

[Cite as *Measles v. Indus. Comm.*, 2010-Ohio-161.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93071**

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**POWELL MEASLES, ET AL.**

PLAINTIFFS-APPELLANTS

vs.

**INDUSTRIAL COMMISSION  
OF OHIO, ET AL.**

DEFENDANTS-APPELLEES

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**JUDGMENT:  
REVERSED AND REMANDED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-623468

**BEFORE:** Kilbane, P.J., McMonagle, J., and Boyle, J.

**RELEASED:** January 21, 2010

**JOURNALIZED:  
ATTORNEYS FOR APPELLANTS**

Patrick J. Perotti  
Jonathan T. Stender  
Dworken & Bernstein Co., L.P.A.  
60 South Park Place  
Painesville, Ohio 44077

**ATTORNEYS FOR APPELLEES**

Ronald D. Holman, II  
Michael C. Cohan  
Max E. Dehn  
Alexander E. Goetsch  
Cavitch Familo & Durkin Co., L.P.A.  
1300 East Ninth Street - 20th Floor  
Cleveland, Ohio 44114

Richard Cordray  
Ohio Attorney General  
Mark E. Mastrangelo  
Jeffrey B. Duber  
Assistant Attorneys General  
State Office Building - 11<sup>th</sup> Floor  
615 West Superior Avenue  
Cleveland, Ohio 44113-1899

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellants, Powell Measles, Vada Measles, and Ann Pocaro (collectively “appellants”) appeal the trial court’s dismissal of their complaint for lack of subject matter jurisdiction. In May 2007, appellants sued the Ohio Industrial Commission and the Administrator of the Bureau of Workers’ Compensation (collectively “the Bureau”) after a dispute arose regarding a decrease in their permanent total disability (“PTD”) awards as they relate to lump-sum advancements (“LSA”) that each had taken against those awards.

{¶ 2} The trial court found that it lacked subject matter jurisdiction to hear the case in light of the Supreme Court’s ruling in *Cristino v. Ohio Bur. of Workers Comp.*, 118 Ohio St.3d 151, 153, 2008-Ohio-2013, 886 N.E.2d 857. *Cristino* held, inter alia, that the Court of Claims has exclusive jurisdiction over cases seeking recovery under contract-related theories. Relying on *Cristino*, the trial court determined that jurisdiction rested with the Ohio Court of Claims because appellants’ claims sounded in contract and not in equity.

{¶ 3} After a careful review of the facts and the law, we disagree and reverse.

### **Statement of Facts and Procedural History**

{¶ 4} The following facts are undisputed. Appellants have all been permanently and totally disabled as a result of workplace accidents. They

are each statutorily entitled to receive lifetime bi-weekly PTD payments from the Bureau. Appellants have taken LSAs against their PTD awards. Under R.C. 4123.64(A), when LSAs are paid, a portion of a claimant's lifetime benefit is "commuted" or reduced into a lump-sum advance, and their corresponding bi-weekly benefit is reduced.

{¶ 5} On May 7, 2007, appellants filed suit against the Ohio Industrial Commission in common pleas court, seeking return of money they allege was wrongfully withheld from their bi-weekly PTD awards. Their three-count complaint demanded a declaratory judgment in their favor, injunctive relief, and sought equitable disgorgement of funds the Bureau allegedly kept from them. Appellants also sought class status.

{¶ 6} Measles was initially injured in 1981. He received his first LSA in 1986 in the amount of \$5,000, and applied for his second LSA in 1987 in the amount of \$9,563. The crux of appellants' claims, then and now, is that they have repaid the amount of their respective LSAs with interest, and that the LSAs should not continue to be a set-off against their bi-weekly lifetime PTD awards.

{¶ 7} On October 21, 2008, the Bureau filed a motion to dismiss for lack of subject matter jurisdiction based upon the Supreme Court's holding in *Cristino*.

{¶ 8} On March 12, 2009, the common pleas court granted the motion

to dismiss, stating in part:

**“Plaintiffs’ claims arise from their agreement with the Bureau of Workers’ Compensation to receive a LSA; however, there is no statutory right to a lump-sum payment. A claim based on a LSA made pursuant to R.C. 4123.64(A) is a claim against the State for money due under a contract, it is not a claim for equitable restitution, and such claims therefore must be brought in the Ohio Court of Claims. \* \* \* As this court lacks subject matter jurisdiction over plaintiffs’ claims, the case is dismissed.”**

### **Analysis**

{¶ 9} On May 15, 2009, appellants filed the instant appeal, asserting a single assignment of error:

**“The trial court erred in dismissing plaintiffs’ action for lack of subject matter jurisdiction.”**

{¶ 10} 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. *Ferren v. Cuyahoga Cty. Dept. of Children & Family Servs.*, Cuyahoga App. No. 92294, 2009-Ohio-2359, at ¶3. (Internal citations omitted.) We review an appeal of a dismissal for lack of subject matter jurisdiction under Civ.R. 12(B)(1) 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 subject matter jurisdiction under Civ.R. 12(B)(1), and it may

consider pertinent material without converting the motion into a motion for summary judgment. *Boutros* at ¶13.

{¶ 11} On appeal, we are essentially asked to decide whether the appellants have pled a cause of action asking for equitable relief or money damages. If the essence of appellants' claims is not money damages but equitable relief, then the Court of Claims does not have exclusive jurisdiction over the case. See, e.g., *Ohio Academy of Nursing Homes v. Ohio Dept. of Job and Family Servs.*, 114 Ohio St.3d 14, 17-18, 2007-Ohio-2620, 867 N.E.2d 400, 403-404.

{¶ 12} Appellants argue that because their complaint requested equitable relief only, jurisdiction rested with the trial court. Appellants argue that this case is analogous to *Santos v. Ohio Bur. of Workers' Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28, 801 N.E.2d 441. In *Santos*, the Supreme Court held, inter alia, that "[a] suit that seeks the return of specific funds wrongfully collected or held by the state is brought in equity. Thus, a court of common pleas may properly exercise jurisdiction over the matter as provided in R.C. 2743.03(A)(2)." *Id.* at syllabus.

{¶ 13} In *Santos*, the class of plaintiffs at issue "sought return of funds already collected by the BWC under the subrogation statute." *Id.* at ¶7. The plaintiffs in *Santos* "thus sought the return of funds that had once been in their possession and so belonged to them 'in good conscience.'" *Cristino*,

supra, at 155, citing *Santos* at ¶7. (Internal citations omitted.)

{¶ 14} Like the plaintiffs in *Cristino*, appellants received PTD benefits. However, unlike the *Cristino* plaintiffs, who took a reduced one-time lump-sum PTD payment in lieu of lifetime PTD payments, appellants received only LSAs and continue to receive bi-weekly lifetime PTD payments.

{¶ 15} In this case, appellants were careful to word their complaint “in equity,” expressly avoiding claims for money damages. The record demonstrates that while appellants’ claims emanate, at least in part, from their LSA claims made with the Bureau pursuant to R.C. 4123.64(A), the issues they raise in their complaint go beyond whether the Bureau may commute payments into a lump sum. Appellants raise the question of whether the Bureau is required to return specific funds it has retained over and above that which appellants were required to pay pursuant to their LSA agreement. While the Bureau argues that because appellants seek restitution for an alleged overpayment, their claims sound in breach of contract and so should be decided according to *Cristino*. However, both the *Cristino* court and the *Santos* court recognized that restitution claims could present either equitable or legal relief: “It is well established that restitution can be either a legal or an equitable remedy. \* \* \* In order to determine whether a claim for restitution requests legal or equitable relief, we look to the basis for the plaintiff’s claim and the nature of the underlying remedies

sought.” *Cristino*, supra, at 152, citing *Santos*, supra, at 76.

{¶ 16} At this stage of the proceedings, appellants have not exclusively pled claims for money due and owing under a contract, and so have not made what is “quintessentially an action at law.” *Cristino* at 153. (Internal citations omitted.) As such, their claims are not essentially claims for money damages, and they sound in equity. Therefore, we cannot agree with the trial court that the Court of Claims is vested with exclusive jurisdiction in this matter.

**“[H]istorically, the distinction between legal and equitable claims for restitution depended on whether the plaintiff could assert ‘title or right to possession’ in particular funds or other property. \* \* \* [A] legal restitution claim [is] a claim in which the plaintiff ‘could not assert title or right to possession of particular property, but in which nevertheless he might be able to show just grounds for recovering money to pay for some benefit the defendant had received from him.’ \* \* \* By contrast, an equitable restitution claim [is] one in which ‘money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant’s possession.’”** *Id.* at 152-153. (Internal citations omitted.)

{¶ 17} Here, appellants assert title or a right to possession of particular “property,” i.e., the funds they were entitled to as permanently injured workers in Ohio that they believe the Bureau has kept from them. Under Civ.R. 12, they have made a case in equity such that exclusive jurisdiction does not reside with the Court of Claims. The trial court incorrectly decided



that it lacked subject matter jurisdiction over appellants' claims.

{¶ 18} While it is true that claims based on a LSA made pursuant to R.C. 4123.64(A) are claims against the State for money due under a contract and not claims for equitable restitution, appellants have made no such claims in their complaint. They seek declaratory judgment, injunctive relief, and finally, equitable disgorgement of property they believe is rightfully theirs. Appellants' claims sound in equity. The trial court erred in granting the Bureau's motion to dismiss.

Judgment reversed. This matter is remanded to the trial court for further proceedings consistent with the opinion.

It is ordered that appellants recover from appellees 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.

MARY EILEEN KILBANE, PRESIDING JUDGE

CHRISTINE T. McMONAGLE, J., CONCURS;  
MARY J. BOYLE, J., DISSENTS (SEE SEPARATE DISSENTING  
OPINION)

MARY J. BOYLE, J., DISSENTING:

{¶ 19} I respectfully disagree with the majority and would find that appellants' claims herein against the state sound in contract and not equity. Thus, I agree with the trial court in its application of the very recent Ohio Supreme Court case of *Cristino v. Ohio Bur. of Workers Comp.*, 118 Ohio St.3d 151, 2008-Ohio-2013, 886 N.E.2d 857. Appellants' claims, therefore, must be brought in the Ohio Court of Claims. Thus, I would affirm the trial court's decision that it lacks subject matter jurisdiction.