

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

In the Matter of the Appeal of Hollingsworth Media Group, Inc., etc.,  (Appellant).	: : :	No. 09AP-724 (M.C. No. 2007 EVA 60344)  (ACCELERATED CALENDAR)
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D E C I S I O N

Rendered on December 10, 2009

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*Duncan Law Firm, LLC, and Brian K. Duncan*, for appellant.

*Richard Cordray, Attorney General, Paul A. Russell, and Gregory S. Severance*, for appellee.

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APPEAL from the Franklin County Municipal Court,  
Environmental Division.

BROWN, J.

{¶1} Hollingsworth Media Group, Inc., an Ohio corporation, appellant, appeals from a judgment of the Franklin County Municipal Court, Environmental Division, in which the court granted the motion to dismiss for lack of subject-matter jurisdiction filed by the Ohio Department of Transportation ("ODOT"), appellee.

{¶2} Many of the underlying facts are not pertinent to the legal issue on appeal. On September 29, 1997, the Allen County Building Department issued a permit allowing appellant the right to construct a billboard on certain premises located in Allen County,

Ohio. Appellant began work erecting a billboard on the premises, but did not complete the erection thereof.

{¶3} On September 16, 2004, the state of Ohio assumed jurisdiction over billboards and advertising devices pursuant to R.C. 5516.062. On March 7, 2006, ODOT issued appellant a notice indicating that it needed to obtain a permit for the billboard. On October 4, 2006, appellant filed applications for two billboards with ODOT. ODOT denied the applications on February 12, 2007. Appellant filed a notice of appeal, and an administrative appeal was held.

{¶4} On July 15, 2007, a hearing examiner issued a report and recommendation recommending that the director deny the appeal. Appellant filed objections to the report and recommendation. The director of ODOT adopted the hearing officer's report and recommendation on October 31, 2007.

{¶5} On November 13, 2007, appellant filed a notice of appeal with ODOT and the Franklin County Municipal Court, Environmental Division. On November 30, 2007, ODOT filed a motion to dismiss appellant's appeal, pursuant to Civ.R. 12(B)(1), arguing the municipal court lacked subject-matter jurisdiction. Appellant filed a memorandum contra December 4, 2007. ODOT then filed a reply to appellant's memorandum contra in April 2008. On April 3, 2008, appellant filed a motion to strike ODOT's reply as being untimely filed.

{¶6} On June 26, 2009, the trial court issued a judgment granting ODOT's motion to dismiss, but did not specifically address appellant's motion to strike. Appellant appeals the trial court's judgment, asserting the following assignments of error:

[I.] The trial court erred in granting Appellee's motion to dismiss because the Environmental Division of the Franklin County Municipal Court has concurrent jurisdiction with the Franklin County Court of Common Pleas to review a final order from the Ohio Department of Transportation regarding a state regulation.

[II.] The Trial Court erred when it granted Appellee's motion to dismiss because the trial court failed to rule on Appellant's Motion to Strike Appellee's untimely Reply to Appellant's Memorandum Contra.

[III.] The Trial Court erred when it granted Appellee's motion to dismiss because it violated Appellant's right to due process of law.

{¶7} In appellant's first assignment of error, appellant argues that the trial court erred when it dismissed its complaint based upon lack of subject-matter jurisdiction pursuant to Civ.R. 12(B)(1). Appellate review of a trial court's decision to dismiss a case, pursuant to Civ.R. 12(B)(1), is de novo. *Crestmont Cleveland Partnership v. Ohio Dept. of Health* (2000), 139 Ohio App.3d 928, 936. De novo review means that we apply the same standards as the trial court. *GNFH, Inc. v. W. Am. Ins. Co.*, 172 Ohio App.3d 127, 2007-Ohio-2722, ¶16.

{¶8} To dismiss a complaint under Civ.R. 12(B)(1), we must determine whether a plaintiff has alleged any cause of action that the court has authority to decide. *Crestmont* at 936. Furthermore, when a trial court determines its own jurisdiction, it has authority to consider any pertinent evidentiary materials. *Nemazee v. Mt. Sinai Med. Ctr.* (1990), 56 Ohio St.3d 109, 111, fn.3. Thus, in determining whether plaintiff has alleged a cause of action sufficient to withstand a Civ.R. 12(B)(1) motion to dismiss, a court is not confined to the allegations of the complaint. *Southgate Dev. Corp. v. Columbia Gas Transmission Corp.* (1976), 48 Ohio St.2d 211, paragraph one of the syllabus.

{¶9} In the present case, the municipal court found it did not have subject-matter jurisdiction over the matter. In so finding, the trial court first looked to R.C. 119.12, which provides that "[a]ny party adversely affected by any order of an agency issued pursuant to an adjudication \* \* \* 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." Because appellant's business is located in Franklin County, the court found Franklin County Court of Common Pleas had subject-matter jurisdiction over the action.

{¶10} However, appellant countered that the municipal court had concurrent jurisdiction with the common pleas court to hear the matter, based upon R.C. 1901.183(I). R.C. 1901.183, which is entitled "Additional jurisdiction of environmental division," grants the environmental division of a municipal court jurisdiction over:

[A]ny review or appeal of any final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality that relates to a local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation, in the same manner and to the same extent as in similar appeals in the court of common pleas.

R.C. 1901.183(I). The trial court concluded that R.C. 1901.183(I) granted it concurrent jurisdiction with the Franklin County Court of Common Pleas only in administrative appeals that relate to "local" regulations, and because the billboard in question was located in Allen County, and billboards are regulated by state statute, R.C. 1901.183 did not grant jurisdiction to the court.

{¶11} Appellant argues in its first assignment of error herein that the trial court, as the environmental division of the Franklin County Municipal Court, had jurisdiction pursuant to R.C. 1901.183(I). Appellant first asserts the trial court's finding that it had no

jurisdiction because the billboards were not located in Franklin County, and because the billboard locations were regulated by state statute, was not supported by law or any argument in ODOT's motion to dismiss. Appellant contends that the location of the billboard in question was irrelevant to the matter because the trial court, as the environmental division of the Franklin County Municipal Court, was explicitly afforded the opportunity, pursuant to R.C. 1901.183, to hear the matter because it has concurrent jurisdiction with the common pleas court. In essence, the crux of appellant's argument is that the municipal court improperly defined the word "local" in R.C. 1901.183(I). We disagree.

{¶12} In the construction of statutes, the purpose is to ascertain and give effect to the legislative intent, and it is well-settled that none of the language employed therein should be disregarded, and that all of the terms used should be given their usual and ordinary meaning and significance except where the law-making body has indicated that the language is not so used. *Weaver v. Edwin Shaw Hosp.*, 104 Ohio St.3d 390, 2004-Ohio-6549, ¶12, citing *Carter v. Youngstown Div. of Water* (1946), 146 Ohio St. 203, paragraph one of the syllabus. Courts must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged. *Id.* at ¶13, citing *Wachendorf v. Shaver* (1948), 149 Ohio St. 231, paragraph five of the syllabus. Significance and effect should, if possible, be accorded to every word, phrase, sentence and part of an act, and in the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given

their common, ordinary, and accepted meaning in the connection in which they are used. Id.

{¶13} In the present case, the trial court concluded that it did not have jurisdiction concurrent with the common pleas court over the current matter because ODOT's order did not "relate[ ] to a *local* \* \* \* code, ordinance, or regulation." R.C. 1901.183(l) (Emphasis added). "Local" is undefined by the statute, and we can find no case law offering general definitions thereof. The Supreme Court of Ohio has noted it often applies definitions from Black's Law Dictionary to determine the meaning of undefined statutory language. *State ex rel. Turner v. Eberlin*, 117 Ohio St.3d 381, 2008-Ohio-1117, ¶16, citing *State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register*, 116 Ohio St.3d 88, 2007-Ohio-5542, ¶30, and *State ex rel. Musial v. N. Olmsted*, 106 Ohio St.3d 459, 2005-Ohio-5521, ¶23-24. Black's Law Dictionary defines "local" as "belonging or confined to a particular place." Black's Law Dictionary (6 Ed.1990). "Local concern" is defined as one "exercised by a municipality in its proprietary capacity." Id. "Local law" is defined as one "which relates or operates over a particular locality instead of over the whole territory of the state." Id. We find these definitions helpful.

{¶14} As discussed above, we are required to presume the legislature used the word "local" purposefully and meant it to mean something. Consistent with Black's Law Dictionary and the trial court's definition, we find "local," within R.C. 1901.183(l), means the particular jurisdiction in which the municipal court sits. In the present case, "local" would encompass Franklin County. As the trial court reasoned, because the res at issue, the billboards, are not within the purview of local code, ordinance or regulation, and the state statute at issue, R.C. 5516.062, is not a local code, ordinance or regulation, R.C.

1901.183(l) does not confer the municipal court concurrent jurisdiction with the common pleas court over the matter. Therefore, we find the trial court properly determined that it lacked subject-matter jurisdiction in this case. For these reasons, appellant's first assignment of error is overruled.

{¶15} Appellant argues in its second assignment of error that the trial court erred when it granted ODOT's motion to dismiss because there was no case law set forth in ODOT's original motion to dismiss, and the trial court failed to rule on appellant's motion to strike ODOT's untimely reply to appellant's memorandum contra. Appellant asserts that ODOT failed to cite any of the law or arguments in its motion to dismiss, and the trial court ultimately relied upon arguments set forth in ODOT's untimely reply to appellant's memorandum contra. However, the trial court was not limited to the law and arguments raised by ODOT in its motion to dismiss. It is axiomatic that subject-matter jurisdiction cannot be waived and may be raised sua sponte by the trial court. *Nord Community Mental Health Ctr. v. Lorain Cty.* (1994), 93 Ohio App.3d 363, 365. Here, the lower court was required to dismiss the appeal for lack of subject-matter jurisdiction whenever it determined such jurisdiction was lacking, whether the argument was raised by ODOT or not. *Id.* Furthermore, appellant asserts the trial court erred when it failed to rule on its motion to strike appellant's untimely reply. It is true the trial court did not expressly rule on the motion. However, when a trial court fails to rule upon a pre-trial motion, it may be presumed that the court overruled it. *State ex rel. The V. Cos. v. Marshall*, 81 Ohio St.3d 467, 1998-Ohio-329, citing *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.*, 69 Ohio St.3d 217, 223, 1994-Ohio-92. See also *George Ford Constr., Inc. v. Hissong*, 9th Dist. No. 22756, 2006-Ohio-919, ¶12 (if a trial court fails to rule on a pending motion

prior to entering judgment, it will be presumed on appeal that the motion in question was implicitly denied). Thus, we presume the trial court denied the motion. Whether the trial court erred in denying the motion is immaterial to the underlying conclusion in this case, given, as explained above, the trial court was permitted to raise the issue of subject-matter jurisdiction sua sponte, regardless of the parties' filings. Therefore, appellant's second assignment of error is overruled.

{¶16} Appellant argues in its third assignment of error that the trial court erred when it granted appellee's motion to dismiss because it violated its right to due process of law. Appellant specifically contends the vague and equivocal nature of the language in R.C. 119.12 and 1901.183 denied it due process, as it was clear that it intended to file its notice with the appropriate common pleas court. Appellant also claims that the trial court ignored the fact that substantial compliance with a procedurally controlling statute allows an appeal to go forward despite a minor deviation, especially where all parties have notice.

{¶17} We disagree with appellant's propositions. Due process was afforded to appellant. Procedural due process requires notice and an opportunity to be heard. *Morrissey v. Brewer* (1972), 408 U.S. 471, 92 S.Ct. 2593; *State v. Hochhausler*, 76 Ohio St.3d 455, 1996-Ohio-374. Here, appellant does not dispute it received proper notice of the proceedings. Furthermore, despite appellant's claims, it was also afforded an opportunity to be heard. R.C. 119.12 is explicit in its terms that "[a]ny party adversely affected by any order of an agency issued pursuant to an adjudication \* \* \* 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." ODOT's decision and order also specifically

indicated in two separate paragraphs that R.C. 119.12 authorizes an appeal to the court of common pleas of the county where appellant's business is located. Appellant's business is located in Franklin County. The only uncertainty arose when appellant sought to construe R.C. 1901.183(l) to render its filing in the wrong court proper. Therefore, we find appellant had notice and a full opportunity to be heard.

{¶18} In addition, appellant claims that the trial court ignored the fact that substantial compliance with a procedurally controlling statute allows an appeal to go forward despite a minor deviation, especially where all parties have notice. Appellant cites no case law to support this proposition, and we find none. Indeed, the Supreme Court of Ohio has long held that an administrative appeal, the right to which is conferred by statute, can be perfected only in the mode prescribed by statute. *Zier v. Bur. of Unemployment Comp.* (1949), 151 Ohio St. 123, paragraph one of the syllabus. The exercise of the right conferred is conditioned upon compliance with the accompanying mandatory requirements. *Id.* In *Nibert v. Ohio Dept. of Rehab. & Corr.*, 84 Ohio St.3d 100, 1998-Ohio-506, the court specifically rejected the assertion that the administrative appeal, pursuant to R.C. 119.12, should be liberally construed and instead determined that the statute should be strictly applied, stating that " '[t]here is no need to liberally construe a statute whose meaning is unequivocal and definite.' " *Id.* at 102, quoting *Lake Hosp. Sys., Inc. v. Ohio Ins. Guar. Assn.* (1994), 69 Ohio St.3d 521, 525. The court further reasoned that the plain language of the statute enabled both courts and administrative agencies to effectuate expeditious appeals, as well as promoted procedural efficiency and a simplified administrative appeals system. *Id.* at 102-03. Thus, if a party fails to strictly comply with the requirements of R.C. 119.12, subject-matter jurisdiction is forfeited

and the administrative appeal must be dismissed. *Harrison v. Registrar, Bur. of Motor Vehicles*, 11th Dist. No. 2002-T-0095, 2003-Ohio-2546. See also *Smith v. Ohio Dept. of Commerce* (Aug. 21, 2001), 10th Dist. No. 00AP-1342 (the requirement that the notice of appeal be filed with the agency and a copy with the common pleas court is mandatory and jurisdictional). Here, the fact that the parties had notice of appellant's intent to appeal ODOT's order does not cure the jurisdictional defect, and "substantial compliance" fails to relieve appellant of the mandatory requirement that the appeal be filed in the court of common pleas. For these reasons, we find appellant was not denied due process. Therefore, appellant's third assignment of error is overruled.

{¶19} Accordingly, appellant's first, second, and third assignments of error are overruled, and the judgment of the Franklin County Municipal Court, Environmental Division, is affirmed.

*Judgment affirmed.*

FRENCH, P.J., and CONNOR, J., concur.

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