

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

KENNETH HETRICK,

Plaintiff- Appellant,

VS.

OHIO DEPARTMENT OF AGRICULTURE, ET AL.,

Defendants- Appellees.

CASE NO.: 15CVF-02-1171

JUDGE: McCARTHY

DECISION AND ENTRY
GRANTING THE MOTION OF THE DEFENDANTS-APPELLEES' TO DISMISS
AS FILED ON FEBRUARY 13, 2015

McCARTHY, J.

This action comes before the Court upon the Motion to Dismiss as filed by the Ohio Department of Agriculture and Director David Daniels (Hereinafter referred to collectively as the Department) on February 13, 2015. Kenneth Hetrick (hereinafter referred to as Appellant) filed his Memorandum in Opposition to the motion on February 17, 2015. The Department filed its Reply on February 24, 2015. For the reasons that follow, this Court **GRANTS** the Department's Motion to Dismiss.

FACTS:

On February 9, 2015 the Appellant commenced this appeal. The Appellant relied upon R.C. §119.12 for his authority to appeal the actions of the Department. The Department, pursuant to R.C. Chapter 935, has the obligation to control the management of wild animals and snakes within the State of Ohio. Pursuant to R.C. §935.20 the Director or his designee – prior to the administrative process – can order a quarantine or a transfer of the dangerous wild animal (DWA). On January 23, 2015, just such an Order was issued.

The Appellant set forth the following facts within his 'Response' to the Department's Motion to Dismiss:

Mr. Hetrick registered his animals as prescribed by R.C. 935.04 on October 12, 2102. Mr. Hedrick then filed his application for a rescue facility permit on October 17, 2014. Agents from ODA came out to inspect his property on or about November 7, 2014. This inspection was related to the application process for a permit to keep the animals currently in his possession. IN November and December no information was provided regarding the findings of the inspection. Mr. Hedrick finally received a letter dated January 13, 2015 from the ODA outlining their [sic] findings from the November 7, 2014 inspection. Mr. Hedrick started to marshal material and individuals to correct the deficiencies out lined [sic] in the letter. Mr. Hedrick also received a letter dated January 22, 2015 expressing ODA's intent to deny his application for a permit and if he wished to request a hearing on that issue he could do so within 30 days from January 22, 2015. Mr. Hedrick did request a hearing which has been set for March 11 and 12 of 2015. On January 26, 2015 ODA issued a transfer order to remove the animals from Mr. Hetrick's property. The ODA then executed the transfer order on January 28, just 12 days after issuing the letter identifying the deficiencies found in the November 7 investigation.

The Appellant's appeal currently deals with the transfer order issued on January 26, 2015. The Department filed its Motion to Dismiss asserting that the January 23, 2015 Order is not appealable at this time. The Department asserted that the Order could not be appealed until after the administrative process has run its course. The Department asserted that it was the exercise of R.C. §935.20 that 'initiates' the Appellant's right to seek an administrative appeal. In fact, several days of hearings have already been conducted at the administrative level after the Appellant commenced this appeal.

The Appellant has asserted that the January 23, 2015 Order was in fact subject to an appeal to this Court. The matter is now before the Court.

ANALYSIS:

The Department has argued that there was no adjudication order and that its Order of January 23, 2015 is not covered by R.C. §119.12.

§ 119.12. Appeal by party adversely affected - notice - record - hearing - judgment

Any 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 registration of a licensee, or **revoking** or suspending a license, or allowing the payment of forfeiture under section 4301.252 of the Revised Code may appeal . . . (emphasis added)

Please note the following language from R.C. §935.20(D):

(D) A person that is adversely affected by a quarantine or transfer order pertaining to a dangerous wild animal or restricted snake owned or possessed by the person, within thirty days after the order is issued, may **request in writing an adjudication** in accordance with Chapter 119. of the Revised Code. **A request for an adjudication does not stay a quarantine or transfer order.** (Emphasis added)

In fact, the authority granted to the Department as found in the statute clearly states that the Department has the right to act. That if it does act, an aggrieved party has the right to appeal that action in accordance with Chapter 119 to the agency.

The same statute contains the following language:

(G) A quarantine or transfer order issued under this section shall remain in effect until one of the following occurs:

- (1) The director, after reviewing the results of the investigation conducted under division (A) of this section, issues a written notice of release.
- (2) A court of competent jurisdiction orders the quarantine or transfer order to be terminated in a proceeding conducted under division (H) of this section.
- (3) A court of competent jurisdiction orders the seizure of the dangerous wild animal or restricted snake in a proceeding conducted under division (H) of this section.

(H) If, after reviewing the results of an investigation concerning a dangerous wild animal or restricted snake conducted under division (A) of this section and after resolution of any proceeding conducted under division (D) of this section, the director determines that a circumstance described in division (A)(1), (2), or (3) of this section is or was occurring, the director shall initiate, in a court of competent jurisdiction, a proceeding for the permanent seizure of the animal or snake, as applicable. If the court affirms the director's determination that a circumstance described in

division (A)(1), (2), or (3) of this section is or was occurring, the court shall order the animal or snake seized and shall order the method of disposition of the animal or snake. The court may order the person owning or possessing the animal or snake to pay all reasonable costs associated with the seizure and, if applicable, the costs associated with the quarantine or transfer of the animal or snake, including the costs of transportation, housing, food, and veterinary care of the animal or snake. If the court does not affirm the director's determination, the court shall order the quarantine or transfer order to be terminated and the animal or snake to be returned to the person owning or possessing it, if applicable.

From a review of the statute, it is apparent that the Legislators desired that there would be an administrative review prior to any appeal to a court.

The Appellant took the position that because the Director signed the documents to take possession of the animals, then the Order is in fact an Order that is executed by the highest authority of the agency and is therefore subject to appeal. That is not a sound argument given the clear language of the statute.

The Court holds that the transfer order is not the final adjudication from the Department and therefore, the Department's Motion is **GRANTED**.

DECISION

Having applied the law to the facts, having reviewed the arguments of all parties this Court **GRANTS** the Appellee's Motion to Dismiss as filed on February 13, 2015.

Appellant's Appeal is **DISMISSED**.

THIS IS A FINAL AND APPEALABLE ORDER

Sean McCarthy, Judge

Appearances:

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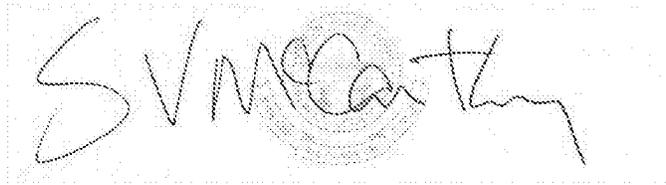
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Franklin County Court of Common Pleas

Date: 03-20-2015
Case Title: KENNETH HETRICK -VS- OHIO DEPARTMENT OF AGRICULTURE ET AL
Case Number: 15CV001171
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, reading "SVMcCarthy", is enclosed within a rectangular dotted-line border. The signature is written in a cursive style.

/s/ Judge Sean V. McCarthy

Court Disposition

Case Number: 15CV001171

Case Style: KENNETH HETRICK -VS- OHIO DEPARTMENT OF AGRICULTURE ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0011712015-02-1399930000
Document Title: 02-13-2015-MOTION TO DISMISS
Disposition: MOTION GRANTED