[Cite as *Ferriell v. Ohio Dept. of Transp.*, 2005-Ohio-6816.]

IN THE COURT OF CLAIMS OF OHIO

DAVID E. FERRIELL	:	
Plaintiff	:	
v.	:	CASE NO. 2005-01196-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	MEMORANDUM DECISION
Defendant	:	

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{¶ 1} Plaintiff, David E. Ferriell, is the owner of farm land abutting and adjacent to Interstate 70 in Preble County. Apparently, plaintiff has owned this land in Preble County for decades. Plaintiff explained that on five separate occasions between 1962 and 1993, defendant, Department of Transportation ("DOT"), exercising its right of eminent domain acquired several land tracts from plaintiff's farm in order to improve and upgrade the abutting roadway. At all times when DOT exercised the right of eminent domain involving takings of plaintiff's property, plaintiff received monetary compensation for every taking incident. At some time after 1996, plaintiff decided to transfer his remaining real property into a trust. However, plaintiff related he could not complete this land transfer until a new survey was conducted pursuant to land conveyance standard adopted by the Preble County Auditor and the Preble County Engineer. The particular land conveyance standard affecting plaintiff's situation was adopted in 1996, several years after DOT last acquired a land parcel from plaintiff's farm. Plaintiff advised the specific Preble County Conveyance Standard §11(D)(4) relevant to his circumstance provides: "A new survey of the residual is required after four (4)

tracts have been excepted from the original tract. Splits resulting from highways or railroads are excluded from the above provision."

{¶ 2} Because Preble County required plaintiff to have his residual land surveyed before he could complete a transfer of the entire property, he believes DOT should be responsible to pay for the survey expense, due to DOT's past land acquisitions from plaintiff. Plaintiff is essentially proposing DOT should be held liable for expenses related to the acts of Preble County officials since DOT's previous land acquisitions triggered implementation of a Preble County land conveyance standard adopted several years after DOT last acquired land from plaintiff. Plaintiff reasoned defendant should pay for his $1500.00 land survey expense and he has filed this complaint seeking to recover that amount. Plaintiff has not provided any authority to support his claim against defendant. The filing fee was paid.

{¶ 3} Defendant maintained plaintiff has been adequately compensated for land DOT acquired between 1962 and 1993. Defendant, therefore, denied any responsibility for expenses incurred by plaintiff related to a land transfer long after DOT's last acquisition. Additionally, defendant has contend plaintiff filed an untimely as well as an uncognizable claim in this court. Defendant argued plaintiff, based on the statute of limitations requirement in R.C. 2743.16(A)[1] had two years from the adoption of the 1996 Preble County land conveyance standard to file a claim against DOT for perceived damages resulting from the implementation

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[1] §2743.16 Statute of limitations, claimant must seek to have claim compromised or satisfied by state's insurance.

"(A) Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties."

of the standard. Plaintiff filed this claim on January 6, 2005. The stated damages in this claim-land survey costs-arose in 1996 when the land standard was adopted and surveys for landowners in plaintiff's situation were required. Under R.C. 2743.16(A) plaintiff had until two years after the adoption date of the 1996 standard to file a claim for damages arising from implementation of the standard. Considering plaintiff's specific claim is cognizable in this court, the claim is barred by the two-year statute of limitations. Plaintiff filed his complaint more than two years after any characterized cause of action accrued.

{¶ 4} Defendant also asserted plaintiff failed to state a cognizable claim. Defendant insisted plaintiff did not produce any evidence supporting his position that DOT should bear responsibility for survey expenses. Defendant reiterated plaintiff received adequate compensation on all five occasions when his land was taken and plaintiff has not presented any evidence to establish he received inadequate compensation. Plaintiff's claim can be referenced as an attempt to recover uncontemplated future damages which should have been addressed, if possible, at the time compensation was agreed upon when particular tracts were transferred.

{¶ 5} Section 19, Article I, Ohio Constitution, states:

{¶ 6} "Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deductions for

benefits to any property of the owner."

{¶ 7} Generally claims arising out of the United States or Ohio Constitutions, are not cognizable in this court. However, a specific exception exists where the issue involves an uncompensated taking of property in alleged violation of Section 19, Article I of the Ohio Constitution. *Kermetz v. Cook-Johnson Realty Corp.* (1977), 54 Ohio App. 2d 220; *Nacelle Land Mgt. Corp. v. Ohio Dept. of Natural Resources* (1989), 65 Ohio App. 3d 481. Plaintiff may file an uncompensated taking action in this court if the taking is instituted by DOT.

{¶ 8} The Fifth Amendment to the United States Constitution provides, " *** nor shall private property be taken for public use, without just compensation." In order for compensation to be required in a particular case, there must be a taking. The Ohio Supreme Court has defined "taking" in accordance with the United States Supreme Court's interpretation of that word. In *Smith v. Erie RD. Co.* (1938), 134 Ohio St. 135, 142, the court held, " *** there need not be a physical taking of the property or even dispossession; any substantial interference with the elemental rights growing out of ownership of private property is considered a taking." Later, in *McKee v. Akron* (1964), 176 Ohio St. 282, the court gave more of a negative definition of the term; something more than loss of market value or loss of comfortable enjoyment of the property is needed to constitute a taking. Specifically, the court stated, " *** governmental activity must physically displace a person from space in which he was entitled to exercise dominion consistent with the rights of ownership ***." Id. at 285. Thus, in order for a governmental activity to constitute a "taking," there must be substantial interference with the owner's property rights.

{¶ 9} As defendant pointed out in the instant action, plaintiff

received adequate compensation on the five separate occasions his land was taken between 1962 and 1993. Considering the Preble County land standard survey requirement arises to the level of a governmental taking (the court concludes it does not), the governmental entity involved is Preble County, not DOT. Therefore, plaintiff has no cause of action against defendant which can be characterized as an uncompensated taking. At best, plaintiff's claim against DOT, if any, amounts to a claim for prospective damages precipitated by the act of Preble County and plaintiff's own desire to transfer his land. This court under R.C. 2743.02 does not have jurisdiction over actions involving political subdivisions such as Preble County. Furthermore, this court does not exercise jurisdiction over DOT in a claim of this type concerning a request for prospective damages when there has been a completed taking of property. Plaintiff's claim, as defendant indicated, lies in mandamus and subject matter jurisdiction to such actions does not rest in this court. See R.C. 5501.22; *Sarkies v. Ohio Dept. of Transp.* (1979), 58 Ohio St. 2d 166; *State ex rel Lawrence Developmental Co. v. Weir* (1983), 11 Ohio App. 3d 96. Plaintiff has not alleged any cause of action cognizable in this forum. *Avco v. Financial Services Loan Inc. v. Hale* (1987), 36 Ohio App. 3d 65. Consequently, plaintiff's claim is dismissed.

IN THE COURT OF CLAIMS OF OHIO

DAVID E. FERRIELL	:	
Plaintiff	:	
v.	:	CASE NO. 2005-01196-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	ENTRY OF ADMINISTRATIVE DETERMINATION
	:	

Defendant

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Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, plaintiff's claim is DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
11/16
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