LEXIS 2105 (May 18, 2000), citing *Fox*.

Loc.App.R. 45(D)(3) provide a period of 28 days within which to file an answer or dispositive motion. Dailey was served with the complaint on August 6, 2019, and filed the motion to dismiss on September 6, 2019.

{¶ 5} When this court employs the above standards, it is clear that East Cleveland's action must be dismissed. This court has no jurisdiction to hear East Cleveland's petition for declaratory judgment.

{¶ 6} The jurisdiction of a court of appeals to hear original actions is defined in the Ohio Constitution:

> The courts of appeals shall have original jurisdiction in the following:
>
> (a) Quo warranto;
>
> (b) Mandamus;
>
> (c) Habeas corpus;
>
> (d) Prohibition;
>
> (e) Procedendo;
>
> (f) In any cause on review as may be necessary to its complete determination.

Ohio Const. Art. IV, Section 3(B)(1).

{¶ 7} The petition filed by East Cleveland does not fall within any of these categories of original actions. Therefore, this court lacks jurisdiction to hear the action.

{¶ 8} In its complaint, East Cleveland argues that R.C. 2721.20, the declaratory judgment statute, gives all "courts of record" the ability to hear declaratory judgment actions. However, the Ohio Supreme Court has determined that courts of appeals have no jurisdiction over declaratory judgment actions:

> "Statutes which create a declaratory judgment procedure do not extend the jurisdiction of the subject matter of a court but rather extend the power of the court to grant declaratory relief within its respective

> jurisdiction. In other words, declaratory judgment statutes provide an additional remedy which may be granted by a court but they do not extend the jurisdiction as to the subject matter upon which a court may act. *San Ysidro Irrigation District v. Superior Court of San Diego County*, 56 Cal. 2d 708, 365 P.2d 753, and 26 Corpus Juris Secundum 255, Declaratory Judgments, Section 113." *State, ex rel. Foreman, v. Bellefontaine Municipal Court* (1967), 12 Ohio St. 2d 26, 28. Although R.C. 2721.02 gives all "courts of record" the power to render declaratory judgments, the 1968 Modern Courts Amendment gives Court of Appeals original jurisdiction only in quo warranto, mandamus, habeas corpus, prohibition, procedendo, and in any cause on review as may be necessary to its complete determination. Section 3(B)(1)(a)-(f), Article IV of the Ohio Constitution. Permitting a Court of Appeals to give what is basically a declaratory judgment is to expand its constitutionally declared jurisdiction.

State ex rel. Neer v. Indus. Comm., 53 Ohio St.2d 22, 23-24, 371 N.E.2d 842 (1978). *See also Wright v. Ghee*, 74 Ohio St.3d 465, 466, 659 N.E.2d 1261 (1996) (affirming the dismissal of an original action in the court of appeals because courts of appeals lack jurisdiction over a complaint for declaratory judgment and injunction).

{¶ 9} Moreover, if the allegations in a mandamus complaint indicate that the real object sought is a declaratory judgment, the complaint does not state a cause of action in mandamus because a court of appeals does not have jurisdiction over claims for declaratory judgment. *State ex rel. Beane v. Dayton*, 112 Ohio St.3d 553, 2007-Ohio-811, 862 N.E.2d 97; *State ex rel. Ministerial Day Care Assoc. v. Zelman*, 100 Ohio St.3d 347, 2003-Ohio-6447, 800 N.E.2d 21.

{¶ 10} East Cleveland obviously cannot prevail in this action because this court lacks jurisdiction. We, sua sponte, dismiss East Cleveland's action as to all respondents for want of jurisdiction.

B. Request for Sanctions

{¶ 11} Coleman asserts that making her a party to this action was done merely to harass. She seeks the award of attorney fees as sanctions in this case. Dailey also requests sanctions in its motion to dismiss, claiming the action East Cleveland filed is frivolous. Coleman and Dailey do not cite to any specific rule or statute when making their requests for sanctions, nor did they request a hearing.

{¶ 12} There are several sources of authority for the imposition of sanctions. R.C. 2323.51 defines frivolous conduct to include the filing of a civil action that "obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation." R.C. 2323.51(A)(1)(a) and (A)(2)(b)(i). However, "R.C. 2323.51 does not mandate the award of sanctions if a trial court finds frivolous conduct as defined under the statute — instead, the statute bestows discretion to impose sanctions." *Hardin v. Naughton*, 8th Dist. Cuyahoga No. 99182, 2013-Ohio-2913, ¶ 21, citing *ABN Amro Mtge. Group, Inc. v. Evans*, 8th Dist. Cuyahoga No. 98777, 2013-Ohio-1557, ¶ 13.

{¶ 13} Civ.R. 11 mandates that all filings must be supported by good grounds and not be filed for the purpose of delay. If not, the rule provides for sanctions: "For a willful violation of this rule, an attorney or pro se party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an

award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule."

{¶ 14} Loc.App.R. 23(A) also provides for the award of sanctions in original actions for frivolous filings, or actions filed for the purpose of delay, harassment, or other improper purpose. Those sanctions may include "an award to the opposing party of reasonable expenses, reasonable attorney fees, costs or double costs, or any other sanction the Eighth District Court of Appeals considers just."

{¶ 15} When determining whether sanctions are appropriate a court must consider "whether the attorney or pro se party who signed the document: (1) read it; (2) to the best of his knowledge, had good grounds for filing it; and (3) did not file it for the purpose of delaying the proceedings" or for some other improper purpose. *State ex rel. Bristow v. Baxter*, 6th Dist. Erie Nos. E-17-060, E-17-067, E-17-070, 2018-Ohio-1973, ¶ 25 (addressing sanctions under Civ.R. 11), citing *Bergman v. Genoa Banking Co.*, 6th Dist. Ottawa No. OT-14-019, 2015-Ohio-2797, ¶ 33. Further, "[s]anctions are proper only for willful, bad faith violations of Civ.R. 11—not merely negligent ones." *Id.*, citing *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 127 Ohio St.3d 202, 2010-Ohio-5073, 937 N.E.2d 1274, ¶ 8; *Gallagher v. AMVETS*, 6th Dist. Erie No. E-09-008, 2009-Ohio-6348, ¶ 33.

{¶ 16} Here, East Cleveland's petition evidences a negligent understanding of the jurisdiction of courts of appeals to entertain declaratory judgment actions, but does not evidence a willful or bad faith violation of Civ.R. 11. Exercising our discretion, this court determines that the filing of this action and naming Coleman

as a party were not done merely to harass. Further, this court does not find that the actions of East Cleveland amount to frivolous conduct under the above rules and statute. East Cleveland set forth arguments that, at least superficially, indicate why it believed Coleman was a necessary party to this action and why East Cleveland had a good-faith belief that the action was appropriate. Therefore, the requests for sanctions made by respondents are denied.

{¶ 17} However, the continued filing of actions that evidence a lack of understanding of the requirements for original actions in the court of appeals may result in sanctions under Loc.App.R. 23, up to and including a designation that the parties that commenced the present action are vexatious litigators.

{¶ 18} East Cleveland's petition for declaratory judgment is sua sponte dismissed. Respondents' motions to dismiss are denied as moot. The requests for sanctions are denied. Costs to East Cleveland. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶ 19} Petition dismissed.

_____

EILEEN T. GALLAGHER, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
EILLEEN A. GALLAGHER, J., CONCUR