

Sprint Spectrum, LP v. Department of Revenue, 64943-4-1

Becker, J. (concurring) — I concur in the majority opinion’s analysis and result. I write separately to reject, explicitly, the Department of Revenue’s argument that the petition for judicial review by Sprint Spectrum, LP, had to be dismissed for lack of subject matter jurisdiction.

The law that determines this appeal is the section of the Administrative Procedures Act that specifies the time for filing and service of a petition for judicial review of a final order of an agency:

A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order.

RCW 34.05.542(2). The issue raised by Sprint’s appeal is one of statutory construction. Sprint argues that “agency” means the Department of Revenue in this particular case. We conclude, however, that “agency” continues to mean what it has always meant, the agency issuing the order. In this case, the agency is the Board of Tax Appeals. Sprint failed to serve the “agency” within 30 days and accordingly failed to comply with the procedures for service dictated by the statute.

What are the consequences for a petitioner who fails to comply with the service procedures dictated by the Administrative Procedures Act? According to the Department of Revenue, the petition must be dismissed for lack of subject

matter jurisdiction. In my view, the authorities supporting that position are outdated and harmful.

Our Supreme Court has stated the underlying principle as follows:

“Acting in its appellate capacity, the superior court is of limited statutory jurisdiction, and all statutory procedural requirements must be met before jurisdiction is properly invoked.” Skagit Surveyors & Eng’rs, LLC v. Friends of Skagit County, 135 Wn.2d 542, 555, 958 P.2d 962 (1998). However, as the court has also recognized, the problem with this oft-repeated principle is that it tends to transform procedural elements into jurisdictional requirements. Dougherty v. Dep’t of Labor & Indus., 150 Wn.2d 310, 315, 76 P.3d 1183 (2003).

The critical concept in determining whether a court has subject matter jurisdiction is the type of controversy. If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction. Dougherty, 150 Wn.2d at 316. Without question, determining whether or not the Department of Revenue assessed taxes correctly is a type of controversy that a superior court acting in its appellate capacity is empowered to resolve. Therefore, any error or defect in Sprint’s compliance with the statutory service requirements must go to something other than the superior court’s subject matter jurisdiction.

To think of subject matter jurisdiction as something that depends on what the parties to an action do or fail to do is to undermine the fixed nature of a tribunal’s power. “Jurisdiction exists because of a constitutional or statutory

provision. A party cannot confer jurisdiction; all that a party does is invoke it.” Dougherty, 150 Wn.2d at 319. If Sprint could not confer jurisdiction on the superior court by properly serving the correct entities, then Sprint could not deprive the superior court of jurisdiction by failing to serve the correct entities. Treating subject matter jurisdiction as though it were a fleeting and fragile attribute of a court diminishes the authority of the court, creates a trap for the unwary, and prevents worthy cases from being heard on the merits even when the procedural violation has not prejudiced the opposing party. Dougherty recognized these concerns when it overruled a line of cases that had transformed venue into a jurisdictional requirement:

“Elevating procedural requirements to the level of jurisdictional imperative has little practical value and encourages trivial procedural errors to interfere with the court's ability to do substantive justice.” Okanogan Wilderness League, Inc. v. Town of Twisp, 133 Wn.2d 769, 791, 947 P.2d 732 (1997) (Durham, C.J., concurring). Transforming venue into a jurisdictional matter allows a party to raise it at any time, even after judgment. “A party's ability to raise procedural defects at any time could result in abuse and cause a huge waste of judicial resources.” Okanogan, 133 Wn.2d at 790.

Dougherty, 150 Wn.2d at 319.

The principle that all statutory requirements must be met before jurisdiction is properly “invoked” still leaves open the issue of which statutory requirements are jurisdictional. Okanogan, 133 Wn.2d at 790 (Durham, J., concurring). The Administrative Procedures Act itself does not state or imply that its procedural requirements are limitations on the subject matter jurisdiction of a superior court. It bears repeating that once a procedural requirement is

transformed into an element of subject matter jurisdiction, a party's violation of the requirement becomes a defect that can be raised at any time. This is so because no objection is necessary to preserve an objection to lack of subject matter jurisdiction, RAP 2.5(a), and a judgment entered without subject matter jurisdiction is void. In re Marriage of Ortiz, 108 Wn.2d 643, 649-50, 740 P.2d 843 (1987). A void judgment must be vacated even if the moving party actively participated in the lawsuit, because lack of subject matter jurisdiction is not subject to waiver. Skagit Surveyors & Eng'rs, LLC, 135 Wn.2d at 556.

Classifying procedural errors as jurisdictional flaws thus has serious implications for the finality of judgments. It must always be a matter of institutional concern to the courts when the casual and imprecise use of the term "subject matter jurisdiction" leads to an increase in the number of decisions that are subject to attack indefinitely. In this case, the Department of Revenue raised a prompt challenge to Sprint's failure to serve the Board of Tax Appeals. But if that failure truly deprived the superior court of jurisdiction, the Department of Revenue could have waited to see what happened in the superior court and then raised its jurisdictional challenge if it did not like the result.

Sprint relies entirely on the unsuccessful argument that their service complied with the requirements of RCW 34.05.542(2). Sprint has not questioned the Department of Revenue's theory that a failure to comply deprives the superior court of subject matter jurisdiction. Consequently Sprint has not argued that the consequences of failure to comply should be anything other than

dismissal for lack of subject matter jurisdiction. Given this posture of the case, I believe affirmance of the dismissal to be the proper result here and I support the majority opinion which has carefully stated a rationale for affirming without mentioning the term “jurisdiction.” Even though in my view the superior court had subject matter jurisdiction, it does not necessarily follow that the court had to grant relief to Sprint. “Technical compliance with mandatory procedures may be grounds for dismissal if raised at the proper time.” Okanogan, 133 Wn.2d at 792 (Durham, J. concurring).

It appears likely that the Supreme Court will in due course recognize that a failure to comply with the service requirements of the Administrative Procedures Act is a defect that goes to something other than subject matter jurisdiction. What consequences will then flow from a failure to comply with the statutory service requirements is a question that will have to await further briefing and analysis.

Becker, J.