

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

DAMIEN OXIER,	:	CASE NO. 14-CV-2143
	:	
APPELLANT,	:	
	:	
V.	:	JUDGE COCROFT
	:	
OHIO STATE DEPARTMENT	:	
OF AGRICULTURE, et al.,	:	
	:	
APPELLEES.	:	

DECISION AND ENTRY
GRANTING THE APPELLEES’ MOTION TO DISMISS

This matter is before the Court on the appellees’ motion to dismiss. Specifically, the appellees argue that this Court lacks subject matter jurisdiction and the Notice of Appeal fails to state a claim upon which relief can be granted because there was no administrative proceeding from which the appellant could appeal under R.C. §119.12.

R.C. §119.12 provides that “[a]ny party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license, or revoking or suspending a license...” may appeal to the court of common pleas in the county where that party is a resident or in which the place of business of the license is located. Additionally, “[a]ny party adversely affect by any order of an agency issued pursuant to any other adjudication may appeal to the court of common pleas of Franklin County.” R.C. §119.12

Adjudication is defined in R.C. §119.01 as “the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person, but does not include the issuance of a license in response to an application with respect to which no question is raised, nor other acts of a ministerial nature.”

The appeal at issue was filed in response to the appellee's refusal to schedule a hearing upon the appellant's request following the appellee's indication that the appellant needed to apply for a license from the ODA for his ownership of dangerous wild animals. The appellant contends that the ODA's denial of an administrative hearing is considered an adjudication from which he can appeal.

Attached to the Notice of Appeal are copies of letters to the appellant from the appellee ODA's chief legal counsel explaining that the appellant's request for an administrative hearing is not appropriate as the ODA has made no decision on the two permit applications pending before it. The letter further explains that R.C. Chapter 935 authorizes a right to an administrative hearing in several instances, but, "[t]o date, ODA has issued no such proposals or Orders and has taken no other action that constitutes an adjudication that would give rise to a right for an administrative hearing." Ex. F. The appellee has not yet made any decision either granting or denying the appellant's permit applications. Because it has made no decision on the appellant's applications, the ODA it has not issued any written notice of the ODA's proposed actions against the appellant or a written notice of an opportunity for a hearing, and no administrative hearing has taken place.

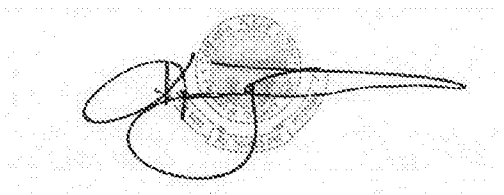
Accordingly, the Court finds the appellees' motion to be well-taken. Letters from the ODA's chief legal counsel do not constitute an adjudication by the highest or ultimate authority of the ODA as required by R.C. §119.12. Furthermore, as was explained by ODA, it has not taken any action which would give rise to the right for an administrative hearing from which the appellant can appeal to this Court. The appellant can request an administrative hearing when the ODA takes some action which would make a hearing appropriate. The appellees' motion to dismiss is **GRANTED**. The Notice of Appeal is dismissed with prejudice. Costs to the appellant.

IT IS SO ORDERED.
Copies to all parties.

Franklin County Court of Common Pleas

Date: 08-11-2014
Case Title: DAMIEN OXIER -VS- OHIO STATE DEPARTMENT
AGRICULTURE
Case Number: 14CV002143
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read 'Kimberly Cocroft', is written over a light gray, textured rectangular background.

/s/ Judge Kimberly Cocroft

Court Disposition

Case Number: 14CV002143

Case Style: DAMIEN OXIER -VS- OHIO STATE DEPARTMENT
AGRICULTURE

Case Terminated: 08 - Dismissal with/without prejudice

Motion Tie Off Information:

1. Motion CMS Document Id: 14CV0021432014-03-1099940000
Document Title: 03-10-2014-MOTION TO DISMISS
Disposition: MOTION GRANTED
2. Motion CMS Document Id: 14CV0021432014-03-1099970000
Document Title: 03-10-2014-MOTION TO DISMISS
Disposition: MOTION GRANTED