[Cite as *All Children Matter v. Ohio Secy. of State,* 2010-Ohio-371.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

All Children Matter,	:	
Appellant-Appellant,	:	
v.	:	No. 09AP-322 (C.P.C. No. 08CVF-05-6902)
Ohio Secretary of State,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	
All Children Matter Ohio PAC,	:	
Appellant-Appellant,	:	
v.	:	No. 09AP-323 (C.P.C. No. 08CVF-05-6900)
Ohio Secretary of State,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on February 4, 2010

Bopp, Coleson & Bostrom, *James Bopp, Jr., Randy Elf* and *Joseph La Rue*, pro hac vice; *Chester, Willcox & Saxbe, LLP,* and *Donald C. Brey*, for appellants.

Richard Cordray, Attorney General, *Richard N. Coglianese, Melissa G. Wright* and *Erik D. Gale*, for appellee.

APPEALS from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Appellants, All Children Matter ("ACM"), and All Children Matter Ohio PAC ("ACM Ohio"), appeal from the judgment of the Franklin County Court of Common Pleas granting the motion to dismiss of appellee Ohio Secretary of State Jennifer Brunner ("secretary of state").

{¶2} ACM is a Virginia political action committee ("PAC"), that established ACM Ohio as an Ohio affiliate. Though ACM Ohio is a PAC formed under Ohio law and registered with the secretary of state, ACM is not. In 2006, ACM requested an advisory opinion from the Ohio Elections Commission ("OEC"), seeking the OEC's interpretation of R.C. 3517.102(B)(2)(a)(vi), Ohio's statutory limitation on campaign contributions that may be made between PACs. On May 25, 2006, the OEC issued an advisory opinion concluding that while there is no limitation on contributory amounts that can be transferred between affiliated PACs, whether from within or outside the state of Ohio, before contemplating the transfer of funds to the Ohio PAC, an out-of-state PAC must file the necessary documentation to establish its existence in Ohio.

{¶3} Prior to the end of the 2006 election cycle, ACM made an $870,000 contribution to ACM Ohio. On December 18, 2006, the office of the previous secretary of state sent a letter to ACM Ohio indicating this contribution was required to be refunded to ACM because ACM was not a registered Ohio PAC, and was, therefore, prohibited from making this contribution. Thereafter, in February 2007, the secretary of state filed complaints with the OEC against both ACM and ACM Ohio. On April 25, 2008, the OEC found both ACM and ACM Ohio in violation of various sections of the Revised Code and assessed fines totaling more than $5.2 million.

{¶4} On May 9, 2008, ACM and ACM Ohio filed separate appeals in the common pleas court challenging the findings of the OEC. The OEC, however, was not named as a party in either appeal as each appeal named secretary of state Brunner as the sole appellee. The two appeals were consolidated in the common pleas court on July 25, 2008. Because neither appeal named the OEC as the adverse party, the secretary of state filed a motion to dismiss asserting the trial court lacked subject-matter jurisdiction.[1]

{¶5} The trial court agreed with the secretary of state and concluded that appellants' failure to name the OEC as an appellee deprived the trial court of subject-matter jurisdiction over the appeals. In so concluding, the trial court relied on *Haig v. State of Ohio Bd. of Edn.* (Aug. 9, 1990), 10th Dist. No. 89AP-1251, affirmed by (1992), 62 Ohio St.3d 507, in which this court held that with respect to R.C. 119.12 appeals, the proper appellee must be the party charged with the responsibility for making and enforcing the decision from which the aggrieved party appeals. Because the OEC was not named as an appellee, and because the secretary of state was not the party charged with the responsibility for making and enforcing the decision from which appellants appealed, the trial court granted the secretary of state's motion to dismiss.

{¶6} Appellants timely appeal to this court and bring the following assignment of error for our review:

> The Franklin County Common Pleas Court erred when it granted the Secretary of State's motion to dismiss the R.C.

[1] On June 20, 2008, the OEC filed in both appeals a motion to dismiss, or in the alternative, to join the OEC as a necessary party. The motions were not ruled upon prior to the trial court granting the motion to dismiss filed by the secretary of state; therefore, we presume the trial court overruled said motions. *Evans v. Evans*, 10th Dist. No. 08AP-398, 2008-Ohio-5695.

> 119.12 administrative appeals brought by All Children Matter ("ACM") and All Children Matter Ohio PAC ("ACM Ohio").

{¶7} The trial court dismissed the instant appeal for lack of subject-matter jurisdiction due to appellants' failure to name the proper party, i.e., the OEC. Subject matter jurisdiction is a question of law, which we review de novo. *Derakhshan v. State Med. Bd.*, 10th Dist. No. 07AP-261, 2007-Ohio-5802, ¶11, citing *Village of Hill & Dales v. Ohio Dept. of Edn.*, 10th Dist. No. 06AP-1249, 2007-Ohio-5156, ¶16.

{¶8} Appellants argue that an appeal is perfected and cannot be dismissed for jurisdictional reasons when a proper adverse party is named as an appellee and the adjudicatory agency is given notice of the appeal. According to appellants, the secretary of state is the proper adverse party and notice was filed with the OEC; therefore, there was no basis for the trial court to dismiss this appeal. Appellants further argue *Haig* is wrong in its conclusion that implicit in the right to appeal administrative decisions is that the appellee be the body that made the decision and that this proposition was overruled and/or corrected by this court's decision in *Russell v. City of Dublin Planning & Zoning Comm*., 10th Dist. No. 06AP-492, 2007-Ohio-498, discretionary appeal not allowed by 2007-Ohio-3699.

{¶9} To the contrary, it is the secretary of state's position that *Russell* is inapplicable here because *Russell*'s analysis focused on administrative appeals in the context of R.C. Chapter 2505, which governs appellate procedures only when R.C. Chapter 119 does not apply. Further, the secretary of state contends *Haig* is dispositive because it instructs that the necessary party to an appeal is the one empowered by statute to provide the relief sought, which in this case, by statute, is the OEC.

{¶10} As is relevant here, R.C. 3517.157 provides that the OEC must conduct hearings in accordance with R.C. Chapter 119, and that a party adversely affected by a final determination of the OEC may appeal from the determination under section 119.12 of the Revised Code. R.C. 119.12 provides that any party adversely affected by any adjudication may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident.

{¶11} We initially note that we agree with the secretary of state's position that *Russell* is not applicable here. The appeal in *Russell* was brought pursuant to R.C. 2506.01, which provides for common pleas court review as provided in R.C. Chapter 2505. Pursuant to R.C. 2505.03, appeals are governed by R.C. Chapter 2505, "[u]nless in the case of an administrative-related appeal, Chapter 119 or other sections of the Revised Code apply." R.C. 2505.03(B). Thus, *Russell*'s discussion of one's failure to identify a necessary party took place in the context of R.C. Chapter 2505, not Chapter 119, and there is nothing in *Russell* that either expressly or implicitly suggests that it meant to overrule *Haig* and its analysis of proper appellees in the context of R.C. Chapter 119. We are presented with a matter governed by R.C. Chapter 119, and consequently, by *Haig*, which held that in an appeal pursuant to R.C. Chapter 119, the entity empowered by statute to provide appellants with the relief they seek is the necessary appellee.

{¶12} In *Haig*, the appellees instituted an action in the common pleas court against the appellants, State of Ohio Board of Education and Franklin Walter, Superintendent of Public Instruction. The appellees challenged the appellants'

confirmation of a decision of Kelly's Island Local School Board. The appellants moved the trial court for a dismissal of the case in part because neither the state board of education nor the superintendent was a proper party to the appeal. The trial court, however, denied the motion to dismiss. In reversing the trial court, this court stated:

> R.C. 119.12 provides that any party adversely affected by an agency decision may appeal to the court of common pleas. *Implicit in this right is the proposition that the proper appellee must be the party charged with responsibility for making and enforcing the decision from which the aggrieved party appeals.* In this action, that party is the Kelley's Island Local School Board and not the state board of education or the superintendent of public instruction. The state board merely confirms or rejects the decision made by another party. By holding a quasi-judicial position without enforcement powers, appellants herein cannot provide the relief which appellees seek. Therefore, appellants are not a proper party with an interest adverse to appellees. The only aggrieved party was the Kelley's Island Local School District and they were not made a party to the appeal.

(Emphasis added.)

{¶13} On appeal to the Supreme Court of Ohio, the appellees argued the state board of education was a proper party to the R.C. 119.12 administrative appeal challenging the state board's decision confirming the local board's determination. The Supreme Court of Ohio, however, disagreed, noting that the state board of education was unable to provide the appellees with the relief they sought and had no authority to enforce the local board's duty to provide transportation; therefore, the Supreme Court of Ohio determined the state board of education was not a proper party.

{¶14} Here, while the secretary of state indeed brought the initial complaints before the OEC pursuant to R.C. 3517.153(A), pursuant to this same provision, enforcement of the statutory provisions of which appellants were found in violation falls

under the authority of the OEC. Further, it is the OEC that can provide the relief sought by appellants. While the secretary of state is required to report a failure to comply with sections R.C. 3517.08 to 3517.13 of the Revised Code by filing a complaint with the OEC, it is clear that once a complaint is filed, enforcement of such provisions falls under the OEC's authority. See R.C. 3517.153(A). In this instance it is the OEC, not the secretary of state, that can provide the relief appellants seek, and it is the OEC, not the secretary of state, that is the party charged with the responsibility for making and enforcing the decision from which appellants appeal. Thus, pursuant to *Haig*, appellants' failure to include the OEC as a necessary party/appellee warrants dismissal. Accordingly, we overrule appellants' assignment of error.

{¶15} For the foregoing reasons, appellants' single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

TYACK, P.J., and KLATT, J., concur.

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