

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Paul Garrett,	:	
	:	
Appellant-Appellant,	:	
	:	No. 10AP-77
v.	:	(C.P.C. No. 09CV08-12087)
	:	
City of Columbus,	:	(ACCELERATED CALENDAR)
Civil Service Commission,	:	
	:	
Appellee-Appellee.	:	
	:	

D E C I S I O N

Rendered on August 19, 2010

Teresa Villarreal, for appellant.

Richard C. Pfeiffer, Jr., City Attorney, and *Emily D. Bennett*,
for appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Appellant, Paul Garrett, appeals from a judgment of the Franklin County Court of Common Pleas dismissing his appeal from a decision of appellee, the City of Columbus, Civil Service Commission ("Commission"). For the following reasons, we affirm.

{¶2} The Planning and Operations Division ("Division") of the City's Department of Public Service employed Garrett as a traffic paint/sign worker. The position of traffic paint/sign worker is within the competitive class of classified service.

{¶3} In June 2009, certified mail that the Division had sent to Garrett's home address was returned to the Division marked with a forwarding address in Malta, Ohio. City employees in the competitive class of classified service must maintain their residence within Franklin County or a county contiguous to Franklin County. Section 158-1 of the Charter of the City of Columbus, Ohio (hereinafter "Section 158-1"); Rule VI(D)(2) of the Rules and Regulations of the Municipal Civil Service Commission (hereinafter "Rule VI(D)(2)"). Because Malta is located outside of Franklin County and its contiguous counties, the Division asked the Commission to investigate whether Garrett was in violation of Section 158-1 and Rule VI(D)(2).

{¶4} In a July 8, 2009 letter, the Commission notified Garrett that it had scheduled a residency hearing for July 21, 2009. The letter directed Garrett to bring to the hearing documentation that demonstrated his compliance with the residency requirement.

{¶5} Garrett and his attorney appeared at the July 21, 2009 hearing. After the hearing officer swore him in, Garrett admitted that he had relocated to Malta after selling his Carroll, Ohio residence. When Garrett began receiving certified mail from the City at his Malta address, he moved to an extended-stay hotel in Groveport, Ohio in an attempt to satisfy the residency requirement. Garrett, however, only lived at the Groveport hotel for a week before moving back to Malta.

{¶6} In a memorandum dated July 22, 2009, Barbara Gates McGrath, Executive Director of the Commission, and Brenda S. Sobieck, the hearing officer who had presided over the residency hearing, reported to the Civil Service Commissioners the results of the investigation into Garrett's residency. After setting out the facts as described above, McGrath and Sobieck recommended that the Commission find that Garrett had violated Section 158-1 and Rule VI(D)(2). The Commission accepted McGrath and Sobieck's recommendation. In a July 28, 2009 letter, the Commission informed Garrett of its finding, and it notified him that it would stop certifying his payroll beginning August 9, 2009.

{¶7} Relying upon R.C. 119.12, 124.34(B), and 2506.01, Garrett filed with the trial court a notice of appeal "from the decision of the City of Columbus, Civil Service Commission, rendered on July 28, 2009, terminating him from his employment with the City of Columbus on the grounds that he was no longer a resident of Franklin County and therefore was not in compliance with the City's residency requirements for its employees." Garrett attached to his notice of appeal the July 22, 2009 memorandum and July 28, 2009 letter.

{¶8} In response, the Commission moved to dismiss Garrett's appeal, arguing that the trial court lacked subject matter jurisdiction. The Commission contended that the trial court could not exercise jurisdiction over Garrett's appeal because the administrative decision Garrett appealed did not result from a quasi-judicial proceeding. The trial court agreed with the Commission's argument, and it issued a decision granting the motion to dismiss.

{¶9} Garrett moved for reconsideration. In the motion, Garrett's attorney explained that, unbeknownst to her, Garrett had received notice of and attended a disciplinary hearing, held August 11, 2009. At the conclusion of that hearing, a labor relations hearing officer from the City's Human Resources Department found that Garrett had violated Central Work Rule 8,¹ Section 158-1, and Rule VI(D)(2). These violations provided just cause for the termination of Garrett's employment. Pursuant to the hearing officer's order, Garrett was terminated from his traffic paint/sign worker position on August 18, 2009.

{¶10} Relying upon these facts, Garrett argued that the August 11, 2009 hearing constituted a quasi-judicial proceeding, and thus, the trial court had jurisdiction to consider his appeal of the Commission's decision. Soon after filing his motion for reconsideration, Garrett also filed a motion seeking leave to amend his "complaint." Garrett explained that he wanted to assert causes of action for wrongful termination and declaratory judgment against the City. The trial court denied both of Garrett's motions.

{¶11} The trial court entered judgment dismissing Garrett's appeal on January 4, 2010. Garrett now appeals from that judgment, and he assigns the following errors:

[1.] The Trial Court erred in granting Defendant-Appellee City of Columbus, Civil Service Commission's Motion to Dismiss pursuant to Ohio Civ. Proc. R. 12(B)(1) (lack of subject matter jurisdiction) and 12(B)(6) (failure to state a claim upon which relief may be granted) on the grounds that the actions of the Civil Service Commission resulting in a[n] Order of termination were not conducted pursuant to a quasi-judicial hearing.

¹ Garrett was a member of the American Federation of State, County and Municipal Employees, Ohio Council 8, Local 1632 ("AFSCME"). The collective bargaining agreement between the City and AFSCME provides that employees must comply with all Central Work Rules that the City establishes. Central Work Rule 8 prohibits "[a]ny violation of the City Charter, Columbus City Codes, Ohio Revised Code or Ohio Administrative Code that has a nexus with City employment."

[2.] The Trial Court erred in denying Plaintiff-Appellant's motion for leave to amend his pleading to allege additional claims for relief pursuant to Ohio Civ. Proc. R. 15(A).

{¶12} By his first assignment of error, Garrett argues that the trial court erred in concluding that it did not possess subject matter jurisdiction over his appeal. We disagree.

{¶13} A court has subject matter jurisdiction over a case if the court has the statutory or constitutional power to adjudicate that case. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶11. Without subject matter jurisdiction, a court cannot consider the merits of a controversy. *Turner v. Ohio Dept. of Rehab. & Corr.*, 180 Ohio App.3d 86, 2008-Ohio-6608, ¶9; *Cheap Escape Co., Inc. v. Tri-State Constr., L.L.C.*, 173 Ohio App.3d 683, 2007-Ohio-6185, ¶18. A motion to dismiss for lack of subject matter jurisdiction raises a question of law, and thus, this court reviews a trial court's ruling on such a motion under the de novo standard. *Crosby-Edwards v. Ohio Bd. of Embalmers & Funeral Directors*, 175 Ohio App.3d 213, 2008-Ohio-762, ¶21; *Heskett v. Ohio Dept. of Adm. Servs.*, 166 Ohio App.3d 311, 2006-Ohio-2074, ¶9.

{¶14} Garrett claims that R.C. 119.12, 124.34, and 2506.01 authorized the trial court to exercise jurisdiction over his appeal. Each of these statutes allows the appeal of administrative decisions to the courts of common pleas. However, Section 4(B), Article IV of the Ohio Constitution limits the extent to which these statutes invest the courts of common pleas with jurisdiction to review administrative actions. Pursuant to Section 4(B), Article IV of the Ohio Constitution, courts of common pleas may only review administrative decisions resulting from quasi-judicial proceedings. *Fortner v. Thomas* (1970), 22 Ohio St.2d 13, paragraph one of the syllabus. See also *TBC Westlake, Inc. v.*

Hamilton Cty. Bd. of Revision, 81 Ohio St.3d 58, 62, 1998-Ohio-445; *M.J. Kelley Co. v. Cleveland* (1972), 32 Ohio St.2d 150, paragraph one of the syllabus.

{¶15} A proceeding does not qualify as quasi-judicial unless the law mandates that the proceeding include notice, a hearing, and the opportunity for the introduction of evidence. *M.J. Kelley Co.* at paragraph two of the syllabus. See also *Zupp v. Mun. Civ. Serv. Comm.*, 10th Dist. No. 09AP-895, 2010-Ohio-2614, ¶12; *Braun v. Columbus, Bd. of Indus. Relations*, 10th Dist. No. 07AP-496, 2007-Ohio-7148, ¶9. "Whether there is an adjudication [that a court of common pleas can review] depends not upon what the administrative agency actually did, but rather upon what the administrative agency should have done." *In re Appeal of Howard* (1991), 73 Ohio App.3d 717, 719. Thus, regardless of the procedural amenities granted on the administrative level, absent a legal requirement that the agency provide notice and a hearing before rendering a decision, an appellant has no ground to appeal that administrative decision. *Id.* at 719-20; *Zupp* at ¶13; *Gaines v. Columbus Civ. Serv. Comm.*, 182 Ohio App.3d 576, 2009-Ohio-2662, ¶11.

{¶16} Here, we must first identify what decision Garrett appealed before we can determine whether the proceedings that led to that decision were quasi-judicial. Before this court, Garrett argues that he appealed the August 11, 2009 decision to terminate his employment. We reject this argument. The only decision named in the notice of appeal is the Commission's July 28, 2009 decision to stop certifying Garrett's payroll. Additionally, the notice of appeal states that "[a] copy of the decision and order appealed from is attached hereto and incorporated by reference." Garrett attached the July 22, 2009 memorandum and the July 28, 2009 letter to his notice, not the August 11, 2009 decision.

{¶17} Having identified the decision appealed, we now examine the law governing the proceedings that resulted in that decision. The Commission reached its decision to stop certifying Garrett's payroll as a consequence of its investigation into Garrett's residency. Both the Charter of the City of Columbus, Ohio (hereinafter "Charter") and the Rules and Regulations of the Municipal Civil Service Commission (hereinafter "Rules") address the Commission's authority to conduct investigations. The Charter empowers the Commission to "make investigations concerning the enforcement and effect of the civil service provisions and of the rules thereunder." Section 149. Additionally, the Charter gives the Commission "the power to subpoena and require the attendance of witnesses and the production of books and papers pertinent to the investigation and to administer oaths to such witness." Section 154. Like the Charter, the Rules permit the Commission to "make investigations * * * concerning all matters touching the enforcement and effect of the Charter, as it applies to Civil Service and these Rules." Rule XIV(H).

Also pursuant to Rule XIV(H):

In the course of an investigation, the Commission, a single commissioner, the Executive Secretary, or a Hearing Officer, may subpoena witnesses and/or require the production of documents and records relevant to the investigation. The Commission's investigation may be public or private and may terminate with such decision or report within the power of the Commission to render or make.

{¶18} Notably, neither the Charter nor the Rules include a requirement that the Commission give notice or hold a hearing as part of an investigation. Therefore, the Commission's decision to stop certifying Garrett's payroll did not result from a quasi-judicial proceeding. We consequently conclude that the trial court lacked subject matter jurisdiction over Garrett's appeal from that decision.

{¶19} Our conclusion is unaltered by Garrett's argument that the August 11, 2009 disciplinary hearing constituted a quasi-judicial proceeding. As we held above, Garrett did not appeal from the decision arising out of that hearing. Because Garrett only appealed the Commission's decision to stop certifying his payroll, the trial court's jurisdiction hinges upon whether that decision resulted from a quasi-judicial proceeding. Since it did not, the trial court lacked jurisdiction over Garrett's appeal.

{¶20} Garrett also contends that the trial court could exercise jurisdiction over a declaratory judgment action challenging the legality of the City's residency requirement. The viability of a hypothetical declaratory judgment action is not relevant to our analysis. The question before this court is whether the trial court had jurisdiction over Garrett's administrative appeal. We answer that question negatively. Accordingly, we overrule Garrett's first assignment of error.

{¶21} By his second assignment of error, Garrett argues that the trial court erred in refusing to allow him to add causes of action to his appeal. We disagree.

{¶22} This court reviews the denial of a motion to amend under the abuse of discretion standard. *Wilmington Steel Prods., Inc. v. Cleveland Elec. Illuminating Co.* (1991), 60 Ohio St.3d 120, 122. " '[A]buse of discretion' connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Id.*

{¶23} In *Community Concerned Citizens, Inc. v. Union Twp. Bd. of Zoning Appeals*, 66 Ohio St.3d 452, 1993-Ohio-115, the appellant combined its appeal from an administrative decision with a "complaint" seeking declaratory judgment relief. The trial court dismissed the complaint that the appellant had engrafted onto its notice of appeal.

In concluding that the trial court had properly dismissed the complaint, the Supreme Court of Ohio stated:

[I]n order to request a declaratory judgment[,] appellant was required to file a *separate* R.C. Chapter 2721 action. Procedurally, appellant's request for declaratory judgment could not be combined with its appeal.

Id. at 454 (emphasis sic).

{¶24} Like the appellant in *Community Concerned Citizens*, Garrett sought to combine an administrative appeal with a complaint asserting causes of action. Applying the holding of *Community Concerned Citizens* to this case, we conclude that the trial court did not abuse its discretion in refusing to amend the notice of appeal to include causes of action. See also *Holm v. Clark Cty. Auditor*, 168 Ohio App.3d 119, 2006-Ohio-3748, ¶3 (holding that the trial court properly dismissed claims seeking declaratory and injunctive relief that the appellant had filed in conjunction with an administrative appeal); *Pullin v. Hiram*, 11th Dist. No. 2001-P-0146, 2003-Ohio-1973, ¶28 (same). As the trial court recognized, an administrative appeal and a complaint are procedurally incompatible. Accordingly, we overrule Garrett's second assignment of error.

{¶25} For the foregoing reasons, we overrule Garrett's first and second assignments of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER and FRENCH, JJ., concur.
