

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

SAVE OHIO PARKS, ET AL.,

CASE NO.: 23CVF-11-8540

Appellants,

JUDGE: PAGE

VS.

OIL & GAS LAND MANAGEMENT
COMMISSION,

Appellee.

DECISION AND ENTRY
GRANTING THE MOTION TO DISMISS FILED BY THE APPELLEE ON
DECEMBER 29, 2023

PAGE, J.

This action comes before the Court upon an appeal commenced by Save Ohio Parks, Ohio Environmental Council, Backcountry Hunters & Anglers, and Buckeye Environmental Network (Appellants). The Appellants took issue with a group of nominations issued by the Oil and Gas Land Management Commission (Appellee) The Appellee responded to the Notice of Appeal by filing a Motion to Dismiss on December 29, 2023.

The Appellants filed their Memorandum Contra on January 12, 2024. That was followed by the Appellee's Reply on January 19, 2024. The matter has now been fully briefed. As set forth below, the Motion of the Appellee is **GRANTED**.

STATEMENT OF THE FACTS

It is understood that the Appellee was created to review requests that could lead to leases of public land owned or controlled by the state. The Appellee was created by R.C. 155.31. That statute contains the following in section A:

It is the policy of the state to promote the exploration for, development of, and production of oil and natural gas resources owned or controlled by the state in an effort to use the state's natural resources responsibly.

The court has further reviewed the language of R.C. 155.33. The language of the code makes it clear that the legislature desired that public lands be used for oil and natural gas development.

Please note the following from R.C. 155.33(A)(1):

. . . a state agency **shall** lease, in good faith, a formation within a parcel of land that is owned or controlled by the state agency for the exploration for and development and production of oil or natural gas. The lease shall be on terms that are just and reasonable, as determined by custom and practice in the oil and gas industry, and shall include at least the terms required under divisions (A)(1)(a) to (d) of section 155.34 of the Revised Code. (Emphasis added)

After a ‘nomination’ is submitted to attempt to lease state land, the Appellee is to meet and determine whether to approve or disapprove the request. The Appellee is tasked with reviewing 9 factors listed in the code to aid in its decision making. If the nomination is approved, the Appellee can then make the land available for leasing.

In the current action, the Appellee did just that. After a meeting of November 15, 2023, the Appellee reviewed up to 12 ‘nominations’ for the use of state land. In a series of 7 orders – 23-DNR-001 to 0007 – the Appellee made seven plots of state land available for oil and gas development. It was this action that led the Appellants to file their Notice of Appeal.

STANDARD OF REVIEW

Appellee has filed a Civ.R. 12(B)(1) motion to dismiss. Appellee has asserted that this Court does not have subject matter jurisdiction. Please note the following:

The standard of review for a Civ.R. 12(B)(1) motion to dismiss is "whether any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush v. Spurlock* (1989), 42 Ohio St.3d 77, 80. When making this determination, the trial court is not confined to the allegations of the complaint, but may consider material pertinent to that inquiry without converting the motion into one for summary judgment. *Southgate Development Corp. v. Columbia Gas Transmission Corp.* (1976), 48 Ohio St.2d 211, paragraph one of the *syllabus*. If the trial court only considers the complaint and undisputed facts when ruling on the motion, then appellate review is limited to a determination of whether the facts are indeed undisputed and whether the trial court correctly applied the law. *Wilkerson v. Howell Contrs., Inc.*, 163 Ohio App.3d 38, 43, 2005-Ohio-4418.

Given the specific nature of this case, the court must be mindful of the ruling in *Clifton Care Ctr. v. Ohio Dept. of Job & Family Servs.*, 2013-Ohio-2742 (10th Dist.).

Please note the following from *Clifton* at paragraph 9:

"Jurisdiction" refers to a court's " 'statutory or constitutional power to adjudicate the case.' " *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶ 11, quoting *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89 (1998). Courts of common pleas only have "such powers of review of proceedings of administrative officers and agencies as may be provided by law." Ohio Constitution, Article IV, Section 4; see also *Springfield Fireworks, Inc. v. Ohio Dept. of Commerce*, 10th Dist. No. 03AP-330, 2003-Ohio-6940, ¶ 17. Thus, courts of common pleas lack jurisdiction to review actions of administrative agencies unless R.C. 119.12 or some other specific statutory authority grants it. *Total Office Prods. v. Dept. of Adm. Servs.*, 10th Dist. No. 05AP-955, 2006-Ohio-3313, ¶ 12; accord *Univ. of Toledo v. Ohio State Emp. Relations Bd.*, 10th Dist. No. 11AP-834, 2012-Ohio-2364, ¶ 9 ("A court of common pleas has power to review proceedings of administrative agencies and officers only to the extent the law so grants."). Whether a court of common pleas possesses subject-matter jurisdiction is a question of law, which appellate courts review *de novo*. *Courtyard Lounge v. Bur. of Environmental Health*, 10th Dist. No. 10AP-182, 2010-Ohio-4442, ¶ 5.

This Court will apply said legal authority to the pending motion.

REVIEW ON THE MERITS

Within its motion the Appellee advanced two reasons why it thinks the case should be dismissed. The first issue is the lack of any statutory authority to appeal the decision(s) of the Appellee. The second issue concerns the claimed lack of standing as it relates to the Appellants. This court will address the right to appeal argument first.

Lack of Authority:

Concerning the right to appeal a decision from an agency, it is apparent to this court that the right must be clearly defined. Here the Appellee has asserted that – even though the Appellants relied upon it – R.C. 119 does not apply. The Appellee relied heavily on *Brown v. Ohio Dept of Transportation*, (1992) 83 Ohio App. 3d 879, a case from the Tenth District.

Please note the following from *Brown* at page 881:

An agency action does not qualify for an appeal pursuant to this section unless: (1) the agency is specifically named in R.C. 119.01(A); (2) the agency action involves licensing functions of the agency; or (3) some other statute specifically makes the agency or agency action subject to R.C. 119.12. *Plumbers & Steamfitters Comm. v. Ohio Civ. Rights Comm.* (1981), 66 Ohio St.2d 192, 421 N.E.2d 128; *Asphalt Specialist, Inc. v. Ohio Dept. of Transp.* (1988), 53 Ohio App.3d 45, 557 N.E.2d 1224; *Augustine v. Ohio Dept. of Rehab. & Corr.* (1981), 3 Ohio App.3d 398, 3 OBR 464, 445 N.E.2d 706; *Fair v. School Emp. Retirement Sys.* (1975), 44 Ohio App.2d 115, 73 O.O.2d 101, 335 N.E.2d 868; *State ex rel. Citizens for Van Meter v. Ohio Elections Comm.* (1992), 78 Ohio App.3d 289, 604 N.E.2d 775.

Brown is still good law. See, *Chibinda v. Ohio BMV*, 2018-Ohio-1378 (10th Dist.)

Chibinda follows *Brown* and notes the following at paragraph 19:

Generally, an administrative appeal is appropriate when the order is issued as a result of an adjudication. *Columbus S. Power Co. v. Ohio Dept. of Transp.*, 10th Dist. No. 93APE09-1280, 1994 Ohio App. LEXIS 860 (Mar. 1, 1994), citing *Brown v. Ohio Dept. of Transp.*, 83 Ohio App. 3d 879, 615 N.E.2d 1126 (10th Dist.1992)

Hence, with the weight of prior authority on its side, the Appellee argued that there is no statutory authority to support the Appellants' current appeal.

The first paragraph of the Appellants' Brief attempts to characterize the Appellee's action as the granting of a license. Appellants must take that position because they understand that there is no direct statutory authorization for their appeal. Clearly, had there been some valid statutory authority the Appellants would have led with that argument. The Appellee's Reply noted that the Appellants waived the statutory argument by not even addressing it in their Brief. The Appellants limited their argument to a claim that the actions of the Appellee created a license and/or was an adjudication.

This court is unaware of any action that granted any entity a lease or a license. The ultimate decision of the Appellee was that certain public land will be made available for leasing. The lease will be issued to the highest and best bidder with terms acceptable to the State.

The Appellants asserted that the Appellee is in fact the ‘highest and ultimate authority’ because once the nomination is accepted, there is no stopping the process. The Appellants’ argument is as follows: A granted nomination leads to a bidding process that leads to a lease that leads to drilling on public lands. The Appellants do not want that to happen. In support of their ‘highest and ultimate authority’ argument the Appellants rely on several dissimilar and nonauthoritative cases.

Appellants relied on *Total Office Prods., Inc. v. Dept. of Admin. Servs.*, 2006-Ohio-3313 (10th Dist.) to support their belief that the acts of the Appellee were in fact appealable under R.C. 119 et seq. In *Total Office*, the decision turned on the fact that the agency was issuing a certificate and ‘certificate’ was in fact within the definition of ‘license’ as used in R.C. 119.01(B). There is no similar language that applies to the actions of the Appellee and so, *Total Office* cannot help the Appellants.

The Appellants next relied upon *Karvo Cos., Inc. v. Dept. of Transp.*, 2019-Ohio-4556, (9th Dist.) *Karvo* does not apply to the case at hand, given that it is a case where both parties agreed that an appeal was warranted because the action of the agency was an adjudication as defined by R.C. 119.01(D). In *Karvo* the issue was ‘where should the appeal be filed’ not ‘does the appellant have a right of appeal’. *Karvo*’s dicta did not review a similar scheme as the one utilized by the Appellee. Hence *Karvo* does not help the Appellants’ argument.

Appellants further claimed that *Karvo* can be viewed as analogous to what the Appellee did. That argument overlooks the fact that the Appellee’s action did not give an individual right or license to anyone. By accepting a nomination – all the Appellee did was open up that specific public land to a bidding process. No individual or entity was awarded a bid, no individual or entity was given a proprietary right to bid on the public land. No final bid was accepted or

rejected. In the *Karvo* decision, the actions affected Karvo's ability to conduct business, no such similar outcome happened when the Appellee made its decision in this case.

The Appellants also assert that the Appellee's decision stemmed from an 'adjudication'. The Appellee countered that nothing that transpired pursuant to R.C. 155.33 can be viewed as a judicial proceeding. The Appellants asserted that the 'meeting' contained in the statute was a 'hearing' for the purpose of R.C. 119.09. Oddly while trying to show standing, the Appellants asserted that one of their harms was in fact the lack of a hearing thereby implicitly agreeing with the Appellee that there was in fact no hearing held.

In the end, the court assumes that the legislature knew what it was doing when it used the word meeting. Hence, there was no hearing conducted from which an appeal can be taken.

The Appellants assert that there is a right conferred on the nominator because if the Appellee accepts the nomination, the nominator becomes the 'opening bidder'. Being the opening bidder does not confer any favorable outcome. Once a nomination is accepted, a 'right to bid' is given to all who can meet the requirements. There is nothing unique or beneficial to being the first bidder.

The court rejects the argument that the actions of the Appellee in accepting a nomination for the leasing of state property is the same as an adjudication order. R.C. 119 is not triggered and the Appellants' appeal should be dismissed.

Standing:

The Appellee's Motion also asserted that the Appellants have no standing to bring the action. "Lack of standing challenges the capacity of a party to bring an action, not the subject matter jurisdiction of the court." *State ex rel. Smith v. Smith* (1996), 75 Ohio St.3d 418, 420, 1996-Ohio-215, 662 N.E.2d 366; *State ex rel. LTV Steel Co. v. Gwin* (1992), 64 Ohio St.3d 245, 251, 1992-Ohio-20, 594 N.E.2d 616.

Please note the following from *Osmic v. Sutula*, 2022-Ohio-4216 at paragraph 15:

"Standing" is generally defined as "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 27.

"Whether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue. Where the party does not rely on any specific statute authorizing invocation of the judicial process, the question of standing depends on whether the party has alleged * * * a "personal stake in the outcome of the controversy.""

Cleveland v. Shaker Hts., 30 Ohio St.3d 49, 51, 30 Ohio B. 156, 507 N.E.2d 323 (1987), quoting *Middletown v. Ferguson*, 25 Ohio St.3d 71, 75, 25 Ohio B. 125, 495 N.E.2d 380 (1986), quoting *Sierra Club v. Morton*, 405 U.S. 727, 731-732, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972), quoting *Baker [**981] v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 7 L.Ed.2d 663 (1972).

The Appellants' memorandum contra established no actual specific harm to any of the Appellants. Instead, the document and affidavits were replete with public policy issues and associated what ifs. Appellants claim, "that fracking will destroy the recreational and aesthetic values they derive from the Nominated Lands, and they will no longer visit if fracking occurs beneath them." (Appellants' Memorandum Contra at page 14)

The Appellee reiterated its prior argument that the Appellants lack any concrete or specific injury. The Appellee reminded the court that – at this stage of the process – the only thing approved is that a bidding process can start as to the nominated land. Appellee claims that the Appellants are just advancing 'unfettered speculation'.

Appellee relied upon the holding in *State ex rel. Food & Water Watch v. State*, 153 Ohio St.3d 1, 2018-Ohio-555. *Food & Water* was a mandamus action wherein the issue of standing became central to the appeal. *Food & Water* noted:

"To establish traditional standing, a party must show that the party has 'suffered (1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief.'" *Id.* at 19.

This court finds that *Food & Water* is on point and the Appellants lack the necessary standing to bring this matter.

DECISION

The Motion to Dismiss of the Appellee as filed on December 29, 2023, is **GRANTED**.

The case is **DISMISSED**.

THIS IS A FINAL APPEALABLE ORDER

Judge Jaiza Page

Copies to:

CLAIRE TAIGMAN
311 S WACKER DR
SUITE 1400
CHICAGO, IL 60606

JAMES YSKAMP
2924 CEDAR HILL ROAD
CUYAHOGA FALLS, OH 44223

MEGAN HUNTER
SUITE 1400
311 SOUTH WACKER DRIVE
CHICAGO, IL 60606
Counsel for the Appellants

THOMAS J PUCKETT
30 EAST BROAD STREET
26TH FLOOR
COLUMBUS, OH 43215

DANIEL J MARTIN
26TH FLOOR
30 EAST BROAD STREET
COLUMBUS, OH 43215
Counsel for the Appellee

Franklin County Court of Common Pleas

Date: 02-23-2024
Case Title: SAVE OHIO PARKS ET AL -VS- OIL & GAS LAND
MANAGEMENT COMMISSION
Case Number: 23CV008540
Type: ORDER

It Is So Ordered.



/s/ Judge Jaiza Page

Court Disposition

Case Number: 23CV008540

Case Style: SAVE OHIO PARKS ET AL -VS- OIL & GAS LAND
MANAGEMENT COMMISSION

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 23CV0085402023-12-2999980000
Document Title: 12-29-2023-MOTION TO DISMISS -
DEFENDANT: OIL & GAS LAND MANAGEMENT COMMISSION
Disposition: MOTION GRANTED
2. Motion CMS Document Id: 23CV0085402024-02-2099970000
Document Title: 02-20-2024-MOTION TO STAY - PLAINTIFF:
SAVE OHIO PARKS
Disposition: MOTION RELEASED TO CLEAR DOCKET