

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

William B. Dancy et al., :
 :
 Plaintiffs-Appellants, :
 :
 v. : No. 09AP-749
 : (C.P.C. No. 09CVH-03-4811)
 :
 Jolene Molitoris et al., : (ACCELERATED CALENDAR)
 :
 Defendants-Appellees. :

D E C I S I O N

Rendered on March 31, 2010

Moore & Associates, Joseph P. Moore and Brian Huelsman,
for appellants.

Richard Cordray, Attorney General, and Paul A. Russell, for
appellees.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Plaintiffs-appellants, William B. Dancy and Shirley Dancy (collectively "appellants"), appeal from a judgment of the Franklin County Court of Common Pleas granting the motion to dismiss of defendants-appellees, Ohio Department of Transportation ("ODOT"), and its director, Jolene Molitoris (collectively "appellees").

{¶2} Appellants filed a complaint for unlawful taking on March 31, 2009. In the complaint, appellants allege ODOT reconstructed a roadway on West State Route 571

near their home that included the replacement of an existing storm drainage system. According to the complaint, since the reconstruction of the roadway, appellants have suffered severe flooding on their property. The first count in appellants' complaint alleges unlawful taking for which appellants request a writ of mandamus ordering appellees to commence condemnation proceedings and compensate appellants for the unlawful taking. The second count in the complaint alleges trespass and seeks damages in excess of \$25,000. Appellees filed a motion to dismiss on June 3, 2009. Thereafter, appellants filed a memorandum in opposition. The trial court granted appellees' motion to dismiss on July 10, 2009, finding that it lacked jurisdiction. Because the Court of Claims of Ohio is the sole forum available for actions seeking monetary damages against the state, even when such actions also include requests for equitable relief, the trial court held that the Court of Claims had jurisdiction over appellants' action. Appellants now appeal from this judgment and assign the following errors:

ASSIGNMENT OF ERROR NO. 1

The Trial Court erred as a matter of law by dismissing the Complaint without construing all inferences in favor of Appellants' allegations as required by law.

ASSIGNMENT OF ERROR NO. 2

The Trial Court erred as a matter of law by dismissing Appellants' Complaint in violation of Ohio Revised Code Section 5501.22, which mandates that Franklin County Common Pleas has exclusive jurisdiction for this action.

{¶3} Because they are interrelated, we will address appellants' assignments of error together. In these assigned errors, we are asked to determine whether the Franklin County Court of Common Pleas has jurisdiction over the claims asserted herein. When

presented with a motion to dismiss for lack of subject-matter jurisdiction made pursuant to Civ.R. 12(B)(1), a trial court must determine "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. An appellate court reviews the grant of a Civ.R. 12(B)(1) motion to dismiss under the de novo standard. *Howard v. Supreme Court of Ohio*, 10th Dist. No. 04AP-1093, 2005-Ohio-2130, ¶6.

{¶4} It is undisputed that subject only to the specifically defined exceptions in the statute, R.C. 5501.22 requires individuals to prosecute all claims for relief against the director of transportation in Franklin County, even those that could be brought as counterclaims under Civ.R. 13. *Proctor v. Kardassilaris*, 115 Ohio St.3d 71, 2007-Ohio-4838, syllabus. Here, appellants seek a writ of mandamus against the director of ODOT, and none of the statutory exceptions apply; thus, jurisdiction is proper in Franklin County. Appellants argue, however, that because they seek mandamus, jurisdiction is proper in the Franklin County Court of Common Pleas, while appellees contend jurisdiction is proper in the Court of Claims because appellants seek money damages against the state.

{¶5} " 'The United States and Ohio Constitutions guarantee that private property shall not be taken for public use without just compensation.' " *State ex rel. Blank v. Beasley*, 121 Ohio St.3d 301, 2009-Ohio-835, ¶12, quoting *State ex rel. Shemo v. Mayfield Hts.*, 95 Ohio St.3d 59, 63, 2002-Ohio-1627, judgment modified in part on other grounds, 96 Ohio St.3d 379, 2002-Ohio-4905; Fifth and Fourteenth Amendments to the United States Constitution; Section 19, Article I, Ohio Constitution. Mandamus is the appropriate avenue for compelling a public authority to initiate appropriation proceedings and determine whether respondent, as a public authority, has effectuated a compensable

taking of relator's access to his property. *State ex rel. Thieken v. Proctor*, 10th Dist. No. 06AP-171, 2006-Ohio-4596, ¶11, citing *State ex rel. Levin v. City of Sheffield Lake* (1994), 70 Ohio St.3d 104, 108. See also *Hatfield v. Wray* (2000), 140 Ohio App.3d 623, discretionary appeal not allowed by (2001), 91 Ohio St.3d 1514, quoting *Consolidated Rail Corp. v. Gahanna* (May 16, 1996), 10th Dist. No. 95APE12-1578 (Under Ohio law, "a property owner's remedy for an alleged 'taking' of private property by a public authority is to bring a mandamus action to compel the authority to institute appropriation proceedings"). The Court of Claims, however, has no authority to allow writs of mandamus as these are extraordinary writs and are not encompassed within the grant of "full equity powers" to the Court of Claims as found in R.C. 2743.03(A). *State ex rel. Mahoning Cty. Community Corrections Assn., Inc. v. Shoemaker* (1983), 12 Ohio App.3d 36, paragraph two of the syllabus. See also *Ohio Academy of Nursing Homes v. Ohio Dept. of Job and Family Servs.*, 114 Ohio St.3d 14, 2007-Ohio-2620, ¶19.

{¶16} Upon review of the complaint, we find appellants' first claim alleges an unlawful taking and seeks a writ of mandamus to compel the director to commence condemnation proceedings; thus, jurisdiction properly lies within the Franklin County Court of Common Pleas. As such, we conclude the trial court erred in dismissing this claim for lack of jurisdiction. With respect to appellants' second claim, however, as conceded by appellants at oral argument before this court, said claim seeks money damages arising from a claim of trespass. Civil suits for money damages do fall within the exclusive original jurisdiction of the Court of Claims. *Schwartz v. Bd. of Trustees of O.S.U.* (1987), 31 Ohio St.3d 267, 275, citing *Boggs v. State* (1983), 8 Ohio St.3d 15.

Thus, a dismissal of count two of appellants' complaint for lack of jurisdiction was proper. Therefore, we sustain in part and overrule in part appellants' two assignments of error.

{¶7} Consequently, we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas and remand this matter to that court for further proceedings consistent with law and this decision.

*Judgment affirmed in part, reversed
in part, and cause remanded.*

BRYANT and SADLER, JJ., concur.
