

IN THE SUPREME COURT OF OHIO

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| Donald E. Wood, | : | |
| | : | |
| Appellant, | : | On Appeal from the Franklin |
| | : | County Court of Appeals, |
| v. | : | Tenth Appellate District |
| | : | |
| Division of Oil and Gas Resources | : | Court of Appeals |
| Management, et al., | : | Case No. 18AP-470 |
| | : | |
| Appellees. | : | |

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT DONALD E. WOOD**

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***EXPLANATION OF WHY THIS IS A CASE OF PUBLIC
OR GREAT GENERAL INTEREST AND INVOLVES
A SUBSTANTIAL CONSTITUTIONAL QUESTION***

This cause presents the issue of whether the Ohio Court of Claims has exclusive, original jurisdiction to hear and determine a class action lawsuit brought by commercial oil and gas well owners seeking declaratory relief and compensatory damages resulting from the receipt of unlawful and unreasonable administrative [chief's] orders issued by the Division of Oil and Gas Resources Management of the Ohio Department of Natural Resources of the State of Ohio.

This is a case of public interest because it examines the power of the Division of Oil and Gas Resources Management to issue large numbers of administrative orders, in this case known as chief's orders, ordering oil and gas well owners to immediately suspend the operation of their businesses and the proper venue to seek redress for damages arising from the issuance of those orders.

This is a case of great general interest because it examines the issue of the proper venue for certification of a class of recipients of administrative orders issued by a state agency in violation of relevant provisions of the Ohio Revised Code.

This is a case involving a substantial constitutional question because the administrative orders issued by the state agency were issued without the procedural due process safeguards of notice and opportunity for a hearing as guaranteed by the Ohio Constitution and the United States Constitution.

In this case, the court of appeals affirmed the decision of the Court of Claims when it dismissed plaintiff(s)' complaint because the complaint failed to allege that the plaintiff(s) were

“damaged monetarily.” The court of appeals held that a prayer for compensatory damages in the complaint is not sufficient to invoke the jurisdiction of the Court of Claims.

Appellant argues that the decision of the court of appeals is contrary to the plain language contained in Ohio Revised Code §2743.03(A)(1) which clearly states that the Court of Claims has exclusive, original jurisdiction of all civil actions against the state. *Id.*

The decision of the court of appeals is also contrary to the decision of the Ohio Supreme Court in the case of *Cirino v. Ohio Bureau of Workers’ Comp.*, 153 Ohio St.3d 333 (2018), in which the Court clearly states that, “the Court of Claims has exclusive jurisdiction over many suits against state entities [sic].” *Id.*

This case is a class action lawsuit against a state entity. It seeks both legal and equitable relief. It seeks equitable relief in the form of adjudication of a class of some eighty (80) administrative [chief’s] orders issued to oil and gas well owners by the Chief of the Division of Oil and Gas Resources Management and whether those orders are unlawful and unreasonable. It seeks legal relief in the form of compensatory damages incurred by members of the class as a result of their compliance with those orders.

The Division of Oil and Gas Resources Management of the Ohio Department of Natural Resources is a state entity. That entity issued unlawful and unreasonable administrative orders to approximately eighty (80) oil and gas well owners operating in the state of Ohio. Those orders stated that the owners must “immediately suspend” their operations and provide a surety or cash bond in lieu of a financial statement as proof of financial responsibility pursuant to Ohio Revised Code §1509.07(B). It is reasonable to conclude that many of the owners suffered money damages as a result of the issuance of those unlawful and unreasonable orders.

A prayer for compensatory damages is sufficient to invoke the jurisdiction of the Court of Claims when it is accompanied by evidence that provides a reasonable basis to conclude that the plaintiff(s) have suffered money damages as a result of compliance with unlawful and unreasonable administrative orders.

There is no provision in the civil rules and the rules of the Court of Claims that requires a plaintiff to plead specific facts with regard to the type of damages incurred by the plaintiff(s), or that require the plaintiff(s) to specify the amount of the damages.

This is a case of first impression. Ohio Revised Code §1509.36 gives the recipient of a chief's order the right to "appeal to the courts to protect and preserve those rights." *Id.* Paragraph twelve of that Code Section states, "[T]he order of the commission is final unless vacated by the court of common pleas of Franklin county in an appeal as provided for in section 1509.37 of the Revised Code. Sections 1509.01 to 1509.37 of the Revised Code, providing for appeals relating to orders by the chief or by the commission, or relating to rules adopted by the chief, do not constitute the exclusive procedure that any person who believes the person's rights to be unlawfully affected by those sections or any official action taken thereunder must pursue in order to protect and preserve those rights, nor do those sections constitute a procedure that that person must pursue before that person may lawfully appeal to the courts to protect and preserve those rights. *Id.*

The foregoing code section states that the well owner may appeal a chief's order to the "courts," but the code section does not specifically identify the "court" in which an appeal should be filed. Appellant argues that the Court of Claims is the proper venue for an appeal to the courts when an administrative order inflicts money damages on the recipient(s) of that

order. The Court of Claims is the only court in which the plaintiff(s) may recover compensatory damages against a state entity.

In sum, this is a case in which a state administrative agency decided to ignore the plain language of the Ohio Revised Code and prior case precedent and engage in a pattern of conduct which inflicted economic harm on a large number of oil and gas well owners in the state of Ohio. The Court of Claims is the only venue in which the Plaintiff(s) can obtain both equitable and legal relief in the form of a declaratory judgment, certification of a class, and compensatory damages.

The administrative orders were also issued without the procedural due process safeguards of prior notice and opportunity for a hearing in violation of Article I of the Ohio Constitution and the Fourteenth Amendment of the U.S. Constitution.

Appellant respectfully requests the Court grant jurisdiction to hear this case to review the erroneous decision by the court of appeals and to clarify the issue of the proper venue for cases involving review of chief's orders issued by the Division of Oil and Gas Resources Management of the State of Ohio.

STATEMENT OF THE CASE AND FACTS

The court of appeals erred in affirming the decision of the Court of Claims to dismiss the plaintiff(s) case for lack of subject-matter jurisdiction. Subject-matter jurisdiction of the Court of Claims is conferred by statute. The statute raises a presumption that the proper venue for a class action against a state agency or entity seeking both equitable and legal relief is the Court of Claims. The facts that gave rise to the cause of action in this case are consistent with the

intent of the Ohio General Assembly to waive immunity and vest one court with the authority to adjudicate a claim for money damages against the State of Ohio.

In this case, it is unclear whether the Court of Claims dismissed Appellant's complaint under Civil Rule 12(B)(6) or Civil Rule 12(B)(1). On appeal, the Tenth District Court of Appeals stated in its opinion that, "[H]ere, Wood's complaint does not contain a claim for money damages and, as such, the Court of Claims lacks subject-matter jurisdiction over the complaint." *Wood v. Division of Oil and Gas Resources Management, et al.*, 18AP-470, Tenth District Ct. of Appeals, 12-11-2018, Paragraph 18. Based on the foregoing statement, the Court of Appeals affirmed the decision of the Court of Claims to dismiss Appellant's complaint.

Both the Court of Claims and the appeals court take the position that a complaint must contain a "factual allegation that he [Wood] or the proposed class members were damaged monetarily" to invoke the jurisdiction of the Court of Claims. *Id.* The appeals court acknowledges that the prayer for relief contains a prayer for compensatory damages but it relies on its decision in the *Windsor House, Inc.* case for the proposition that a prayer is insufficient to invoke the jurisdiction of the Court of Claims. *Windsor House, Inc. v. Ohio Dept. of Job and Family Services*, 10th Dist. Ct. of Appeals, 09AP-584, 2010 WL323269, Unreported, 1-28-2010. The appeals court's reliance on *Windsor House* is misplaced.

The *Windsor House* case is a 2010 decision by the appeals court. The case was a dismissal based on the running of a two-year statute of limitations and the issue of whether the savings clause applied beyond the two-year limitation. The appeals court affirmed the dismissal on the basis that the savings clause did not toll the two-year statute of limitations. The court's

statements regarding the sufficiency of the complaint were not determinative in that case. *Id.*, at Paragraph 13.

In this case, there is no statute of limitations or savings clause. The appeals court failed to consider the entire record on appeal. Plaintiff's complaint included a copy of the chief's order issued by the Division of Oil and Gas Resources Management. That order states that the well owner must "immediately suspend" all oil and gas operations. It also requires the owner to post a Fifteen Thousand Dollar (\$15,000) surety bond or cash prior to resuming operations. In the alternative, the order requires the well owner to convey their wells to another owner or to plug and abandon all of their wells.

Compensatory damages are by definition an amount of money awarded to a person for loss or injury. The administrative order(s) issued to the Plaintiff(s) in this case instructed them to immediately suspend their production of oil and gas and to provide a surety or cash bond prior to resuming operations. If one is ordered to suspend production of oil and gas then one has lost revenue that otherwise would have been earned during the period of the suspension. If one is ordered to post a surety or cash bond then it is reasonable to infer a cost associated with the furnishing of these instruments.

Civil Rule 10(C) states, "[A] copy of any written instrument attached to a pleading is a part of the pleading for all purposes." *Id.* The fact that an administrative or chief's order requires a business to immediately suspend its operations and provide a surety bond, or dispose of its assets provides sufficient facts for the court to reasonably conclude that there are facts supporting the plaintiff's prayer for compensatory damages. In the alternative, it creates

a rebuttable presumption that the plaintiff(s) have incurred money damages as a result of compliance with the unlawful and unreasonable orders.

The Record on appeal also includes the Defendant's Motion to Dismiss and the Plaintiff-Appellant's Memorandum in Opposition to Defendant's Motion to Dismiss. In the Memorandum, the Plaintiff(s) provides specific facts as to the cost to comply with the orders issued to members of the proposed class. Specifically, Plaintiff(s) stated that a surety bond costs the owner \$750.00 per year or requires the owner to deposit Fifteen Thousand Dollars (\$15,000) with the Defendant. The facts contained in the Plaintiff's Memorandum provide the court with additional and sufficient facts as to the monetary costs of complying with the chief's order(s). This combined with the fact that Plaintiff(s) are seeking to certify a class action against a state agency and are seeking compensation for damages resulting from the issuance of unlawful and unreasonable administrative [chief's] orders is sufficient to invoke the jurisdiction of the Court of Claims.

In support of its position on these issues, the appellant presents the following argument.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: The Ohio Court of Claims has exclusive, original jurisdiction to hear and determine a class action lawsuit brought by commercial oil and gas well owners seeking declaratory relief and compensatory damages resulting from the receipt of unlawful and unreasonable administrative [chief's] orders issued by the Division of Oil and Gas Resources Management of the Ohio Department of Natural Resources of the State of Ohio.

Appellant's First Proposition of Law is supported by the Ohio Supreme Court's recent decision in *Cirino v. Ohio Bureau of Workers' Compensation*, 153 Ohio St.3d 333 (2018). In that decision the Court stated, "[T]he Court of Claims has "exclusive original jurisdiction of all civil

actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code.”” *Cirino v. Ohio Bureau of Workers’ Compensation*, 153 Ohio St.3d 333, 2018-Ohio-2665, Paragraph 19. “Suits for money damages against the state, however, fall within R.C. 2743.02(A)’s waiver of immunity and therefore within the exclusive, original jurisdiction of the Court of Claims.” *Id.*, citing *Boggs v. State*, 8 Ohio St.3d 15, 16-17, 455 N.E.2d 1286 (1983). “Finally, suits involving both equitable and legal claims must be brought in the Court of Claims. Under R.C. 2743.03(A)(2), when a plaintiff pursuing a claim permitted by the waiver of immunity also presents a claim for “declaratory judgment, injunctive relief, or other equitable relief against the state that arises out of the same circumstances” the Court of Claims has “exclusive, original jurisdiction to hear and determine that claim,” too.” *Cirino, supra at Paragraph 20*. The compensatory damages sought in this case arise directly from compliance with unlawful and unreasonable chief’s orders issued to members of the proposed class.

Ohio Revised Code §1509.37 provides the right of a recipient of a chief’s order issued by the Chief of the Division of Oil and Gas Resources of the State of Ohio to bring an action in court to determine whether the order is both lawful and reasonable. The statute does not specify the venue for such an action. The Appellant argues that the Court of Claims is the proper venue for an action in which the plaintiff(s) are seeking a declaratory judgment, certification of a class of plaintiffs, and compensatory damages resulting from compliance with the order(s).

When considering a motion to dismiss for failure to state a claim upon which relief can be granted, the court must presume all factual allegations contained in the complaint to be true and must make all reasonable inferences in favor of the non-moving party. As long as there is a set of facts consistent with the plaintiff’s complaint, which would allow recovery, the court may

not grant a defendant's motion to dismiss. *State ex rel. V.K.B. v. Smith*, 138 Ohio St.3d 84 (2013).

In this case, Appellant(s) received administrative orders requiring them to immediately suspend their production of oil and gas and to provide a cash or surety bond prior to resuming production. For the purpose of a Civil Rule 12(B) review, the court must assume that members of the class complied with the order(s) by suspending their production of oil and gas and then by supplying a cash or surety bond, or in the alternative that they disposed of their wells. It is reasonable to infer that the recipients of these orders incurred money damages as a result of these actions. The court must also assume that the chief's orders are unlawful and unreasonable. The plaintiff(s) are entitled to compensation for the damages incurred as a result of compliance with those unlawful and unreasonable orders. That compensation may only be awarded against the State of Ohio in the Court of Claims.

The Chief of the Division of Oil and Gas Resources Management has been engaged in the practice of administrative rulemaking through the issuance of unlawful and unreasonable chief's orders since the year 2015. Specifically, he adopted a policy of refusing to accept financial statements in lieu of surety bond. Appellant and members of the proposed class have provided proof of financial responsibility by providing a financial statement since 1986 pursuant to O.R.C. §1509.07(B). The orders issued by the Chief in this case violate O.R.C. §1509.07(B). The Appellant(s) seek both a declaratory judgment and money damages resulting from compliance with these orders. The fact that the chief issued some eighty (80) of these orders requires the Appellant(s) to proceed as a class to avoid the prohibitive costs associated with proceeding individually and the duplicative nature of proceeding with eighty individual cases.

The Appellant(s) seek class action status, declaratory relief and money damages as compensation for the loss of revenues from production of oil and gas. The Appellant(s) also seek money damages for the cost to provide a surety or cash bond in lieu of a financial statement and such other relief as the court may deem appropriate.

CONCLUSION

For the reasons discussed above, this case involves matters of public interest and great general interest and a substantial constitutional question. The Appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2019, a copy of the foregoing Memorandum in Support of Jurisdiction was sent by ordinary U.S. Mail to Christopher P. Conomy, Esq., Office of Ohio Attorney General, Court of Claims Defense, 150 East Gay Street, 18th Floor, Columbus, Ohio 43215-3130.

/s/Donald E Wood, Esq.