[Cite as *Ferren v. Cuyahoga Cty. Dept. of Children & Family Servs.*, 2009-Ohio-2359.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92294

JOEL S. FERREN

PLAINTIFF-APPELLANT

vs.

CUYAHOGA COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas

Case No. CV-667437

BEFORE: McMonagle, J., Kilbane, P.J., and Stewart, J.

RELEASED: May 21, 2009

JOURNALIZED:

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CHRISTINE T. McMONAGLE, J.:

{¶1} Defendant-appellant Joel S. Ferren appeals the September 23, 2008 trial court judgment granting plaintiff-appellee Cuyahoga County Department of Children and Family Services' ("CCDCFS") motion to dismiss. We affirm.

{¶2} On August 8, 2008, Ferren filed in the court of common pleas a notice of administrative appeal under R.C. 2506.01. In particular, Ferren attempted to appeal a CCDCFS finding that determined as "indicated" a report of sexual abuse of a child by him. CCDCFS filed a motion to dismiss for lack of subject matter jurisdiction on August 29. The motion was unopposed,[1] and the trial court granted it on September 23. The sole issue on appeal is whether the court's dismissal for lack of subject matter jurisdiction was proper.

{¶3} Civ.R. 12(B)(1) permits dismissal where the trial court lacks jurisdiction over the subject matter of the litigation. The standard of review for a dismissal pursuant to Civ.R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint. *Milhoan v. Eastern Loc. School Dist. Bd. of Edn.*, 157 Ohio App.3d 716, 2004-Ohio-3243, ¶10, 813 N.E.2d 692; *State ex rel. Bush v. Spurlock* (1989), 42 Ohio St.3d 77, 80, 537 N.E.2d 641. We review an appeal of a dismissal for lack of subject matter jurisdiction under Civ.R. 12(B)(1)

[1]On September 24, one day after the court ruled on the motion to dismiss, Ferren filed a stipulation of extension of time to respond to the motion. Loc.R. 12(C) of the Court of Common Pleas of Cuyahoga County, General Division, provides seven days to oppose a motion (except for oppositions to motions for summary judgment).

de novo. *Boutros v. Noffsinger*, Cuyahoga App. No. 91446, 2009-Ohio-740, ¶12. A trial court is not confined to the allegations of the complaint when determining its subject matter jurisdiction under Civ.R. 12(B)(1), and it may consider pertinent material without converting the motion into one for summary judgment. Id. at ¶13.

{¶4} The record demonstrates that CCDCFS, the public children services agency serving Cuyahoga County, investigates allegations of child abuse, neglect, and dependency. At the conclusion of each investigation, CCDCFS must issue a disposition of "substantiated," "indicated," or "unsubstantiated." The disposition may identify an individual, if that person is known, alleged to have inflicted the abuse or neglect.

{¶5} The dispositional information is reported to law enforcement and the Ohio Department of Job and Family Services ("ODJFS"). Law enforcement officials may, in their discretion, conduct a criminal investigation. ODJFS receives dispositional information from the 88 Ohio counties and maintains the information in a central registry on child abuse and neglect.

{¶6} After Ferren received notification via a July 29, 2008 letter from CCDCFS that the "indicated" status would remain unchanged and would be forwarded to ODJFS to be entered in the central registry, Ferren attempted to appeal to the common pleas court under R.C. 2506.01.

{¶7} R.C. 2506.01 governs appeals to the common pleas court and provides in pertinent part as follows:

{¶8} "(A) *** every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in Chapter 2505. of the Revised Code.

{¶9} "***

{¶10}"(C) As used in this chapter, 'final order, adjudication, or decision' means an order, adjudication, or decision that determines rights, duties, privileges, benefits, or legal relationships of a person, but does not include any order, adjudication, or decision from which an appeal is granted by rule, ordinance, or statute to a higher administrative authority if a right to a hearing on such appeal is provided, or any order, adjudication, or decision that is issued preliminary to or as a result of a criminal proceeding."

{¶11}The determinative issue in this case is whether the July 29 letter was a "final order" under R.C. 2506.01. It was not.

{¶12}The Tenth Appellate District addressed this issue in *Moore v. Franklin Cty. Children Services*, Franklin App. No. 06AP-951, 2007-Ohio-4128. Moore was a respite care provider who was investigated by the Franklin County Children Services Agency. The Agency found that sexual abuse was "indicated."

Moore filed a notice of appeal under R.C. 2506.01 in the common pleas court, and the Agency filed a motion to dismiss for lack of subject matter jurisdiction, which the court granted.

{¶13}The Tenth District agreed with the trial court's finding that the decision Moore attempted to appeal from was not a "final order" because it did not affect his legal rights, duties, or privileges. In so holding, the court stated the following:

{¶14}"Here, the placing of appellant's name on a confidential registry does not, as appellant suggests, per se foreclose his ability to work as a respite care worker in Franklin County or any other county in this state. Under Ohio law, the data entered into the central registry is 'confidential,' and the unauthorized dissemination of the contents of a central registry report constitutes a misdemeanor of the fourth degree. Ohio Adm.Code 5101:2-34-38.1(A). See, also, *Cudlin v. Cudlin* (1990), 64 Ohio App.3d 249, 254, 580 N.E.2d 1170 (child abuse reports received by agencies are confidential). Further, the law allows limited access to the information. For instance, a public children services agency is limited to requesting and receiving information from the central registry 'because it has received a report of child abuse or neglect.' Ohio Adm.Code 5101:2-34-38.1(B). The law also sets forth timeframes, whereby the identifying information in the registry is automatically removed. See Ohio Adm.Code 5101:2-35-19 ('[e]xpunction of identifying information from the central registry').

{¶15}"As noted by the trial court, appellant is still employed by Parenthesis, and there is no indication that appellant, subsequent to the allegations in this case, applied for or was denied respite service opportunities based upon information in the central registry. Given the limited disclosure requirements, appellant's concern that he may not be able to provide respite services in the future is merely speculative, rather than direct and consequential. Federal courts have recognized that 'listing on a confidential registry is not an injury in itself.' *Battles v. The Anne Arundel Cty. Bd. of Edn.* (D.Md. 1995), 904 F. Supp. 471, 477. See, also, *Hodge v. Jones* (C.A.4, 1994), 31 F.3d 157, 165 (retention of records in confidential central registry does not implicate liberty interest where alleged loss, as set forth in the complaint, 'reveals no more than a conclusory allegation of reputational injury'). Nor has appellant demonstrated, as found by the trial court, an immediate impact to his pecuniary interests by the mere placement of his name on the registry. While there may be circumstances in which the placing of a name on a central registry directly and adversely threatens a provider's employment, e.g., such as an impact on licensure, etc., appellant's purported 'understanding' that his future employment opportunities working with children may be impaired is speculative and remote at best." *Moore* at ¶20-21.

{¶16} Ferren states that "[r]espectfully disagreeing with *Moore*, the current and foreseeable harm to [him], as set forth above, exists and warrants judicial

review of the Decision by way of R.C. 2506.01 and Section 16, Art.1, Ohio Const." A review, however, indicates that Ferren has not demonstrated any current or foreseeable harm.

{¶17}In particular, Ferren merely provides conclusory statements about alleged harm to his reputation, and argues that although the information is to be treated as confidential, "[i]n today's real world, regardless of how or where stored, no information remains private, secret, confidential, or secure, e.g., the invasion of a vice-presidential candidate's private e-mail messages." He also argues that he "has the right to challenge an investigation and classification that affects his reputation and his livelihood." In addition to being conclusory, there is absolutely no evidence in the record as to Ferren's livelihood.

{¶18}In light of the above, the July 29 letter was not a "final order" that determined Ferren's rights, duties, privileges, benefits, or legal relationships.

{¶19}Ferren further argues, citing *Johns 3301 Toledo Cafe, Inc. v. Liquor Control Comm.*, Franklin App. No. 07AP-632, 2008-Ohio-394, that his appeal to the common pleas court was an appeal from the final decision of an administrative agency. *Johns* involved an appeal to the common pleas court by a liquor permit holder after the Ohio Liquor Control Commission revoked the holder's liquor permit.

{¶20}R.C. 119.12 governs appeals to the common pleas court from administrative agencies. The statute provides in part as follows:

{¶21}"Any party adversely affected by any order of an agency issued pursuant to an *adjudication* denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, or allowing the payment of a forfeiture under section 4301.252 [4301.25.2] of the Revised Code 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, except that appeals from decisions of the liquor control commission, the state medical board, state chiropractic board, and board of nursing shall be to the court of common pleas of Franklin county. If any party appealing from the order is not a resident of and has no place of business in this state, the party may appeal to the court of common pleas of Franklin county.

{¶22}"Any party adversely affected by any order of an agency issued pursuant to any other *adjudication* may appeal to the court of common pleas of Franklin county ***." (Emphasis added.)

{¶23}R.C. 119.01(D) defines an "adjudication" as "the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person, but does not include the issuance of a license in response to an application with respect to which no question is raised, nor other acts of a ministerial nature."

{¶24} Thus, "to constitute an 'adjudication' for the purposes of R.C. 119.12, a determination must be (1) that of the highest or ultimate authority of an agency which (2) determines the rights, privileges, benefits or other legal relationships of a person. Both elements are required." *Russell v. Harrison Twp.* (1991), 75 Ohio App.3d 643, 648, 600 N.E.2d 374.

{¶25} As already discussed, CCDCFS's finding did not determine Ferren's rights, privileges, benefits, or other legal relationships. As such, the finding was not subject to an administrative appeal to the common pleas court.

{¶26} Finally, the record demonstrates that as a result of CCDCFS's finding, law enforcement became involved in the situation and, therefore, under R.C. 2506.01(C), the finding was not final because it was "issued preliminary to *** a criminal proceeding."

{¶27} Accordingly, Ferren's sole assignment of error is overruled and the trial court judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, JUDGE

MARY EILEEN KILBANE, P.J., and
MELODY J. STEWART, J., CONCUR