

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Daniel S. Adams,	:	
Plaintiff-Appellant,	:	
v.	:	No. 09AP-684 (C.C. No. 2009-04726)
Brian Cox et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on February 9, 2010

James H. Banks and Nina M. Najjar, for appellant.

Richard Cordray, Attorney General, *Charissa D. Payer* and *Jack W. Decker*, for appellees.

APPEAL from the Court of Claims of Ohio.

BRYANT, J.

{¶1} Plaintiff-appellant, Daniel S. Adams, appeals from a judgment of the Ohio Court of Claims dismissing his complaint for lack of jurisdiction. Plaintiff assigns a single error:

THE TRIAL COURT ERRED IN SUA SPONTE DISMISSING PLAINTIFF'S COMPLAINT.

Because the trial court properly dismissed plaintiff's complaint, we affirm.

I. Procedural History

{¶2} Because the procedural history of plaintiff's appeal bears on the issue before us, we address it in some detail. On December 8, 2003, plaintiff filed a complaint in the Scioto County Court of Common Pleas against defendants-appellees, Brian Cox, Carla Cox, Ohio Department of Rehabilitation and Correction, Southern Ohio Correctional Facility, James Haviland, David Newsom, Al Lewis, and Kevin Adkins, alleging defendants violated 42 U.S.C. 1983, 1985 and 1986, violated plaintiff's rights under the "whistleblower" statute found in R.C. 4113.52, and intentionally inflicted emotional distress on plaintiff.

{¶3} Although defendants filed an answer on January 12, 2004 by facsimile, followed by an answer filed the next day, defendants on January 31, 2005 filed a motion for leave to file an amended answer as well as a motion for judgment on the pleadings or for summary judgment. The motion asserted the common pleas court lacked subject matter jurisdiction and, to the extent the court had jurisdiction, the complaint failed to state a claim. On April 8, 2005, the common pleas court granted defendants leave to file an amended answer, but denied defendants' motion for judgment on the pleadings or for summary judgment due to remaining issues of material fact.

{¶4} Apparently preparing for trial on plaintiff's complaint, defendants on April 26, 2005 filed a motion to strike plaintiff's jury demand. Shortly after the motion was filed, the trial judge recused himself. On May 17, 2007, a retired judge was appointed to hear plaintiff's complaint. The newly-appointed judge on August 15, 2007 filed a judgment entry (1) finding plaintiff's whistleblower action under R.C. 4113.52 could be commenced only before the State Personnel Board of Review, (2) determining the Court of Claims had

exclusive jurisdiction to determine whether the individual defendants were immune from civil liability under state law, and (3) transferring the matter to the Court of Claims.

{¶5} Plaintiff timely appealed. On February 19, 2008, the Fourth District Court of Appeals determined the order from which plaintiff appealed was not final and appealable. Accordingly, the court dismissed the appeal. Nonetheless, in the course of the decision, the appellate court noted it found no provision that allowed the common pleas court to transfer the case to the Court of Claims. It thus concluded the court should have dismissed the case for lack of subject matter jurisdiction.

{¶6} The case apparently was remanded to the Scioto County Court of Common Pleas where on June 6, 2008, defendants renewed their motion to dismiss or for summary judgment. On May 1, 2009, the trial judge entered virtually the same order entered on August 15, 2007, except that the judge not only transferred the matter to the Court of Claims but dismissed it as well.

{¶7} On June 8, 2009, the Court of Claims journalized an entry of dismissal. In it, the court explained that it received original papers from the clerk of the Scioto County Court of Common Pleas on May 7, 2009. On review, however, the Court of Claims determined plaintiff had not asserted a claim against the state either by filing an original action in the Court of Claims pursuant to R.C. 2743.02 and 2743.13 or by filing a petition for removal pursuant to R.C. 2743.03(E). Absent either of those predicates, the court determined it had "no jurisdiction over the claim asserted in the original papers received from Scioto County." As a result, the Court of Claims ordered plaintiff's "case is DISMISSED and the clerk of this court is directed to return the original papers * * * to the Scioto County Court of Common Pleas."

II. Assignment of Error

{¶8} In his single assignment of error, plaintiff contends the trial court erred in sua sponte dismissing for lack of jurisdiction plaintiff's complaint transferred to the Court of Claims from the Scioto County Court of Common Pleas. "Appellate review of a trial court's decision to dismiss a case pursuant to Civ.R. 12(B)(1) for lack of subject matter jurisdiction is de novo." *Canady v. Indus. Comm. of Ohio* (May 23, 2000), 10th Dist. No. 99AP-930, citing *Shockey v. Fouty* (1995), 106 Ohio App.3d 420. The point of determination is "whether a plaintiff has alleged any cause of action which the court has authority to decide." *Id.*, citing *McHenry v. Indus. Comm.* (1990), 68 Ohio App.3d 56, 62.

A. Statutory Basis

{¶9} The Court of Claims concluded it lacked a statutory basis for asserting jurisdiction over plaintiff's complaint.

{¶10} "The Court of Claims has only that jurisdiction that is specifically conferred upon it by the General Assembly." *Wirick v. Transport America*, 10th Dist. No. 01AP-1268, 2002-Ohio-3619, ¶11. *Wirick* explained that under the statutory framework, "the Court of Claims can try claims against the state and claims against other parties that come before it as the result of the state's third-party complaint in an original action in the Court of Claims or when removed to the Court of Claims pursuant to R.C. 2743.03(E)." *Id.* Given those predicates, *Wirick* concluded that "[j]urisdiction over the state as a defendant is obtained either by the filing of an original action in the Court of Claims, or by removal from another trial court of an action which originally did not involve a claim against the state, but where the state became a party-defendant through counterclaim or third-party practice." *Id.*

{¶11} Here, as the Court of Claims accurately noted, plaintiff did not file an original action in the Court of Claims. Nor was a petition for removal filed pursuant to R.C. 2743.03(E) because, unlike the circumstances where a party defendant files a counterclaim or third-party complaint against the state, plaintiff's case presented no grounds for removal. See R.C. 2743.03(E)(1) (providing "[a] party who files a counterclaim against the state or makes the state a third-party defendant in an action commenced in any court, other than the court of claims, shall file a petition for removal in the court of claims").

{¶12} Per *Wirick*, strict application of the statutory language in R.C. 2743.02 and 2743.03(E)(1) leaves the Court of Claims without jurisdiction over plaintiff's complaint. See also *Hughley v. Kinsel*, 5th Dist. No. 2009 CA 00032, 2009-Ohio-4741, ¶17 (noting "[t]here is no provision for ordering a transfer of an improperly filed complaint to the court of claims" as "[t]he proper procedure for addressing a case that has been improperly filed in the Common Pleas Court against the state of Ohio or employees is to dismiss it for lack of subject matter jurisdiction"); *Adams v. Cox*, 4th Dist. No. 07CA3181, 2008-Ohio-719, ¶7 (finding no appealable order, but also stating "[t]he proper procedure for addressing a case that has been improperly filed in the Common Pleas Court against the state of Ohio or employees is to dismiss it for lack of subject matter jurisdiction").

{¶13} Moreover, to the extent plaintiff contends the Court of Claims has jurisdiction over his complaint to determine whether the individual defendants acted outside the scope of employment, his contention again falls to statutory language. According to R.C. 2743.02(F), a civil action against an officer or employee alleging "the officers or employee's conduct was manifestly outside the scope of the officer's or

employee's employment or official responsibilities" or was done "with malicious purpose, in bad faith or in a wanton or reckless manner" must "first be filed against the state in the court of claims, which has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity" under R.C. 9.86 "and whether the courts of common pleas have jurisdiction over the civil action."

{¶14} Thus, even if plaintiff's complaint raises an R.C. 9.86 issue, plaintiff first should have filed the action in the Court of Claims. More significantly, however, nothing in R.C. 2743.02(F) suggests the case may be transferred from the court where it was improperly filed to the Court of Claims.

B. Common Law Basis

{¶15} Although the Ohio Supreme Court has not addressed the transfer issue raised in plaintiff's appeal, the rationale it employed in *State ex rel. Natl. Employee Benefit Servs., Inc. v. Court of Common Pleas of Cuyahoga Cty.* (1990), 49 Ohio St.3d 49, is instructive. In *Natl. Employee Benefit Servs.*, the complaint, through amendment, exceeded the monetary jurisdictional limits of the municipal court. The trial judge did not dismiss the case, but transferred it, along with the counterclaim, to the common pleas court in the same county.

{¶16} In resolving whether the trial judge properly could transfer the case from the municipal court to the common pleas court, the Supreme Court pointed out that "the municipal court had no jurisdiction under R.C. 1901.17 to decide the merits of the * * * case once the supplemental complaint" caused the case to exceed the municipal court's jurisdictional limits. *Id.* at 50. While noting Civ.R. 13(J) permits a municipal court to transfer a case by certifying it to the common pleas court if a counterclaim, cross-claim or

third-party complaint exceeds the court's jurisdiction, the court observed that Civ.R. 13(J) "does not expressly permit certification on the basis of a complaint or supplemental complaint." *Id.* The court explained that any attempt "to read such permission into the rule would cause Civ.R. 13(J) to conflict with Civ.R. 12(H)(3)," which provides that a court "shall dismiss an action if the court lacks subject matter jurisdiction." *Id.* The Supreme Court ultimately concluded the municipal court "had no jurisdiction to transfer the * * * case and * * * counterclaim to the Court of Common Pleas * * * and, correspondingly * * * the common pleas court had no basis upon which to assume jurisdiction." *Id.*

{¶17} *Kennedy v. Ohio Dept. of Pub. Safety*, 10th Dist. No. 05AP-1041, 2006-Ohio-4777, applied *Natl. Employee Benefit Servs.* to a case in which the Lorain County Court of Common Pleas, after determining it lacked subject matter jurisdiction, transferred the matter to the Franklin County Court of Common Pleas. Applying the reasoning of *Natl. Employee Benefit Servs.*, *Kennedy* noted that once the Lorain County Court of Common Pleas determined "it lacked subject-matter jurisdiction," the Lorain court "lacked jurisdiction to transfer the matter to the Franklin County Court of Common Pleas and, correspondingly, the Franklin County Court of Common Pleas had no basis upon which to assume jurisdiction." *Id.* at ¶12. *Kennedy* ultimately concluded the Franklin County Common Pleas Court improperly exercised subject matter jurisdiction when it dismissed plaintiff's complaint for failure to state a claim upon which relief could be granted; instead, it should have dismissed the action without prejudice for lack of subject matter jurisdiction.

{¶18} Similarly, here, to the extent the Scioto County Court of Common Pleas determined it lacked subject matter jurisdiction over the claims, it lacked jurisdiction to transfer the matter to the Court of Claims. Pursuant to the rationale of *Natl. Emp. Benefits*

Servs., the Court of Claims properly refused to assume jurisdiction from a court that lacked the jurisdiction to transfer it.

C. Sua Sponte Dismissal

{¶19} Plaintiff nonetheless contends the Court of Claims erred in dismissing the complaint in the absence of a motion to dismiss from defendants. Civ.R. 12(H)(3) provides that "[w]hen it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Applying that language, the court in *Sherman v. Burkholder* (Dec. 15, 1994), 8th Dist. No. 66600 concluded that "[w]hen a want of jurisdiction is suggested by a court's examination of the case or otherwise, the court has a duty to consider it, for the court is powerless to act in the case without jurisdiction." *Id.*, citing *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 70, and *Wandling v. Ohio Dept. of Transp.* (1992), 78 Ohio App.3d 368, 371. As a result, "[e]ven though not asserted, lack of subject matter jurisdiction may be raised sua sponte, by the court at any stage of the proceedings." *Id.*, citing *Fox v. Eaton Corp.* (1976), 48 Ohio St.2d 236, 238. *Sherman* thus concluded "there was no requirement in this case that any of the parties raised the issue of whether the trial court lacked subject matter jurisdiction prior to examining the issue," as the trial court could "determine the jurisdiction sua sponte, and if appropriate, dismiss the case."

{¶20} Similarly, here, the Court of Claims was faced with a question of its subject matter jurisdiction, having received the case from the Scioto County Court of Common Pleas Court via transfer. Even if motion practice may be the better avenue for addressing such concerns, plaintiff here suffered no prejudice, as the Court of Claims properly determined it lacked subject matter jurisdiction over a transferred complaint, a matter not

subject to correction even had plaintiff been given the opportunity to defend a motion to dismiss.

{¶21} Because the Court of Claims lacked jurisdiction over plaintiff's complaint transferred from the Scioto County Court of Common Pleas to the Ohio Court of Claims, the Court of Claims properly sua sponte dismissed the complaint for lack of jurisdiction. Plaintiff's single assignment of error is overruled, and the judgment of the Court of Claims of Ohio is affirmed.

Judgment affirmed.

SADLER and McGRATH, JJ., concur.
