

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Dawson's Childcare, LLC, :
Appellant-Appellant, :
v. : No. 13AP-378
State of Ohio, Department of Education, : (C.P.C. No. 13CVF-03-3376)
Appellee-Appellee. : (ACCELERATED CALENDAR)

D E C I S I O N

Rendered on September 19, 2013

Carlile Patchen & Murphy LLP, Matthew S. Brown and Brent D. Rosenthal, for appellant.

Michael DeWine, Attorney General, Jeffrey S. Greenley and Holly E. LeClair Welch, for appellee.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Appellant, Dawson's Childcare, LLC, appeals the Franklin County Court of Common Pleas' decision granting appellee the Ohio Department of Education's motion to dismiss due to lack of subject-matter jurisdiction. For the following reasons, we agree and affirm the trial court's decision.

{¶ 2} Dawson's Childcare assigns two errors for our consideration:

1. The Court of Common Pleas erred in holding that it lacked subject matter jurisdiction over the administrative appeal of an Ohio Department of Education's administrative decision.
2. The Court of Common Pleas erred in holding that Appellant waived its constitutional challenge because it was not raised by Appellant at the administrative hearing.

{¶ 3} This case arises from deficiencies in appellant's participation in the Child and Adult Care Food Program ("CACFP"), a federal program that is administered by the Ohio Department of Education ("ODE"). A hearing was requested, pursuant to 7 C.F.R. Section 226.6(k), and ODE's hearing officer concluded that due to ongoing deficiencies of Dawson's Childcare, the CACFP agreement would be terminated and permanently barred from participating in CACFP.

{¶ 4} Appellant filed an appeal with the Franklin County Court of Common Pleas pursuant to R.C. 119.12. ODE filed a motion to dismiss for lack of subject-matter jurisdiction which the trial court granted on April 26, 2013. Appellant timely appealed the trial court's decision.

{¶ 5} The standard of review for a motion to dismiss for lack of subject-matter jurisdiction is whether any cause of action cognizable by the forum had been raised in the complaint. *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989). In reviewing a motion to dismiss for lack of subject-matter jurisdiction, this court's standard of review is *de novo*. *Groza-Vance v. Vance*, 162 Ohio App.3d 510, 2005-Ohio-3815, ¶ 13 (10th Dist.).

{¶ 6} We have previously addressed this issue and held that common pleas courts lack subject-matter jurisdiction over an appeal filed under R.C. 119.12 of a CACFP final determination made by ODE. In *Mahoning-Youngstown Community Action Partnership v. Ohio State Dept. of Edn.*, 10th Dist. No. 11AP-582, 2011-Ohio-6394, we stated:

The state courts generally do not engraft state procedures of administrative appeals onto a federal program, particularly when the federal program clearly lays out its own procedures for claim disputes and expressly labels its procedures as "final." 7 C.F.R. 225 and 226, the regulations governing these specific programs, do not provide for appeals through the state courts. Instead, they permit independent hearings to be conducted. The hearings are governed by federal law which states that such a hearing is to be the final administrative determination: 7 C.F.R. 225.13(b)(12) states, "[t]he determination by the State review official is the final administrative determination to be afforded to the appellant."; 7 C.F.R. 226.6(k)(5)(x) holds: "[t]he determination made by the administrative review official is the final administrative determination to be afforded to the institution and the responsible principals and responsible individuals." The federal regulations have clearly specified

that the determination by the hearing officer is the final administrative determination.

In the case at bar, we have a federal program funded with federal dollars with a regulatory scheme that clearly defines the method of resolving claims which goes as far as to state that the hearing determination is the final administrative determination to be afforded. The federal scheme does not specially mention judicial appeals to the state courts. However, if Ohio's R.C. Chapter 119 administrative appeal were to be engrafted onto the federal procedure, it would arguably be in conflict with the finality the federal regulations seeks.

Id. at ¶ 7, 8. Appellant attempted to have an R.C. 119.12 appeal heard in the Franklin County Court of Common Pleas, just as *Mahoning-Youngstown Community Action Partnership* had previously, from a final ODE decision on the administration of CACFP. *Mahoning-Youngstown Community Action Partnership* is clearly dispositive of this case. We agree with the trial court that there is lack of subject-matter jurisdiction for an R.C. 119.12 appeal.

{¶ 7} The first assignment of error is overruled.

{¶ 8} Having found that there is lack of subject-matter jurisdiction, the second assignment of error is rendered moot.

{¶ 9} The decision of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

CONNOR and DORRIAN, JJ., concur.
