

STATE OF OHIO)	IN THE COURT OF APPEALS
)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT)	
CARRIAGE INSURANCE AGENCY, INC., et al.		C.A. No. 27259
Appellants		
v.		APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV 2013-04-2221
OHIO FARMERS INS. CO., et al.		
Appellees		

DECISION AND JOURNAL ENTRY

Dated: June 30, 2015

HENSAL, Presiding Judge.

{¶1} Carriage Insurance Agency, Inc., doing business as Carriage Group, appeals a judgment of the Summit County Court of Common Pleas that dismissed its claims against Ohio Farmers Insurance Co. and others for failure to exhaust administrative remedies. For the following reasons, this Court affirms in part and reverses in part.

I.

{¶2} In 2009, Carriage Group entered into an agency agreement with Ohio Farmers to sell Ohio Farmers' insurance products to potential customers. In exchange, Carriage Group received commissions on its sales and a share of Ohio Farmers' profits. The agreement continued until 2012 when Ohio Farmers decided to end their business relationship. According to Carriage Group, Ohio Farmers' representatives persuaded its management to execute a mutual termination agreement.

{¶3} In April 2013, Carriage Group sued Ohio Farmers, its president, and several John Does, alleging, among other things, that they had breached the agency agreement. Carriage Group later amended its complaint to assert a number of tort and contract claims against Ohio Farmers, its directors, and its officers. Ohio Farmers moved to dismiss the amended complaint, arguing that Carriage Group had failed to state a claim under Civil Rule 12(B)(6) and failed to exhaust its administrative remedies. The trial court dismissed Carriage Group's claims over its opposition, concluding that it had not exhausted its administrative remedies under Revised Code Section 3905.50. Carriage Group has appealed, assigning as error that the trial court incorrectly granted Ohio Farmers' motion to dismiss.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN GRANTING APPELLEE'S MOTION TO DISMISS BASED ON FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES WHERE THE COMPLAINT SETS FORTH CAUSES OF ACTION THAT DO NOT ARISE DIRECTLY AND SOLELY OUT OF THE TERMINATION OF THE AGENCY AGREEMENT AND OVER WHICH THE DEPARTMENT OF INSURANCE HAS NO JURISDICTION.

{¶4} Carriage Group argues that the trial court incorrectly dismissed its tortious-interference-with-a-business-relationship claims for failure to exhaust administrative remedies. In *Nemazee v. Mt. Sinai Medical Center*, 56 Ohio St.3d 109 (1990), the Ohio Supreme Court explained the doctrine of exhaustion of administrative remedies:

In Ohio, the exhaustion-of-administrative-remedies doctrine is a court-made rule of judicial economy. * * * [E]xhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review. The purpose of the doctrine * * * is to permit an administrative agency to apply its special expertise * * * and in developing a factual record without premature judicial intervention. The judicial deference afforded administrative agencies is

to * * * prepare the way, if the litigation should take its ultimate course, for a more informed and precise determination by the Court * * *.

(Internal quotations and citations omitted) *Id.* at 111-112. This Court reviews the dismissal of a cause of action for failure to exhaust administrative remedies de novo. *San Allen, Inc. v. Buehrer*, 8th Dist. Cuyahoga No. 99786, 2014-Ohio-2071, ¶ 63.

{¶5} The trial court dismissed Carriage Group’s claims because it determined that the agency had an administrative remedy available to it under Revised Code Section 3905.50 that it did not pursue. Under Section 3905.50(E), “[a]n agent aggrieved by the conduct of an insurer in its breach or termination of a contract of agency may file with the superintendent a request that the superintendent review the action to determine whether it is in accord with this section and the lawful provisions of the contract of agency * * *.” This Court has held that Section 3905.50(E) requires an insurance agency to appeal the termination of its agency agreement to the Superintendent of Insurance before filing a court action. *Pappas & Assocs. Agency, Inc. v. State Auto. Mut. Ins. Co.*, 9th Dist. Summit No. 18458, 1998 WL 15605, *2 (Jan. 7, 1998) (“Because of the doctrine of administrative exhaustion, Pappas may not by-pass administrative review and file his claim directly in the common pleas court.”).

{¶6} Carriage Group argues that its tortious interference claims are not subject to Section 3950.05 because they are unrelated to the parties’ agency agreement. It argues that, since the claims arise out of what Ohio Farmers did after the agreement ended, they are not subject to the exhaustion requirement. In its amended complaint, Carriage Group sued Ohio Farmers, its officers, and its directors for “[n]egligently or intentionally acquiring Plaintiff Carriage Group’s current clients and prospective clients,” “[n]egligently or intentionally interfering with Plaintiff Carriage Group’s business relationships with current clients and prospective clients,” “[n]egligently or intentionally interfering with Plaintiff Carriage Group’s

business advantage in the market,” and “[n]egligently or intentionally disclos[ing] confidential information to other agencies for purposes of interfering with Plaintiff Carriage Group’s business advantage in the market, converting potential clients and existing clients.”

{¶7} According to Carriage Group, the basis of its tortious interference claims is that, after the parties’ relationship ended, Ohio Farmers contacted other insurance agencies and told them that it had terminated its contract with Carriage Group. Ohio Farmers also contacted Carriage Group’s clients who had policies with Ohio Farmers and suggested to them that Carriage Group would no longer be able to meet their insurance needs. Carriage Group contends these communications “placed [it] at a competitive disadvantage in the insurance market with other agencies, thus costing Carriage present and future commissions, and profit sharing as to those clients.”

{¶8} Ohio Farmers asserts that it had obligations under the agency agreement even after the agreement ended. It, therefore, argues that Carriage Group’s claims are related to the agency agreement and subject to Section 3905.50, even if the alleged conduct occurred after the agreement ended.

{¶9} The agency agreement provided that:

Upon termination of this Agreement, [Ohio Farmers] shall issue notices of non-renewal as follows: * * * [Ohio Farmers] shall issue a notice of non-renewal to policyholders, with notice of such renewal rights, as imposed by law or policy provision. * * * [Ohio Farmers] reserves the right to issue such notices of non-renewal as [it] may elect.

Upon review of the agreement, we conclude that, because Ohio Farmers was required to notify its policyholders after the agency agreement ended, Carriage Group’s claim that Ohio Farmers’ tortiously interfered with its business relationship with its clients is within the range of claims covered by Section 3905.50(E). Carriage Group’s claim goes to whether Ohio Farmers breached

the agency agreement by communicating more than was allowed under the notice-of-non-renewal provision. It, therefore, is within the range of issues subject to Section 3905.50(E)'s exhaustion requirement.

{¶10} Regarding Ohio Farmers' alleged communications to other insurance agencies, however, there is nothing in the agency agreement regarding such communications. We, therefore, conclude that, because Ohio Farmers allegedly told other insurance agencies about the termination of the agency agreement after the agreement ended and such communications were not addressed in the agency agreement, the trial court incorrectly determined that Carriage Group's "interfer[ence] with Plaintiff Carriage Group's business advantage in the market" claims are subject to Section 3950.05(E).

{¶11} Ohio Farmers argues that this Court should affirm the trial court's decision because Carriage Group did not sufficiently plead its claims. In its motion to dismiss, Ohio Farmers argued both that Carriage Group's complaint should be dismissed because it failed to exhaust administrative remedies and because it failed to state a claim under Civil Rule 12(B)(6). The trial court, however, based its decision exclusively on failure to exhaust.

{¶12} "This Court's role on appeal is to review the trial court's decision and determine whether it is supported by the record. Because this Court acts as a reviewing court, it should not consider for the first time on appeal issues that the trial court did not decide." *Allen v. Bennett*, 9th Dist. Summit Nos. 23570, 23573, 23576, 2007-Ohio-5411, ¶ 21. "If this Court were to reach issues that had not been addressed by the trial court in the first instance, it would be usurping the role of the trial court and exceeding its authority on appeal." *Id.* Accordingly, Carriage Group's assignment of error is sustained in part and overruled in part, and this matter is remanded to the

trial court to analyze Carriage Group's remaining tortious-interference-with-a-business-relationship claims under Civil Rule 12(B)(6).

III.

{¶13} The trial court incorrectly concluded that Carriage Group had failed to exhaust its administrative remedies for all of its tortious interference claims. The judgment of the Summit County Court of Common Pleas is affirmed in part and reversed in part, and this matter is remanded for proceedings consistent with this decision.

Judgment affirmed in part,
reversed in part,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to both parties.

JENNIFER HENSAL
FOR THE COURT

MOORE, J.
CONCURS.

CARR, J.
CONCURRING IN PART, AND DISSENTING IN PART.

{¶14} There were two distinct issues before the trial court: (1) whether Carriage Group had pleaded valid claims; and, if so (2) whether Carriage Group had exhausted its administrative remedies, if any, prior to filing its claims in the common pleas court. Both the majority and Ohio Farmers assert that the trial court did not address the Civ.R. 12(B)(6) branch of Ohio Farmers' motion to dismiss, instead basing its granting of the motion on Carriage Group's failure to exhaust administrative remedies. I read the trial court's judgment entry differently, however, as the trial court explicitly determined that "Plaintiffs' Amended Complaint sets forth claims for tort[i]ous interference with a business relationship and fraud." This makes sense, as the trial court was required to determine the existence of the claims prior to considering whether another tribunal must first consider and dispose of them. Accordingly, I would conclude that the trial court considered Ohio Farmers' motion in toto and concluded that Carriage Group's complaint sufficiently stated claims upon which relief can be granted pursuant to Civ.R. 12(B)(6), thereby overruling Ohio Farmers' motion to dismiss for failure to state a claim.

{¶15} As Ohio Farmers submits that the trial court did not rule on its Civ.R. 12(B)(6) argument, it asks this Court to address it in the first instance and affirm the trial court on that basis. Ohio Farmers cannot prevail on this argument because the trial court did in fact rule on its Civ.R. 12(B)(6) argument and denied it as stated previously. Moreover, Ohio Farmers was the aggrieved party in regard to that issue below, and the trial court's dismissal of the action on

alternative grounds rendered the judgment final and appealable. Ohio Farmers, therefore, was required to file a notice of cross-appeal. Accordingly, Ohio Farmers has not properly preserved the issue of the trial court's denial of its motion to dismiss pursuant to Civ.R. 12(B)(6) for appeal.

{¶16} With regard to the sole assignment of error, I agree that the trial court incorrectly determined that Carriage Group's tortious interference claims relating to Ohio Farmers' communications to other insurance agencies after the termination of the parties' agreement did not fall within the purview of R.C. 3905.50(E) so as to be subject to administrative review prior to court involvement. I disagree with the majority's conclusion, however, that Carriage Group's tortious interference claims relating to Ohio Farmers' communications with Carriage Group's clients were subject to administrative review pursuant to R.C. 3905.50(E) and, therefore, barred for failure to exhaust administrative remedies.

{¶17} R.C. 3905.50(E) prescribes administrative review with regard to an insurer's breach or termination of its contract with an agent. Carriage Group alleged claims for breach of contract, separate and distinct from its claims for tortious interference. The majority reasons that, because Ohio Farmers was obligated to fulfill certain duties (here, the issuance of notices to policyholders) upon termination of the contract, Carriage Group's tortious interference claims surrounding the scope of the notices were actually breach of contract claims and, therefore, within the purview of R.C. 3905.50(E). I disagree. With respect to the termination of a contract, I believe that the statute requires administrative review only in cases where the agent has alleged that the insurer improperly terminated the contract. *Nurse & Griffin Ins. Agency, Inc. v. Erie Ins. Group*, 7th Dist. Mahoning No. 98 CA 110, 1999 WL 979231 (Oct. 25, 1999), *3-6 (recognizing

the inapplicability of R.C. 3905.50(E) to claims which do not implicate the validity of the termination of the contract itself as lying outside the area of expertise of the superintendent).

{¶18} Carriage Group has not alleged wrongful termination of the contract in its tortious interference claims. Irrespective of the propriety of the termination of the contract, Carriage Group takes issue with Ohio Farmers' behavior after termination of the contract, specifically Ohio Farmers' actions allegedly taken to interfere with Carriage Group's ongoing and future business prospects. Accordingly, I would conclude that the trial court erred by dismissing all of Carriage Group's tortious interference claims, as none implicated the propriety of the termination of the contract as required by R.C. 3905.50(E). I would sustain Carriage Group's sole assignment of error, reverse the trial court's judgment, and remand for further proceedings.

APPEARANCES:

WILLIAM J. PRICE and KIMBERLY C. YOUNG, Attorneys at Law, for Appellants.

JOHN J. HAGGERTY, Attorney at Law, for Appellees.