

IN THE COURT OF APPEALS OF OHIO  
THIRD APPELLATE DISTRICT  
AUGLAIZE COUNTY

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**ROBERTA A. STOLZENBURG,  
EXECUTRIX OF THE ESTATE OF  
LARRY STOLZENBURG,**

**APPELLANT/  
CROSS-APPELLEE,**

**CASE NO. 2-15-01**

**v.**

**OHIO DEPARTMENT OF JOB AND  
FAMILY SERVICES,**

**OPINION**

**APPELLEE/  
CROSS-APPELLANT.**

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**Appeal from Auglaize County Common Pleas Court  
Trial Court No. 2014 CV 0133**

**Judgment Reversed and Cause Remanded**

**Date of Decision: June 8, 2015**

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**APPEARANCES:**

*Paul E. Howell* for Appellant/Cross-Appellee

*Rebecca L. Thomas* for Appellee/Cross-Appellant

**PRESTON, J.**

{¶1} Appellant/cross-appellee, Roberta A. Stolzenburg (“Roberta”), executor of the estate of Larry Stolzenburg (“Larry”), and appellee/cross-appellant, the Ohio Department of Job and Family Services (“ODJFS”), appeal the December 30, 2014 judgment entry of the Auglaize County Court of Common Pleas dismissing the case after concluding that, based on R.C. 5160.31(C)(2), the matter does not raise a justiciable issue under Article IV, Section 4 of the Ohio Constitution. For the reasons that follow, we reverse.

{¶2} On March 10, 2014, while residing in a long-term care facility, Larry applied for Medicaid benefits with the Auglaize County Department of Job and Family Services (“Agency”). (State Hearing Record at 1, Doc. No. 13). Roberta remained at home. (*Id.*). The Agency approved Larry’s application with an 11.02-month period of “restricted coverage” based on a finding by the Agency that Larry made an “improper transfer” of resources. (*Id.*). Larry requested a state hearing under R.C. 5101.35(B), which resulted in a May 20, 2014 decision affirming the Agency’s decision. (*Id.* at 1-7). Larry appealed the State Hearing Decision to the ODJFS Director under R.C. 5101.35(C). (Administrative Hearing Record at 1, Doc. No. 13). An Administrative Appeal Decision was issued on June 17, 2014, affirming the State Hearing Decision. (*Id.* at 1-5).

{¶3} On July 15, 2014, Larry appealed the Administrative Appeal Decision to the common pleas court under R.C. 5101.35(E), 119.12, and 5160.31. (Doc. No. 1). Larry died on November 3, 2014, and, on December 18, 2014, the common pleas court substituted Roberta as the appellant under Civ.R. 25(A). (Doc. No. 32). The parties briefed the merits of the appeal. (See Doc. Nos. 26, 28, 30). However, on December 30, 2014, the common pleas court issued the judgment entry at issue in this case, dismissing the appeal for lack of justiciability and remanding to the Ohio Department of Medicaid (“ODM”) “for its review and determination as to whether it will enforce the decision of the ODJFS’ Bureau of State Hearings, or whether it will take action in favor of the recipient despite the contrary administrative decision.” (Doc. No. 36). On January 26, 2015, Roberta filed a notice of appeal. (Doc. No. 41). On February 4, 2015, ODJFS filed its notice of cross-appeal. (Doc. No. 52). Roberta raises three assignments of error, and ODJFS raises two assignments of error, all of which we consider together.<sup>1</sup>

#### **Roberta’s Assignment of Error No. I**

**The trial court erred in holding that the effect of R.C. 5160.31(C)(2) is to render the cause of action non-justiciable.**

#### **Roberta’s Assignment of Error No. II**

**The trial court erred when it held that R.C. 5160.31(C)(2) was unconstitutional.**

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<sup>1</sup> Amicus curiae ODM also filed a brief in this appeal.

**Roberta's Assignment of Error No. III**

**The trial court erred in directing Mrs. Stolzenburg to request a further ruling from Appellee.**

**ODJFS's Assignment of Error No. I**

**The lower court erred in holding that, in light of R.C. 5160.31(C)(2), a decision on the merits would be advisory and thus constitutionally improper.**

**ODJFS's Assignment of Error No. II**

**The lower court erred in remanding the matter to the Ohio Department of Medicaid for review and a determination.**

{¶4} The parties' assignments of error challenge the common pleas court's conclusion that R.C. 5160.31(C)(2) renders Roberta's appeal to the common pleas court non-justiciable.

{¶5} In essence, the common pleas court decided that, because the controversy is not justiciable, the common pleas court lacks jurisdiction under Ohio Constitution, Article IV, Section 4 over Roberta's appeal. *See Hirsch v. TRW, Inc.*, 8th Dist. Cuyahoga No. 83204, 2004-Ohio-1125, ¶ 12; *Rose v. Ohio Dept. of Job & Family Servs.*, 160 Ohio App.3d 581, 2005-Ohio-1804, ¶ 5, 12 (12th Dist.). This court reviews de novo a common pleas court's dismissal of an administrative appeal for lack of jurisdiction. *Johnson v. Ohio Dept. of Job & Family Servs.*, 8th Dist. Cuyahoga No. 98918, 2013-Ohio-1451, ¶ 7, citing *L & F Tavern, Inc. v. Ohio Liquor Control Comm.*, 10th Dist. Franklin No. 09AP-873,

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2010-Ohio-1025, ¶ 11; *Crawford v. United Dairy Farmers, Inc.*, 2d Dist. Montgomery No. 25786, 2013-Ohio-5047, ¶ 8, citing *Yu v. Zhang*, 175 Ohio App.3d 83, 2008-Ohio-400, ¶ 16 (2d Dist.). If an appellate court is required to engage in statutory interpretation to determine the extent of the common pleas court's jurisdiction, the appellate court also applies a de novo standard of review. *Estep v. Ohio Dept. of Job & Family Servs.*, 10th Dist. Franklin Nos. 12AP-438 and 12AP-490, 2013-Ohio-82, ¶ 11. "De novo review is independent and without deference to the [common pleas] court's judgment." *Hopkins v. Porter*, 3d Dist. Mercer No. 10-13-17, 2014-Ohio-757, ¶ 20, citing *City Rentals, Inc. v. Kesler*, 191 Ohio App.3d 474, 2010-Ohio-6264, ¶ 11 (3d Dist.).

{¶6} Ohio Constitution, Article IV, Section 4(B) provides: "The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law." "The review of proceedings of administrative officers and agencies authorized by Section 4(B), Article IV of the Ohio Constitution, contemplates quasi-judicial proceedings only." *Fortner v. Thomas*, 22 Ohio St.2d 13 (1970), paragraph one of the syllabus. According to the Supreme Court of Ohio's precedent, an administrative appeal to a court from a quasi-legislative proceeding or an otherwise non-justiciable case is not authorized under Ohio Constitution, Article IV, Section 4(B), notwithstanding a statute

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allowing the appeal. *White Consol. Industries v. Nichols*, 15 Ohio St.3d 7, 9-10, fn. 1 (1984), citing *Fortner* and *In re Appeal of Buckeye Power, Inc.*, 42 Ohio St.2d 508 (1975).

{¶7} “For a cause to be justiciable there must ‘exist a real controversy presenting issues which are ripe for judicial resolution and which will have a direct and immediate impact on the parties.’” *Langfan v. Carlton Gardens Co.*, 183 Ohio App.3d 260, 2009-Ohio-3318, ¶ 35 (3d Dist.), quoting *State ex rel. Keller v. Columbus*, 164 Ohio App.3d 648, 2005-Ohio-6500, ¶ 19. “Generally, a claim is not ripe if the claim rests upon ‘future events that may not occur as anticipated, or may not occur at all.’” *Lehman Bros. Holdings v. United Petroleum Marketing, L.L.C.*, 5th Dist. Stark No. 2012 CA 00060, 2013-Ohio-233, ¶ 44, quoting *Texas v. United States*, 523 U.S. 296, 300, 118 S.Ct. 1257 (1998). “[I]n all actions, there must be an ‘actual controvers[y] between parties legitimately affected by specific facts,’ such that the court can ‘render [a] judgment[ ] which can be carried into effect.’” *McQueen v. Dohoney*, 1st Dist. Hamilton No. C-130196, 2013-Ohio-2424, ¶ 13, quoting *Fortner* at 14.

{¶8} The common pleas court concluded that R.C. 5160.31(C)(2) renders Roberta’s administrative appeal non-justiciable. R.C. 5160.31 allows a medical assistance recipient to appeal, under R.C. 5101.35, “a decision regarding the recipient’s eligibility for a medical assistance program or services available to the

recipient under a medical assistance program.” R.C. 5160.31(A), (B)(2). R.C. 5101.35(E) “adopts the provisions in R.C. 119.12,” which “permits any party ‘adversely affected’ by an order of an agency issued pursuant to an adjudication to appeal the order to the court of common pleas.” *Johnson*, 2013-Ohio-1451, at ¶ 8, citing *Rose*, 2005-Ohio-1804, at ¶ 11. “A party is adversely affected for purposes of R.C. 119.12 when its rights, privileges, benefits, or pecuniary interests are the subject of the administrative adjudication, \* \* \* and the party has been, or likely will be, injured by the administrative order.” *Rose* at ¶ 11, citing *Blue Cross of Northeast Ohio v. Ratchford*, 21 Ohio App.3d 113, 114 (10th Dist.1984) and *Rollman & Sons Co. v. Hamilton Cty. Bd. of Revision*, 163 Ohio St. 363, 365 (1955). R.C. 5160.31(C) provides:

If a medical assistance recipient files an appeal as authorized by this section, the department of medicaid may do either or both of the following:

- (1) Take corrective action regarding the matter being appealed before a hearing decision regarding the matter is issued;
- (2) If a hearing decision, administrative appeal decision, or court ruling is against the recipient, take action in favor of the recipient despite the contrary decision or ruling, unless, in the case of a

court's ruling, the ruling prohibits the department from taking the action.

R.C. 5160.31(C)(1), (2).

{¶9} In reaching its decision that the matter is not justiciable, the common pleas court concluded:

Under the statutory scheme set up in R.C. 5160.31(C)(2), the ruling of the Court of Common Pleas is not binding upon [ODM] unless the court has specifically prohibited the department from taking the action. \* \* \* In effect, the court's ruling is an advisory opinion on a matter wherein the department may after the litigation amend its position more favorably to the applicant. \* \* \* In order to be "justiciable", \* \* \* [ODM] must first make its determination as to whether to enforce the decision of the ODJFS' Hearing Authority, or to modify such ruling so as to take action in favor of, or more in favor of, the medical assistance applicant or recipient. \* \* \* Since [ODM] may disagree with ODJFS, it must make its determination pursuant to R.C. §5160.31(C)(2) before the matter can be said to adversely affect the applicant or recipient. \* \* \* Whether seen as an advisory opinion, or merely a premature action brought before it is ripe, the statutory scheme of having [ODM] review the matter only



after the ODJFS litigation has completed its litigation through the trial and appellate courts and ultimately the Ohio Supreme Court violates the “justiciable” requirement of Article IV, §4. \* \* \* [T]he determination of the ODJFS’ Bureau of State Hearings decision does not adversely affect appellant unless [ODM] either takes action to enforce that order or takes action in favor of the recipient/medical assistance applicant.

(Doc. No. 36). On appeal to this court, the parties make similar arguments concerning why the common pleas court’s decision is erroneous. They argue that ODJFS’s decision adversely affects Roberta because it denies benefits to Larry and that the matter is ripe for review and the common pleas court would not be issuing an advisory opinion because either Roberta or the Agency would be bound by and subject to enforcement of an adverse decision. In its brief, ODJFS argues:

That one party might prevail and then later choose not to enforce its legal “win” has no effect on justiciability. If it did, virtually no dispute would be justiciable. \* \* \* [I]t is unhelpful to think of a prevailing party as being “bound” by a judgment (or part thereof). It is the *nonprevailing* party who is “bound.”

(Emphasis sic.) (ODJFS’s Brief at 5, 6).

{¶10} We hold that Roberta’s appeal to the common pleas court is justiciable and that the common pleas court erred by dismissing the appeal for lack of justiciability. Roberta’s appeal presents an actual controversy based on specific facts. That is, Larry, while residing in a long-term care facility, applied for Medicaid benefits. The Agency approved his application but applied a period of restricted coverage based on the Agency’s determination that Larry made an “improper transfer” of resources. ODJFS affirmed the Agency’s decision. On appeal to the common pleas court, Roberta and ODJFS disagree concerning whether the Agency should have imposed a period of restricted coverage. Simply, the Agency’s decision, which ODJFS upheld, adversely affects Roberta because it imposes a period of restricted coverage rather than providing benefits without the period of restricted coverage.

{¶11} Regarding ripeness, the issues presented by Roberta’s appeal rest not on future events but on *past* events—namely, the purported improper transfer of resources and the Agency’s imposition of a period of restricted coverage. Contrary to the common pleas court’s reasoning, the existence of R.C. 5160.31(C)(2) does not affect the justiciability of Roberta’s appeal. The issues presented in Roberta’s appeal are based on past events and therefore ripe, and ODM’s ability under R.C. 5160.31(C)(2) to take action in favor of Roberta despite a decision or ruling against her does not somehow make Roberta’s appeal

contingent on a future event. In other words, the possibility that parties might settle a case following a court's judgment or that a prevailing party might not enforce a court's judgment do not affect justiciability and the court's ability to enter judgment in the first place. Applying the common pleas court's reasoning, no case would be justiciable based on the possibility that the parties to the case might settle. We decline to adopt the common pleas court's reasoning.

{¶12} Finally, a decision on the merits by the common pleas court will have a direct and immediate impact on the parties. If the common pleas court agrees with ODJFS that the Agency properly imposed a period of restricted coverage, then Roberta will be bound by that decision. Similarly, if the common pleas court agrees with Roberta that ODJFS improperly imposed a period of restricted coverage, then ODJFS and ODM will be bound by that decision. In addition, under R.C. 5160.31(C)(2), if the court rules against Roberta and in favor of ODJFS but prohibits ODM from taking action in favor of Roberta, ODM would be foreclosed from taking the action in favor of Roberta. R.C. 5160.31(C)(2). Therefore, each party would be bound by a decision adverse to it, and the common pleas court's judgment would be capable of being carried into effect. The enforceability of the judgment would not be affected by ODM's ability under R.C. 5160.31(C)(2) to take action favorable to Roberta or by Roberta's ability to decline benefits despite a decision favorable to her.

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{¶13} For the reasons above, the common pleas court erred in dismissing Roberta's appeal. Roberta's and ODJFS's assignments of error are sustained.

{¶14} Having found error prejudicial to the appellant/cross-appellee and the appellee/cross-appellant herein in the particulars assigned and argued, we reverse the judgment of the common pleas court and remand for further proceedings consistent with this opinion.

*Judgment Reversed and  
Cause Remanded*

**SHAW and WILLAMOWSKI, J.J., concur.**

/jlr