[Cite as *Summit Cty. Bd. of Health v. Pearson*, 2005-Ohio-2964.]

STATE OF OHIO))ss: COUNTY OF SUMMIT)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
SUMMIT COUNTY BOARD OF HEALTH, et al. Appellees v. LORENZA PEARSON, et al. Appellants	C.A. No. 22194 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV 2002-06-3473

DECISION AND JOURNAL ENTRY

Dated: June 15, 2005

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

MOORE, Judge.

{¶1} Appellant, Lorenza Pearson, appeals an order of the Summit County Court of Common Pleas, which arose from within an R.C. 2506 proceeding to appeal an administrative action initiated by Appellees, the Summit County Board of Health and Copley Township Board of Trustees. The order is vacated.

I.

{¶2} Appellant operated L&L Exotic Animal Farm on his property in Copley, Ohio, which involved the housing of numerous lions, tigers, bears, foxes, pigeons, dogs, and an alligator. In June 2002, Appellees summoned Appellant to

an administrative hearing after which they declared his farm a public nuisance and ordered the animals removed unless Appellant brought the farm into compliance.

{¶3} Appellant appealed to the Summit County Court of Common Pleas, pursuant to R.C. 2506.01, which affirmed. Appellant appealed to this Court, which affirmed the common pleas court. *Summit Cty. Bd. of Health v. Pearson* (2004), 157 Ohio App.3d 105, 2004-Ohio-2251. Appellant did not appeal further.

{¶4} Thereafter, Appellees sought enforcement, and moved the common pleas court for an order authorizing Appellees and local authorities to enter the property to remove the animals and also enjoining Appellant from interfering. On June 8, 2004, the common pleas court granted the order, ex parte. On June 9, 2004, Appellant filed a motion pursuant to Civ.R. 60(B) to vacate the order. The common pleas court conducted a hearing that same day and, on June 10, 2004, denied the motion. Appellant timely appealed, asserting a single assignment of error for review.

II.

Assignment of Error

"THE TRIAL COURT ERRED IN AUTHORIZING, *EX PARTE* AND WITHOUT AN EVIDENTIARY HEARING, THE SUMMIT COUNTY BOARD OF HEALTH TO REMOVE THE ANIMALS FROM THE L&L EXOTIC ANIMAL FARM BECAUSE THERE HAD BEEN COMPLETE COMPLIANCE WITH THE ORDER OF THE HEALTH DEPARTMENT AND ANY NUISANCE HAD BEEN ABATED."

{¶5} Appellant alleges that the trial court abused its discretion in denying his Civ.R. 60(B) motion to vacate the June 8, 2004 order. However, based on the circumstances of this case, the propriety of the Civ.R. 60(B) motion is immaterial. Rather, at issue is the jurisdiction of the common pleas court to issue this order, and the effect of such an order absent jurisdiction. For the reasons that follow, we find that the common pleas court lacked jurisdiction and that the order was a nullity. Therefore, the ruling on the subsequent Civ.R. 60(B) motion is a nullity and there is no further issue before this Court for review. The judgment is vacated.

{¶6} Subject matter jurisdiction is the power conferred on a court to decide a particular matter on its merits and render an enforceable judgment over the action. *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, paragraph one of the syllabus. Importantly, this Court holds jurisdiction to determine whether the trial court had jurisdiction, which bestows on this Court the inherent authority to render void any order issued by the trial court without proper jurisdiction. See *State v. Lomax*, 96 Ohio St.3d 318, 2002-Ohio-4453, at ¶17 (subject-matter jurisdiction cannot be waived and may be raised sua sponte on appeal). Therefore, this Court will inquire into the trial court's subject matter jurisdiction. In this instance we begin by recognizing certain limitations:

> "Moreover, where jurisdiction of the subject matter exists, but a statute has prescribed the mode and particular limits within which it may be exercised, a court must exercise jurisdiction in accordance with the statutory requirements; otherwise, although the proceedings

> are within the general subject-matter jurisdiction of the court, any judgment rendered is void because the statutory conditions for the exercise of jurisdiction have not been met." Ohio Jurisprudence 3d (2003), Courts and Judges, Section 243, citing *State ex rel. Parsons v. Bushong* (1945), 92 Ohio App. 101, paragraph three of the syllabus, and citing generally, Article IV, Ohio Constitution.

As the present appeal arises from an R.C. 2506 administrative appeal to the common pleas court, we must therefore look to the subject matter jurisdiction prescribed to the common pleas court by such an appeal.

{¶7} On an R.C. 2506 administrative appeal, the scope of jurisdiction is limited such that "the only question for the trial court to answer was whether the [agency's] decision *** was supported by the record." *Pullin v. Village of Hiram*, 11th Dist. No. 2001-P-0146, 2003-Ohio-1973, at ¶44, citing *Comm. Concerned Citizens, Inc. v. Union Twp. Bd. Zoning Appeals* (1993), 66 Ohio St.3d 452, 456. In the present case, we are uncertain as to the specifics of the motion prompting the June 8, 2004 order because the motion was made orally and there is no transcript of the hearing. But the substance of the motion can be inferred from the resulting order, which is basically an injunction authorizing Appellees to enter and remove the animals, while also restraining Appellant from interfering. We find this action to be beyond the scope of R.C. 2506's grant of jurisdiction to determine whether the Board of Health's decision was supported by the record. See id.

{¶8} In *Community Concerned Citizens*, the Supreme Court began its opinion with the portent: "In what should have been a relatively straightforward process, for several reasons, this case has become a procedural quagmire."

Concerned Citizens, 66 Ohio St.3d at 453. Such is the case here. In that case, the appellant had filed an R.C. 2506 administrative appeal of appellee zoning board's decision, and had also sought a declaratory judgment as to the constitutionality of the underlying zoning ordinance. Id. at 453-54. The common pleas court dismissed the declaratory judgment complaint and appellant appealed that dismissal. Id. 453. The Supreme Court agreed with the dismissal and held that "the declaratory judgment action is independent from the administrative proceedings; it is not a review of the final administrative order." (Quotations, citations and edits omitted.) Id. Furthermore, "in order to request a declaratory judgment appellant was required to file a *separate* [] action. Procedurally, appellant's request for declaratory judgment could not be combined with its [administrative] appeal." (Emphasis in original.) Id. at 454. We conclude that the same reasoning applies to the present case: in order to request an injunction, appellees were required to file a separate action.[1] The injunction order is beyond

[1] It is undisputed that the Summit County Board of Health has authority to declare a nuisance and order it abated. R.C. 3707.01. Under this statute, the Board may also act, through its officers and employees, to abate that nuisance. Id.; R.C. 3707.02. While the statute also provides for a court-imposed injunction, as was sought in the present case, such an approach is discretionary, not mandatory. See R.C. 3707.021 ("the board *may* petition the court of common pleas for an injunction" (Emphasis added.)). In the present case, the Board's June 2002 Resolution declared the property a nuisance and ordered it abated. That Resolution was appealed pursuant to R.C. 2506, and affirmed by both the court of common pleas and this Court. Upon affirmance, the Resolution became valid and self-executing, meaning that Summit County could have taken action to abate the nuisance without further Court order. However, the tenet arising from this opinion, overall, is that, if the Board seeks a court-imposed injunction, they must file a new claim to do so.

the scope of the jurisdiction granted to the court of common pleas under R.C. 2506. See id.

{¶9} An order issued without jurisdiction is a nullity; that is, void without legal effect. *Patton v. Diemer* (1988), 35 Ohio St.3d 68, paragraph three of the syllabus; *Chapman v. Miller* (1894), 52 Ohio St. 166, syllabus. As set forth above, the June 8, 2004 order was issued without jurisdiction. Therefore, that order is a nullity, and similarly, the subsequent Civ.R. 60(B) motion and ruling are nullities.

III.

{¶10} The orders underlying this appeal are deemed void for lack of subject matter jurisdiction, and accordingly are nullities without legal effect. The judgment at issue is vacated.

Judgment vacated.

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The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E).

The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

Exceptions.

CARLA MOORE
FOR THE COURT

WHITMORE, P.J.
CONCURS

CARR, J.
CONCURS IN JUDGMENT ONLY, SAYING:

{¶11} Although I agree that the trial court's order should be vacated, I concur in judgment only.

{¶12} The Summit County Board of Health passed Resolution 160-02 declaring appellant's property to be a public health nuisance. It then ordered appellant to comply with various requirements. It further authorized the staff to proceed with legal action if appellant did not comply within ten days.

{¶13} The Board of Health did not take any legal action thereafter. However, appellant did file a R.C. Chapter 2506 appeal concerning the Board's resolution, which was upheld by the trial court. The trial court's ruling was then appealed to this Court and was affirmed. The Board still did not take any legal

action to enforce its resolution. Finally, the trial court issued the order in dispute here that authorized the Board to remove appellant's animals. I agree with the majority that the trial court did not have authority in a R.C. Chapter 2506 appeal to make such an order.

{¶14} Although we need not reach the issue of whether the Board could abate the nuisance itself, I disagree with the majority's analysis in footnote 1 that the Board of Health's resolution is self-executing. R.C. 3707.01 empowers the Board of Health of a general health district to abate and remove all nuisances within its jurisdiction. However, proper procedures must be followed under R.C. 3707.02

{¶15} R.C. 3707.02 provides that when an order to abate a nuisance made pursuant to R.C. 3707.01 "is neglected or disregarded, in whole or in part, the board may elect to cause the arrest and prosecution of all persons offending, or to perform, by its officers and employees, what the offending part[y] should have done." If the Board elects to abate the nuisance itself, additional steps must be taken. The statute specifically provides for the issuance and service of a citation upon the person responsible, reciting the cause of the complaint and requiring the person to appear before the Board at a specified time for a hearing to "show cause why the Board should not proceed and furnish the material and labor necessary and remove the cause of the complaint."

> "If the persons cited appear, they shall be fully apprised of the cause of complaint and given a fair hearing. The board shall

> then make such order as it deems proper, and if material or labor is necessary to satisfy the order, and the persons cited promise, within a definite and reasonable time, to furnish them, the board shall grant such time. If no promise is made, or kept, the board shall furnish the material and labor, cause the work to be done, and certify the cost and expense to the county auditor. If the material and labor are itemized and the statement is accompanied by the certificate of the president of the board, attested by the clerk, reciting the order of the board and that the amount is correct, the auditor has no discretion, but shall place such sum against the property upon which the material and labor were expended, which shall, from the date of entry, be a lien upon the property and be paid as other taxes are paid." R.C. 3707.02.

{¶16} This procedure was not undertaken here. Consequently, I would concur in judgment only.

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