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O'Neal v. Department of the Army, 742 A.2d 1095 (Pa. Super. Ct. 1999)

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PENNSYLVANIA

International Land Acquisitions, Inc. v. Pennsylvania Pub. Util. Comm., 743 A.2d 1000 (Pa. Commw. Ct. 1999) (granting respondent's motion to quash appeal improvidently filed where petitioner did not move to amend or present a petition for review).

On December 16, 1998, the Pennsylvania Public Utilities Commission ("PUC") held that Pennsylvania American Water Company did not violate its tariff by requiring International Land Acquisitions, Inc. ("ILA") to pay the cost of installing an additional water line to serve ILA's proposed development. On April 27, 1999, ILA filed a notice of appeal with the commonwealth court. In Pennsylvania, a petition for review, not a notice of appeal, was the only procedure for judicial review of a determination of a government agency. This error came to the attention of counsel for ILA during an argument for supersedeas, however, ILA did not move to amend, nor file a petition for review.

PUC then moved to quash ILA's appeal on June 11, 1999. ILA contended that all of the requirements of a petition for review were present in its notice of appeal. However, there was no general statement of the objections to the order or other determination as required under the Pennsylvania Rules of Appellate Procedure. ILA requested that the court deny the motion, or in the alternative, that it be permitted to amend its pleading. Still, ILA did not make a motion to amend or submit a petition for review.

Almost four months after ILA's counsel received actual notice that its notice of appeal was improvidently filed, this court noted that ILA continued to insist that its notice of appeal was adequate. Therefore, due to ILA's obdurate noncompliance, the court granted PUC's motion to quash the appeal.

Adam B. Kehrli

O'Neal v. Department of the Army, 742 A.2d 1095 (Pa. Super. Ct. 1999) (holding that the Comprehensive Environmental Response, Compensation, and Liability Act's ("CERCLA") jurisdictional limitation to federal district courts had to be strictly construed and that CERCLA did not provide a waiver of sovereign immunity for claims based on state law).

Well water users and other users of a tract of land brought suit against the Department of the Army seeking medical monitoring to help them detect disease that may arise as a result of exposure to contaminants. This case had been in litigation in both state and federal courts for nearly a decade.

Prior to this proceeding, the Pennsylvania Supreme Court held that plaintiffs had made out a prima facie case under the Pennsylvania Hazardous Sites Cleanup Act ("HSCA") for medical monitoring. They

also found that the HSCA permitted recovery of attorney's fees. On remand, the trial court granted defendant's motion for dismissal for lack of subject matter jurisdiction. This proceeding appealed this order.

This court first discussed sovereign immunity. By bringing suit against government agencies, the plaintiffs effectively brought suit against the United States. As such, the United States must waive sovereign immunity and consent to the suit. The waiver in this case existed under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), which provided for limited jurisdiction in federal district courts. Since CERCLA only provided for jurisdiction in federal district court, the trial court correctly dismissed the suit.

The court next considered a state law claim's relation to CERCLA's federal district court exclusivity provision. The plaintiffs sought medical monitoring relief under state law provisions. The Pennsylvania Supreme Court previously held that CERCLA incorporated state laws. The plaintiffs argued that in incorporating state laws, CERCLA acted as a waiver for state law claims. They also argued that CERCLA's exclusivity provision did not apply to claims founded on state law, but only those arising out of CERCLA itself.

In contrasting CERCLA with the Federal Tort Claims Act, plaintiffs reasoned that when Congress intended to limit jurisdiction to federal court, even for claims based on state law, it stated so in clear and precise terms. The court found no merit in this argument. Instead it found that CERCLA provided for federal district court jurisdiction for all controversies arising out of it, and that the right to enforce state law for medical monitoring remedies was clearly a "controversy" under CERCLA.

Plaintiffs also argued that since CERCLA employed state law for removal, remedial, and enforcement action, HSCA alone conferred state court jurisdiction. The court held, however, that no reason existed to assume Congress intended to confer jurisdiction over this controversy to state courts since CERCLA contains a separate jurisdiction and venue provision.

Finally, plaintiffs argued that the dismissal based on lack of jurisdiction violated equitable principles. The court recognized that the facts in this case showed a "disturbing history of alarming land and water contamination over a significant land and water area" for a long period of time. It also noted that the government had belated its immunity claim and the plaintiff had no further recourse after exhausting possibilities in both state and federal forums. But the trial court only had to decide the issue of jurisdiction and had properly decided that it did not exist. This appellate court could only review that decision and no other issue.

The court concluded that the plaintiffs had to pursue claims against the United States in strict accordance with the sovereign immunity waiver in CERCLA which expressly limited jurisdiction to federal district courts.

Shana Smilovits