ORIGINAL

In the Supreme Court of Ohio

DANNY CHENAULT,	:	
Plaintiff/Appellant,	:	Case No. 11-1492
-vs	:	(On appeal from Tenth District
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, et al.,	:	Court of Appeals Case No. 10AP-1113)
Defendants/Appellees.	:	

MEMORANDUM IN OPPOSITION TO JURISDICTION OF APPELLEES

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INTRODUCTION

Appellant Chenault paints this case as raising a novel question about the relationship between state and federal law. It does not. Instead, the courts below resolved this case by applying several well-established principles governing the jurisdiction of the Court of Claims.

- The Court of Claims only has jurisdiction over claims that would visit liability on a private party in the state's position. R.C. 2743.02; *McCord v. Division of Parks and Recreation* (1978), 54 Ohio St.2d 72.
- The Court of Claims has no jurisdiction over challenges to administrative decisions. *Bungard v. Ohio Dept. of Jobs and Family Services* (10th Dist.), 2007-Ohio-6280; *George v. Ohio Dept. of Human Services* (10th Dist.), 2005-Ohio-2292.
- Federal and state law give Chenault a remedy (which he forfeited by not appealing) in the common pleas court via an administrative appeal. 19 U.S.C. 2311(d); R.C. 4141.282(H). Chenault's failure to avail himself to his statutory remedy does not confer jurisdiction upon the Court of Claims over a private cause of action in negligence. See *George, supra.*

Both courts below ruled consistently with these established principles. There are no unsettled questions and no need for this Court's involvement.

STATEMENT OF THE CASE AND FACTS

According to the Complaint, Chenault lost his job with Delphi in November of 2007 and subsequently filed for benefits through ODJFS. Chenault asserted that an internal memo had previously been issued to ODJFS employees instructing them to advise former Delphi employees of their rights to benefits pursuant to certain federal programs known as TAA/TRA. In

November of 2007, ODJFS sent Chenault a letter informing him that he was scheduled for a Benefit Rights Information (BRI) session. The letter specifically stated that one purpose for the meeting was to discuss his TAA application. However, Chenault had plans to take a vacation, so he did not attend this meeting. Despite various contacts with ODJFS regarding other benefits available to him, Chenault never inquired about the BRI session or the TAA/TRA benefits until February of 2008, after the application deadlines for these benefits. Chenault claims that ODJFS should have investigated his status and advised him to seek an extension of time in which to apply for TAA/TRA benefits, but failed to do so. Chenault further claims that he was denied TRA benefits in an appeal to the UCRC because his application was not timely.

Chenault filed his Complaint against the Ohio Department of Job and Family Services (ODJFS) and the Unemployment Compensation Review Commission (UCRC) alleging a single count of negligence stemming from his denial of certain benefits. Specifically, Chenault alleged that he did not receive timely notices and information from ODJFS relative to his application for these benefits. Although he failed to allege any negligence on the part of the UCRC, Chenault asserted that UCRC was a necessary party to the action.

ODJFS and UCRC moved for judgment on the pleadings and Chenault filed a memorandum contra. The Court of Claims granted judgment on the pleadings finding that Chenault failed to state a legally cognizable claim over which the Court of Claims had jurisdiction. Specifically, the lower court held that the Court of Claims lacked subject matter jurisdiction over the action and the negligence claim was barred by the economic-loss rule. Chenault filed an appeal to the Tenth District Court of Appeals. The appellate court affirmed the lower court's decision finding that the Court of Claims lacked jurisdiction to hear the claim, and

did not reach the issue of whether Chenault's negligence claim would be barred by the economic-loss rule.

THIS IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This case is not one of public or great general interest because it involves only well-settled law. The General Assembly has decided that the sole remedy for challenging the kinds of benefits denials at stake here is via an appeal to the UCRC and then to the common pleas court. The General Assembly has not found fit to establish a private right of action in the Court of Claims to challenge these denials; thus no such cause of action exists.

This case is nothing more than a simple case involving well-established principles of Ohio law relative to the State's limited waiver of immunity contained in the Court of Claims Act and the resulting limited jurisdiction of the Court of Claims. Ohio law limits the State's consent to be sued in R.C. Chapter 2743 by confining damages suits against it to the Court of Claims and imposing various other limitations. R.C. 2743.03(A). There is no statutory authorization to sue the State for negligence in administering benefits. Thus, Chenault's case was properly dismissed by the Court of Claims and the appellate court rightly affirmed.

Chenault has not identified an issue of general or public interest. Both lower courts followed settled precedent relative to jurisdiction in the Court of Claims. Both lower courts also ruled in accord with federal guidance when they consigned Chenault to a remedy through an administrative appeal. The lower courts' decisions also appropriately recognize that not all claims can be remedied by an action in the Court of Claims. There is simply no legal inquiry that requires this Court's attention. Accordingly, this Court should decline jurisdiction over this appeal.

ARGUMENT

Appellees' Response to Appellant's Proposition of Law 1:

The common pleas court has jurisdiction to review the denial of unemployment benefits, including the issue of timeliness of the application for those benefits. Even if the common pleas court lacked such jurisdiction, it would not confer jurisdiction upon the Court of Claims over a private cause of action in negligence.

Appellant's first proposition of law asserts that 19 U.S.C. §2291 precludes the review of timeliness by the common pleas court. This assertion is incorrect. Chenault fails to cite any language in the federal statute to support this conclusion. Instead, he cites to the language of R.C. 4141.282(H) which is the very language relied upon by the lower courts. This statute provides that Chenault could have appealed his denial of benefits to the common pleas court and made his argument that his untimely application was the result of the negligence of ODJFS. The common pleas court could have agreed with Chenault on the grounds that in light of all the facts the decision was "unreasonable." Upon so holding, the common pleas court could reverse, vacate, modify or remand the decision of the UCRC. *Id.* Significantly, the federal statute actually provides that the entitlement to benefits is to be reviewed in accordance with the applicable state law. 19 U.S.C. 2311(d). Thus, Chenault's argument is plainly wrong.

Furthermore, none of the cases cited by Chenault have any bearing on this case. The simple fact is that Chenault was entitled to argue before the UCRC that his untimely application was a result of ODJFS' negligence. If he was denied the benefits, he then was entitled to make his argument before the common pleas court. However, he was not entitled to forego the remedy afforded him by statute and instead bring an action for negligence in the Court of Claims. In addition, an appeal by Chenault would not have required the common pleas court to make factual determinations or substitute its judgment for that of the UCRC as Chenault suggests. Instead, the common pleas court would have simply considered the evidence in the record and decided

whether the denial of benefits was reasonable in light of the facts. The sole statutory authority cited by Chenault, R.C. 4141.282(H), authorizes the common pleas court to reverse the decision of the UCRC if it deemed it appropriate to do so. Plaintiff fails to cite to any federal or state law to the contrary.

Regardless, Chenault's argument misses the point. The adequacy of the statutory remedy afforded Chenault has no bearing on the jurisdiction of the Court of Claims. This Court has recognized that not every perceived wrong has a remedy in the Court of Claims. See e.g., *Wallace v. Ohio Dept. of Commerce*, 96 Ohio St. 3d 266, 2002-Ohio-4210, ¶37. See also *Bungard, supra.; George, supra.*. In *Bungard* and *George*, the plaintiffs essentially asked the Court of Claims to review the administrative determinations of a State agency—the very same request being made by Chenault. In both cases, the Tenth District held that the Court of Claims lacked jurisdiction. The *George* court explained that "[t]he right to dispute the validity of an administrative decision is only conferred by statute, and if such a statutory right exists, the party aggrieved by the administrative decision can only seek an appeal via the method articulated in the statute." *George, supra.* at ¶32. After explaining what appellate process was available administratively to the plaintiff in appealing Medicaid eligibility determinations, the court concluded that the Court of Claims was not a part of the only process available to the plaintiffs to dispute the validity of ODJFS eligibility determinations. *Id.*, ¶34. An action in the Court of Claims cannot be a substitute for a statutorily created right of appeal of an administrative determination. *Id.*, ¶35.

~~In this case, Chenault admitted that he was entitled to and received an appeal to the UCRC.~~ If Chenault is entitled to an appeal from this determination it must be conferred upon him by statute. See *Bungard, supra* at ¶5. Where there is no statute giving an aggrieved individual a

private claim for relief, the Court of Claims lacks jurisdiction to hear such a claim against the State. *Id.*, ¶¶ 6, 7, and 9. Chenault's argument that he could not deny that his application was untimely, so he did not appeal is unavailing. The fact remains that the statute sets forth his only remedy for the denial of benefits, an appeal to common pleas court pursuant to R.C. 4141.282, and the statute does not confer a right to sue for negligence in the Court of Claims.

This well-settled principle that the Court of Claims has no jurisdiction to review or hear appeals from administrative agencies is true regardless of the claim asserted in the complaint. Whether the plaintiff attempts a direct appeal of an administrative decision, or an indirect attack claiming that the administrative decision was somehow "negligent," the Court of Claims lacks jurisdiction. *Helfrich v. Ohio Unemployment Comp. Review Bd.* (5th Dist.), 2001-Ohio-1736 ("No matter how appellant characterizes his complaint, he is, in fact, seeking a determination that OBES erred in denying his claim for unemployment benefits. It makes no difference that appellant now alleges OBES was 'negligent.'"); *Tomsu v. Ohio Civil Rights Commission* (2001), 116 Ohio Misc.2d 24 (direct action for negligence in Court of Claims not proper forum to gain review of alleged administrative errors.) Thus, simply alleging that his claim is one for negligence does not change the actual character of his claim: Chenault is unhappy with the determination of the UCRC. See *George, supra.* at ¶37. Accordingly, Chenault's claim that ODJFS and UCRC were negligent in handling and determining his eligibility for benefits could not be heard in the Court of Claims and it was properly dismissed for lack of jurisdiction.

The Court of Claims also lacked jurisdiction to hear Chenault's claim since it was beyond the State's limited waiver of immunity established by the General Assembly. Jurisdiction of the Court of Claims is limited by the State's waiver of immunity. R.C. 2743.02 provides that the State shall be liable in the Court of Claims only ". . . in accordance with the same rules of law

applicable to suits between private parties." R.C. 2743.02. For example, the State cannot be held liable in the Court of Claims for violations of rights which require State action, since a private party could not be held liable for the same. *See NCAA v. Tarkanian* (1988), 488 U.S. 179. There is no common law cause of action between private parties for the cause of action advanced by Chenault, namely that ODJFS employees failed to properly follow procedures contained in an interoffice memo. Therefore, the State has not waived its immunity from suit for such a claim and accordingly, the Court of Claims was without jurisdiction to hear Chenault's claim. *See McCord v. Division of Parks and Recreation* (1978), 54 Ohio St.2d 72. See also *Rodgers v. Ohio Dep't. of Rehab. and Corr.* (1993), 91 Ohio App. 3d 565, 568.

Appellees' Response to Appellant's Proposition of Law 2:

> *Federal law is irrelevant to the jurisdiction of the common pleas court or the remedy it could afford an applicant for unemployment benefits. Instead, federal law defers to state law on appeals from the denial of benefits. More importantly, any limitations on the remedy that could be afforded the applicant would have no bearing on the issue at hand, namely, the jurisdiction of the Ohio Court of Claims.*

Appellant's second proposition of law restates the first and fails for the same reasons. As explained above, 19 U.S.C. §2311(d) specifically authorizes review of benefit determinations in accordance with Ohio law. Ohio law, namely R.C. 4141.282(H), authorized the common pleas court to review the denial of benefits and determine whether the denial was reasonable. If the court found the decision to be unreasonable, it could reverse that decision. Chenault chose to forego his statutory right to appeal and instead filed a negligence action in the Court of Claims. However, he has failed to cite to a single statute or case to establish that he was entitled to do so.

More importantly, as explained above, even if Chenault were correct in arguing that the common pleas court lacked jurisdiction to determine whether Chenault's application was properly deemed untimely, it does not follow that the Court of Claims had jurisdiction over his complaint

for negligence. Similarly, Chenault's suggestion that the common pleas court did not have jurisdiction to hear his negligence argument is equally unpersuasive. Lack of jurisdiction in one court does not confer jurisdiction upon another. There are some claims for which the State simply has not waived its immunity. See, e.g. *Szolosi, Fitch & Soltis v. Ohio Dept. of Transportation* (1995), 101 Ohio App.3d 630, *appeal denied,* 73 Ohio St.3d 1414 (common pleas court's lack of jurisdiction over a creditor's bill action against the state did not confer jurisdiction upon the Court of Claims). Chenault's argument is essentially that the common pleas court could not or would not rule in his favor; thus, he should be entitled to sue for negligence in the Court of Claims. This claim is without merit. Chenault was free to argue that his application should be deemed timely due to the alleged inaction of ODJFS. In fact, R.C. 4141.282(H) specifically provides that a common pleas court can find that the decision of the UCRC was unreasonable. Chenault could have argued that the handling of his case made the decision unreasonable. However, he was not entitled to file a negligence action in the Court of Claims simply because he did not think his appeal would be successful. The fact remains that Chenault's sole remedy lies in R.C. 4141.282.

Appellees' Response to Appellant's Proposition of Law 3:

> *R.C. 4141.282(H) sets forth the scope of review on appeal from a decision of the UCRC. Nothing in this statute or any other statute provides an individual a private cause of action for negligence in the Court of Claims resulting from a denial of benefits.*

Appellees agree that the controlling statute is R.C. 4141.282(H). However, Appellees disagree with Chenault's interpretation of the statute. As recognized by the Tenth District below, Chenault "[fails] to appreciate the common pleas court's scope of review of an administrative decision." *Chenault v. Ohio Dept. of Job and Family Services* (10th Dist.), 2011-Ohio-3554, ¶16. Chenault could have made his arguments about the handling of his case and the court could have found that in light of these facts the decision of the UCRC was unreasonable. Nothing in state or

federal law would preclude such a finding.[1] In fact, other courts have found that a remedy lies for claimants who were not aware of their right to apply for TRA/TAA benefits within the time frames provided by the federal statute. *Williams v. The Board of Review* (1st Dist. 2009), 395 Ill. App.3d 337, 917 N.E.2d 1094, aff'd, (2011), 241 Ill.2d 352, 948 N.E.2d 561.

Chenault has failed to cite to any law that would permit him to bring an action for negligence in the Court of Claims. This Court has recognized that "actions that do not sound in tort but seek recovery purely for a statutory violation will not necessarily lie against the state—particularly if the statute in question provides no private right of action." *Wallace*, supra., ¶37. The same analysis should be applied in this case. Chenault's case was properly dismissed in accordance with *Wallace, George* and *Bungard* for lack of jurisdiction.

CONCLUSION

For the above reasons, the Court should decline to review this case.

Respectfully submitted,

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[1] Certainly a review of the facts could also have lead the court to find that it was not unreasonable and Chenault should have attended the initial meeting scheduled to prepare his application for benefits. However, whether he would have won the appeal is irrelevant since he failed to avail himself to his sole remedy.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition to Jurisdiction of Appellees was served by U.S. mail this 3rd day of October, 2011 upon the following counsel for Appellant:

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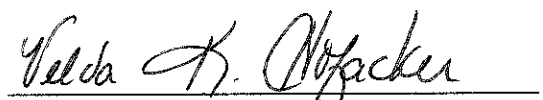

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