[Cite as *Kostrzewski v. Toledo*, 2015-Ohio-2913.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Kris A. Kostrzewski	Court of Appeals No. L-14-1271
Appellant	Trial Court No. CVF-13-17753
v.	
City of Toledo-Department of Public Utilities	**DECISION AND JUDGMENT**
Appellee	Decided: July 17, 2015

* * * * *

Kris A. Kostrzewski, pro se.

Adam Loukx, City of Toledo Director of Law, and
Joyce Anagnos, Senior Attorney, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This case is before the court on appellant Kris Kostrzewski's pro se appeal of the Toledo Municipal Court's December 1, 2014 judgment dismissing his complaint for money damages against appellee, city of Toledo Department of Public Utilities ("the

city.") Because we agree that the court lacked subject matter jurisdiction over the matter, we affirm.

{¶ 2} On November 8, 2013, appellant commenced the matter by filing a complaint in the Toledo Municipal Court, Small Claims Division. Appellant alleged that the Department of Public Utilities ("DPU") overcharged for water and sewer usage at a property he owned that was unoccupied for approximately one year. Appellant requested monetary damages in the amount of $1,225.19, though appellant noted that the total bill was $472.28. (Later, appellant requested that the DPU also be ordered to pay $5,000 to St. Paul Community Center as punishment and publish an apology in The Toledo Blade.) On December 10, 2013, the city requested that the matter be transferred to the general division of the Toledo Municipal Court. On December 31, 2013 the case was transferred.

{¶ 3} On January 16, 2014, the city filed a motion for judgment on the pleadings or motion to dismiss. The city first argued that appellant failed to exhaust his administrative remedies: a "multi-level appeals process" provided in the Toledo Municipal Code Part 9, Title 3, for the resolution of billing disputes.

{¶ 4} Appellant opposed the motion referencing various exhibits which demonstrated that he did, in fact, seek review of the bill via a certified letter to the DPU contesting the bill; the dispute was reviewed by the adjustment committee which rejected appellant's claim. Appellant then sought an administrative hearing which was denied on the basis that he failed to demonstrate that the adjustment committee either misapplied

regulations or ignored evidence. Appellant then filed his claim in court. In response, the city argued that, under R.C. Chapter 2506, appellant was required to commence his appeal in the court of common pleas. The city's motion was denied on March 24, 2014.

{¶ 5} On April 14, 2014, the city filed its answer including the defense of lack of subject matter jurisdiction. On August 18, 2014, the city filed a motion to vacate the trial date and motion for reconsideration of the court's March 24, 2014 judgment denying its motion to dismiss. Thereafter, appellant, without leave, filed an amended complaint seeking to add an additional defendant; the complaint was stricken by the trial court.

{¶ 6} On December 1, 2014, the trial court granted the city's motion for reconsideration and dismissed the action. This appeal followed with appellant raising the following assignment of error:

> The trial court erred by denying plaintiff-appellant's request for trial/trial by jury.
>
> The trial court committed prejudicial error in granting defendant-appellee's motion to dismiss based on nothing.
>
> * no discovery including refusal of defendant-appellee's to answer two sets of plaintiff's interrogatories followed by motion to compel.
>
> * no trial despite both, plaintiff-appellant's and defendant-appellee's requests for trial by jury.
>
> * no law and argument in the judgment entry of the lower court.

{¶ 7} We will address the portion of appellant's multi-issue assignment of error relating to the court's dismissal of the action as it is dispositive. Appellant argues that the court erred when it granted the city's motion to dismiss without discovery or a trial in the matter.

{¶ 8} Appellate review of the granting or denial of a motion to dismiss is de novo. *Perrysburg Twp. v. Rossford,* 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. "In order to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt that [the plaintiff] can prove no set of facts warranting relief, after all factual allegations of the complaint are presumed true and all reasonable inferences are made in [the plaintiff's] favor." *State ex rel. Findlay Publishing Co. v. Schroeder,* 76 Ohio St.3d 580, 581, 669 N.E.2d 835 (1996). Further, "a court's lack of subject matter jurisdiction can be raised at any time during the course of a legal proceeding, and this issue cannot be waived." *Reynolds v. Whitney,* 10th Dist. Franklin No. 03AP-1048, 2004-Ohio-1628, ¶ 10, citing *In re Byard,* 74 Ohio St.3d 294, 296, 658 N.E.2d 735 (1996). The court has an obligation to dismiss the action sua sponte "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction on the subject matter." Civ.R. 12(H)(3).

{¶ 9} Reviewing the plain language of Toledo Municipal Code Part 9, Title 3, Appendix C which states that "[d]ecisions of the Administrative Hearing Officer are final appealable orders of the City pursuant to ORC Chapter 2506," we find that the municipal

court lacked subject matter jurisdiction over the proceedings. In addition to the language explicitly used in the municipal code, appellant was directly informed of the proper appeal process in the December 20, 2013 letter from the DPU denying his request for a hearing. The letter stated: "You may consider this denial a final appealable order of the Department of Public Utilities. If you disagree with this denial you may appeal the original bill to the Court of Common Pleas pursuant to the provisions of Chapter 2506 of the Ohio Revised Code." *See also* R.C. Chapter 2506.

{¶ 10} Based on the foregoing, we find that the court did not err when it dismissed the complaint without elaboration. Appellant's assignment of error is not well-taken.

{¶ 11} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Toledo Municipal Court is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

James D. Jensen, J.
CONCUR. _____
JUDGE