

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ANDRE COLLIER	:	JUDGES:
	:	Julie A. Edwards, P.J.
	:	William B. Hoffman, J.
Plaintiff-Appellant	:	John W. Wise, J.
	:	
-vs-	:	Case No. 2009 CA 0103
	:	
	:	
KEITH SMITH, et al.,	:	<u>OPINION</u>
	:	
Defendants-Appellees	:	

CHARACTER OF PROCEEDING: Civil Appeal from Richland County Court of Common Pleas Case No. 2009 CV 0290

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: June 10, 2010

APPEARANCES:

For Plaintiff-Appellant

For Defendants-Appellees

ANDRE COLLIER, #233-115
Mansfield Correctional Institution
P.O. Box 788
Mansfield, Ohio 44901

RICHARD CORDRAY
Attorney General of Ohio

ASHLEY RUTHERFORD
Assistant Attorney General
150 East Gay Street, 16th Floor
Columbus, Ohio 43215

Edwards, P.J.

{¶1} Appellant, Andre Collier, appeals a judgment of the Richland County Common Pleas Court dismissing his complaint for money damages, declaratory judgment and injunctive relief against appellees Keith Smith, Sharon Berry, Zelus Fields, Barbara Bell, Robert Masczynski, Cynthia Mausser and Gary Croft.

STATEMENT OF FACTS AND CASE

{¶2} In 1991, appellant pleaded guilty to murder with gun specifications and was sentenced to a term of incarceration of 180 months to life. He is incarcerated at the Mansfield Correctional Institution.

{¶3} On June 23, 2004, appellant received a parole hearing. Based on his offense category score and his criminal history/risk score, the Parole Board determined that appellant's aggregate guideline range was 216-258 months. He received a second parole hearing on November 11, 2008. He was again denied parole and his guideline range was altered to 0-888 months.

{¶4} Appellant filed the instant action seeking money damages, declaratory judgment and injunctive relief against Mansfield Correctional Institution warden Keith Smith, inspector Sharon Berry, Unit Manager Zelus Fields, Case Manager Barbara Bell, Ohio Adult Parole Authority Member Robert Masczynski, Chairperson of the Ohio Adult Parole Authority Cynthia Mausser, and Chief Inspector Gary Croft. Appellant alleged that appellees improperly conducted his November 17, 2008 parole hearing by failing to consider the type of residence, neighborhood or community in which he plans to live if paroled. He alleged that appellees failed to allow him to fill out a Parole Plan Addendum which would address his intended place of residence upon release, and as

such failed to provide him with a meaningful parole hearing. Appellant also alleged that appellees violated R.C. 2921.44 (dereliction of duty) and R.C. 2921.45(interfering with civil rights).

{¶5} Appellees filed a motion for judgment on the pleadings pursuant to Civ. R. 12(C). The trial court granted the motion, finding that OAC §5120:1-1-07 does not require appellees to provide inmates with a parole plan addendum prior to the parole hearing, and that appellees provided appellant with a meaningful parole hearing. The court concluded that the Parole Board had reasonable grounds to deny parole because of the seriousness of the offense and appellant's poor conduct in prison, and the inclusion of the addendum would not have changed the outcome. The court found that R.C. 2921.44 and R.C. 2921.45 only establish criminal liability, not civil liability, and appellant's complaint therefore did not state a claim based on these two statutes.

{¶6} Appellant assigns a single error on appeal:

{¶7} "THE TRIAL COURT COMMITTED CLEAR REVERSIBLE ERROR, ACTED OUTSIDE ITS JURISDICTION WITHOUT JURISDICTION AND CONTRARY TO LAW, WITH ITS AUGUST 13, 2009 JUDGMENT ENTRY GRANTING DEFENDANTS' JUDGMENT ON THE PLEADINGS, WHERE AS A MATTER OF LAW, THE APPELLANT-PLAINTIFF WAS DENIED HIS RIGHT TO, DUE PROCESS OF LAW, EQUAL PROTECTION OF LAW, SEPARATION OF POWERS DOCTRINE AND MEANINGFUL PAROLE CONSIDERATION PURSUANT TO LAYNE V. O.A.P.A. (2002) 97 OHIO ST. 3D 452, 2002 OHIO 6719 IN WHICH THE OHIO SUPREME COURT CONSTRUED THE WORDS 'ELIGIBLE FOR PAROLE IN FORMER O.R.C. 2967.13(A) TO REQUIRE A MEANINGFUL HEARING WHEN DEFENDANT-

APPELLEE'S DID NOT CONSIDER O.A.C. 5120-1-1-07(B) AND (B)(11) AT APPELLANT'S NOVEMBER 17, 2008 PAROLE HEARING, WHICH ACCORDING TO THE OHIO SUPREME COURT, 'RULES ISSUED BY ADMINISTRATIVE AGENCIES, PURSUANT TO STATUTORY AUTHORITY HAVE THE FORCE AND EFFECT OF LAW.' THE TRIAL COURT'S AUGUST 13, 2009 JUDGMENT ENTRY IN THIS CASE, WHICH DISMISSED APPELLANT'S CASE, SHOULD BE REVERSED FOR CAUSE."

{¶8} Before considering the merits of appellant's assignment of error, we first consider the issue of whether the trial court had subject matter jurisdiction over appellant's complaint. The issue of subject matter jurisdiction is never waived and a court may raise the issue sua sponte. *Starks v. Patrick*, Warren App. No. 2004-03-030, 2004-Ohio-5654, ¶6. See also *Coey v. Dave Gill Pontiac-GMC, Inc.*, Franklin App. No. 04AP-432, 2005-Ohio-464, ¶10. In fact, where the parties fail to raise a jurisdictional issue on appeal, an appellate court must raise the issue sua sponte. *Brown v. Brown*, Madison App. No. 2008-08-021, 2009-Ohio-2204, ¶72, fn.8, citing *Foster v. Wickliffe*, 175 Ohio App.3d 526, 549, 888 N.E.2d 422, 2007-Ohio-7132, ¶106.

{¶9} Complaints for money damages against the State of Ohio must be instituted in the Court of Claims, and the Common Pleas Court does not have jurisdiction to entertain such actions. See R.C. 2743.03. "State" is defined to include the general assembly, the Supreme Court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state. R.C. 2743.01(A). Ohio courts also lack jurisdiction over civil actions for money damages against state officers and employees until the Court of Claims initially determines that the individual is not entitled to immunity and the common

pleas court, therefore, has jurisdiction. R.C. 2743.02(F). R.C. 109.36(A)(1)(a) defines officer or employee to include anyone who at the time a cause of action against the person arises, is serving in an elected or appointed office or position with the state or is employed by the state.

{¶10} The Court of Claims has exclusive original jurisdiction in all civil suits for money damages against the state and its employees even when ancillary relief such as injunctive relief or declaratory judgment is sought. R.C. 2743.03(A)(2); *Ohio Hosp. Assn. v. Ohio Dept. of Human Services* (1991), 62 Ohio St.3d 97, 103; 579 N.E.2d 695.

{¶11} While appellant makes a federal constitutional argument in his brief, all claims in his complaint were state law claims. Because appellant's complaint included a claim for money damages and it is apparent from the face of the complaint that appellees are state agents or employees, the trial court lacked jurisdiction over the case. The Court of Claims has exclusive jurisdiction over this case.

{¶12} Although the court erred in reaching the merits of the Civ. R. 12(C) motion, the court's judgment dismissing the complaint was not in error because the court lacked jurisdiction. The assignment of error is rendered moot by our determination that the trial court did not have subject matter jurisdiction.

{¶13} The judgment of the Richland County Common Pleas Court is affirmed.

By: Edwards, P.J.

Hoffman, J. and

Wise, J. concur

s/Julie A. Edwards

s/William B. Hoffman

s/John W. Wise

JUDGES

JAE/r0322

