

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Matthew J. Dunlop, :  
Plaintiff-Appellant, :  
v. : No. 11AP-929  
Ohio Department of Job & Family Services, : (C.C. No. 2011-07176)  
Defendant-Appellee. : (ACCELERATED CALENDAR)

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D E C I S I O N

Rendered on March 29, 2012

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*Tyack, Blackmore & Liston Co., L.P.A., and Jonathan T. Tyack, for appellant.*

*Michael DeWine, Attorney General, Randall W. Knutti, and Christopher P. Conomy, for appellee.*

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APPEAL from the Court of Claims of Ohio.

BROWN, P.J.

{¶ 1} Matthew J. Dunlop, plaintiff-appellant, appeals from a judgment of the Court of Claims of Ohio, in which the court granted the motion to dismiss filed by the Ohio Department of Job and Family Services ("ODJFS"), defendant-appellee.

{¶ 2} On December 11, 2007, the Franklin County Common Pleas Court, Division of Domestic Relations, ordered appellant to pay child support pursuant to a decree of dissolution. According to his complaint, appellant began paying child support on January 1, 2008, via a withholding notice issued to his employer by the Franklin County Child Support Enforcement Agency. ODJFS administers the child support program for the state of Ohio ("state"). On May 6, 2011, appellant filed an action against ODJFS in the

Court of Claims, alleging conversion, equitable restitution, fraudulent inducement, constructive trust on fraud, breach of fiduciary duty, wrongful disposition, request for injunction, and request for declaratory relief. Appellant claimed that, due to an error made by his employer, ODJFS collected child support payments in excess of those ordered by the common pleas court and distributed some of these overpayments to his ex-wife, the state, the federal government, and retained other overpayments. Appellant further alleged that ODJFS's case/order information system, available via the Internet, failed to indicate this overpayment under his "total balance due," but he telephoned a representative from ODJFS who indicated he had a credit balance, and a written summary he requested also showed that ODJFS had received more monies from him than the court-ordered amounts.

{¶ 3} On June 9, 2011, ODJFS filed a motion to dismiss appellant's complaint pursuant to Civ.R. 12(B)(1). On October 11, 2011, the trial court granted ODJFS's motion to dismiss, finding that appellant's claims were purely equitable in nature, and, thus, the Court of Claims lacked jurisdiction to hear the case. Appellant appeals the trial court's judgment, asserting the following assignment of error:

The Court of Claims erred in granting the Motion to Dismiss filed by Appellee-Defendant, The Ohio Department of Job and Family Services.

{¶ 4} In appellant's sole assignment of error, appellant argues that the trial court erred when it dismissed his complaint based upon lack of subject-matter jurisdiction pursuant to Civ.R. 12(B)(1). Appellate review of a trial court's decision to dismiss a case, pursuant to Civ.R. 12(B)(1), is de novo. *Crestmont Cleveland Partnership v. Ohio Dept. of Health*, 139 Ohio App.3d 928, 936 (10th Dist.2000). De novo review means that we apply the same standards as the trial court. *GNFH, Inc. v. W. Am. Ins. Co.*, 172 Ohio App.3d 127, 2007-Ohio-2722, ¶ 16 (2d Dist.).

{¶ 5} To dismiss a complaint under Civ.R. 12(B)(1), we must determine whether a plaintiff has alleged any cause of action that the court has authority to decide. *Crestmont* at 936. Furthermore, when a trial court determines its own jurisdiction, it has authority to consider any pertinent evidentiary materials. *Nemazee v. Mt. Sinai Med. Ctr.*, 56 Ohio St.3d 109, 111 (1990), fn. 3. Thus, in determining whether the plaintiff has alleged a cause

of action sufficient to withstand a Civ.R. 12(B)(1) motion to dismiss, a court is not confined to the allegations of the complaint. *Southgate Dev. Corp. v. Columbia Gas Transmission Corp.*, 48 Ohio St.2d 211 (1976), paragraph one of the syllabus.

{¶ 6} In the present case, the trial court found appellant's complaint failed to state any claims for relief. As to his claim for fraudulent inducement, the court found appellant failed to allege he entered into an agreement with ODJFS and failed to allege he detrimentally relied upon the data represented on ODJFS's website. As to the remaining claims, the court found they all sought recovery of funds that ODJFS wrongfully collected, which are claims solely for equitable relief, and the Court of Claims lacks jurisdiction to consider claims seeking purely equitable relief.

{¶ 7} Appellant argues that the trial court failed to recognize that he alleged claims in both equity and at law. Specifically, appellant claims his complaint contains two claims for money damages at law under the theories of conversion and fraud, which we will address in turn. The Court of Claims is a court of limited jurisdiction. It has exclusive jurisdiction over civil actions against the state for money damages that sound in law. R.C. 2743.02 and 2743.03. Included within the jurisdiction of the Court of Claims are civil actions presenting claims sounding in equity if they arise out of the same circumstances giving rise to a civil action over which the Court of Claims otherwise would have jurisdiction. *Measles v. Indus. Comm.*, 128 Ohio St.3d 458, 2011-Ohio-1523 ¶ 7; *Interim Healthcare of Columbus v. Ohio Dept. of Adm. Servs.*, 10th Dist. No. 07AP-747, 2008-Ohio-2286, ¶ 13. In determining whether the Court of Claims has subject-matter jurisdiction, it is necessary to examine both the nature of the claim (whether it sounds in law or equity) and the relief sought (whether compensation for an injury to one's person, property, or reputation, or specific relief such as the recovery of specific property or monies). *Ohio Hosp. Assn. v. Ohio Dept. of Human Servs.*, 62 Ohio St.3d 97, 104 (1991); *Zelenak v. Indus. Comm.*, 148 Ohio App.3d 589, 2002-Ohio-3887, ¶ 15-18 (10th Dist.). At times, creative pleading may obscure the conceptual line between claims for money damages for loss sustained and claims for a specific form of relief. *Id.* at ¶ 15. The prayer for relief does not, in itself, establish subject-matter jurisdiction in the Court of Claims. *See id.*

{¶ 8} With regard to the claim for conversion, appellant asserts that the court did not recognize that the majority of funds improperly collected by ODJFS were redistributed to obligees and not retained by the state, thus making ODJFS liable for conversion. The tort of conversion is the wrongful exercise of dominion over property to the exclusion of the rights of the owner, or withholding it from his possession under a claim inconsistent with his rights. *Joyce v. Gen. Motors Corp.*, 49 Ohio St.3d 93, 96 (1990). The elements of a conversion cause of action are: (1) plaintiff's ownership or right to possession of the property at the time of the conversion; (2) defendant's conversion by a wrongful act or disposition of plaintiff's property rights; and (3) damages. *Dice v. White Family Cos., Inc.*, 173 Ohio App.3d 472, 2007-Ohio-5755, ¶ 17 (2d Dist.).

{¶ 9} Here, the trial court concluded that, whether under a theory of conversion or otherwise, a case in which a plaintiff seeks the return of specific funds that a state agency has wrongfully collected is characterized as a claim for equitable restitution, citing *Santos v. Ohio Bur. of Workers' Comp.* 101 Ohio St.3d 74, 2004-Ohio-28, syllabus, and *Interim HealthCare* at ¶ 17. In *Santos*, a worker received compensation from the Ohio Bureau of Workers' Compensation ("BWC") and later settled an intentional tort claim against his employer to which the BWC claimed to be subrogated under a statute that was subsequently found to be unconstitutional. The worker filed a class action in the common pleas court seeking the recovery of monies both already collected and not yet collected by the BWC based upon subrogation. The trial court found it had jurisdiction to entertain the action, while the court of appeals reversed, holding that the Court of Claims had exclusive jurisdiction over the case.

{¶ 10} The Supreme Court of Ohio reversed the decision of the court of appeals. The court explained that, unlike a claim for money damages where a plaintiff recovers damages to compensate, or substitute, for a suffered loss, equitable remedies are not substitute remedies but an attempt to give the plaintiff the very thing to which it was entitled. *Id.* at ¶ 14, citing *Ohio Hosp. Assn.* The court in *Santos* found that, because any collection or retention of monies collected by the BWC under the unconstitutional statute was wrongful, the action seeking restitution was not a civil suit for money damages but rather an action to correct the unjust enrichment of the BWC. The court concluded that a suit that seeks the return of specific funds wrongfully collected or held by the state is

brought in equity. *Id.* at ¶ 17. Thus, the court determined, a court of common pleas may properly exercise jurisdiction over the matter as provided in R.C. 2743.03.

{¶ 11} In *Interim HealthCare*, a healthcare provider sought payment for care rendered to a child insured by a plan issued through the state. The state's third-party administrator denied part of the provider's claim. The provider filed a complaint in the Court of Claims against the Ohio Department of Administrative Services ("ODAS") seeking a declaratory judgment to interpret a statutory provision, as well as a preliminary injunction. ODAS file a motion to dismiss, asserting the Court of Claims lacked subject-matter jurisdiction. The court granted the motion to dismiss.

{¶ 12} On appeal, this court affirmed, finding the Court of Claims lacked jurisdiction. We first noted that, when a party seeks a declaratory judgment in addition to monetary damages, the R.C. 2743.02 waiver of immunity permits the Court of Claims to determine the declaratory judgment action with the claim for money damages. *Id.* at ¶ 13. However, we concluded that the Court of Claims would not have jurisdiction to consider the provider's equitable declaratory judgment claim because the provider's claim for statutory interest, which it contended it was entitled to because ODAS failed to make timely payments required pursuant to statute, was also a claim for equitable restitution over which the Court of Claims did not have jurisdiction.

{¶ 13} In the present case, appellant contests the trial court's reliance upon these two cases, arguing the court failed to recognize his allegations that the majority of funds improperly collected by ODJFS were passed along to either the obligee, the state, or the federal government. However, we fail to see how appellant's distinction that ODJFS distributed rather than retained most of the allegedly ill-gotten monies renders *Santos* and *Interim HealthCare* inapplicable. Appellant seems to be arguing that the claims in *Santos* and *Interim HealthCare* were found to be claims in equity because the state was still in possession of all of the funds that it had wrongly collected, while his claim in the present case is a proper conversion claim because the state wrongfully collected and then redistributed the money. That the state still possessed the funds is not the basis for either decision. In *Santos*, the syllabus provided that "[a] suit that seeks the return of specific funds wrongfully collected or held by the state is brought in equity." Thus, the funds can either be wrongfully collected or wrongfully held by the state to form the basis of an action

brought in equity. Likewise, in *Interim HealthCare*, the court stated, "[c]ases in which a plaintiff claims a state agency has wrongfully collected certain funds are characterized generally as claims for equitable restitution." *Interim HealthCare* at ¶ 17, citing *Morning View Care Center-Fulton v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 04AP-57, 2004-Ohio-6073, ¶ 19.

{¶ 14} Here, merely because ODJFS might have eventually distributed the allegedly improperly collected funds to the child support obligee, the state government, or the federal government does not transform his claim seeking restitution of those funds from one sounding in equity to one sounding in law. By arguing so, appellant suggests a defendant's dispossession of the specific, converted monies is a necessary element of conversion, which it clearly is not, as set forth above. *See Dice* at ¶ 17. What ODJFS might have subsequently done with the funds is not relevant to the determination of subject-matter jurisdiction.

{¶ 15} Furthermore, as to appellant's contention that his action is distinguishable from *Santos* and *Interim HealthCare* because the plaintiffs in those cases did not allege claims for conversion, this distinction is not relevant to our analysis either. The mere fact that claims in a complaint are couched in certain legal terms is insufficient to confer jurisdiction upon a court. *See State ex rel. Columbia Gas of Ohio, Inc. v. Henson*, 102 Ohio St.3d 349, 2004-Ohio-3208, ¶ 19. Instead, in order to resolve the issue of whether a court has subject-matter jurisdiction over a party's claims, the court must look beyond the language used in the complaint and examine the underlying nature of the claims. *Id.* at ¶ 20. As explained above, we must look at both the nature of the claim (whether it sounds in law or equity) and the relief sought (whether compensation for an injury to one's person, property, or reputation, or specific relief such as the recovery of specific property or monies). *See Ohio Hosp. Assn. and Zelenak*.

{¶ 16} It is clear that, in the present case, appellant is seeking recovery of specific monies and not compensation for an injury to his person, property, or reputation. Appellant's claim in his complaint is that he seeks reimbursement of funds that ODJFS allegedly wrongly collected for child support. *See Santos* at syllabus (a suit that seeks the return of specific funds wrongfully collected by the state is brought in equity); *Interim HealthCare* at ¶ 17 (cases in which a plaintiff claims a state agency has wrongfully

collected certain funds are characterized generally as claims for equitable restitution). In other words, appellant does not seek general substitution compensation but seeks the very thing to which he claims he was entitled. *See Santos* at ¶ 14; *Interim HealthCare* at ¶ 15 (stating that equitable remedies represent a particular privilege or entitlement, rather than general substitute compensation). As made clear by *Santos* and *Interim HealthCare*, this type of claim is one for equitable restitution. Therefore, the Court of Claims did not err when it found it lacked subject-matter jurisdiction regarding appellant's conversion claim because it sought equitable restitution.

{¶ 17} With regard to his fraudulent inducement claim, appellant argues that the trial court erred when it ruled his claim was not properly set forth in the complaint. The trial court found appellant failed to allege he entered into an agreement with ODJFS and failed to allege he detrimentally relied upon the data represented on ODJFS's website, two required elements of a fraudulent inducement claim. Appellant counters that, despite the trial court's finding that he failed to plead the element of "fraudulent inducement" requiring that there be an "agreement" between him and ODJFS, the label he placed on the claim was immaterial, and the court should have viewed the claim as a standard fraud claim.

{¶ 18} Before addressing appellant's "fraudulent-inducement" claim as a general claim of fraud, we first point out that, like his conversion claim addressed above, appellant also apparently seeks only equitable restitution under this claim. In his complaint, the only monies appellant refers to under his fraudulent inducement claim are the "recoupment of funds that [obligors] do not know that they have overpaid." He indicates no other relief he seeks. Thus, appellant's claim for fraud suffers from the same deficiency as his other claims, in that he seeks only equitable restitution for the amounts wrongfully collected by the state.

{¶ 19} Notwithstanding, even if we were to find that appellant does not seek an equitable remedy under this fraud claim, and appellant's fraudulent inducement claim should be read more broadly as a fraud claim, we would find appellant's complaint did not state a claim for which relief may be granted. Civ.R. 9(B) provides: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." The elements of a fraud claim are: (1) a representation (or concealment of a

fact when there is a duty to disclose); (2) that is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred; (4) with intent to mislead another into relying upon it; (5) justifiable reliance; and (6) resulting injury proximately caused by the reliance. *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, ¶ 27, citing *Burr v. Stark Cty. Bd. of Commrs.*, 23 Ohio St.3d 69, 73 (1986).

{¶ 20} In the present case, appellant contends that his complaint clearly set forth the elements of a fraud claim. Appellant points out that he alleged in his complaint that ODJFS "falsely represented the status of the child support accounts through its online 'Case/Order Information,' which misleads, and is intended to mislead, obligors that there is no overpayment when there has been." Appellant also points out that his complaint alleged, "Plaintiffs relied on the false representations to their injury in that they may fail to seek recoupment of funds that they do not know that they have overpaid." Appellant further points out that he alleged in the complaint that he justifiably and detrimentally relied on the false representations made by ODJFS.

{¶ 21} However, we find appellant failed to allege a fraud claim that the court had authority to decide. Initially, appellant alleged in his complaint that, on ODJFS's Internet-based case/order information system, the "total balance due" indicated he had a zero balance due, when it should have shown he had credits for overpayments. However, we fail to see how appellant's alleged credits translate into a "total balance due." If appellant had overpaid his child support, he would, in fact, have a "total balance due" of zero. Thus, appellant has alleged no misrepresentation, and any reliance upon the "total balance due" to indicate his credit balance, rather than merely his balance due, was not justifiable.

{¶ 22} Notwithstanding, appellant failed to allege any reliance upon this "total balance due" figure that caused him injury. Appellant alleged in his complaint that, after viewing his "total balance due" on ODJFS's website, he spoke with a representative at ODJFS who told him he had a credit balance, and he subsequently requested a written account summary that showed his payroll deductions were for more than the court order support amount. These allegations clearly defeat any claim of reliance upon the figures



represented on ODJFS's website, as appellant admits that ODJFS truthfully informed him of his account status when he inquired about such.

{¶ 23} Furthermore, appellant has failed to sufficiently allege that he has had any resulting injury. Appellant admits in his complaint that "[u]nder current ODJFS policies, over-collected or overpaid child support may not be recouped while an active child support order is in place." Thus, any injury to appellant is not due to any fraud or misrepresentation with respect to ODJFS's reporting of the "total balance due" on its website account system. Rather, it appears that appellant's complaint is based upon ODJFS's rules and regulations regarding how and when it refunds overpayments. Also, because appellant admits in his complaint that ODJFS, in fact, informed him of his overpayment "credits" both orally and in writing, appellant cannot demonstrate any injury caused by the alleged misrepresentation. Therefore, even if the trial court should have analyzed appellant's fraudulent inducement claim as one sounding in fraud generally, we find appellant's fraud claim failed to raise a claim cognizable by the Court of Claims. For these reasons, we agree with the trial court that it lacked subject-matter jurisdiction. Appellant's assignment of error is overruled.

{¶ 24} Accordingly, appellant's single assignment of error is overruled, and the judgment of the Court of Claims of Ohio is affirmed.

*Judgment affirmed.*

BRYANT and DORRIAN, JJ., concur.

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