

HHB-CV-185025479 : SUPERIOR COURT
NOAH SNYDER : JUDICIAL DISTRICT
V. : AT NEW BRITAIN
SCOTT SEMPLE, ET AL : AUGUST 13, 2019

MEMORANDUM OF DECISION ON MOTION TO DISMISS(#120)

The defendant, Colleen Murphy, has moved to dismiss the plaintiff's complaint on the grounds that the plaintiff failed to properly served her and, therefore, the court lacks subject matter jurisdiction.

Procedural History

The plaintiff, Noah Snyder, commenced this action against the defendants, Scott Semple, former Commissioner of the Connecticut Department of Correction ("DOC"), and Colleen Murphy, Executive Director and General Counsel of the Connecticut Freedom of Information Commission ("FOIC"), to obtain a declaratory judgment from this court. Prior to filing the action on May 18, 2018, the plaintiff made a letter-request to the FOIC for a "declaratory judgment" regarding a DOC policy. The defendant, Colleen Murphy, has represented that on June 1, 2018, the Acting Clerk of the FOIC responded by letter to the plaintiff and stated that the defendant Murphy would address the plaintiff's request for a declaratory judgment. The plaintiff did not respond to the Acting

*8/13/19 - Copy mailed to Reporter of
Judicial Decisions and Plaintiff
Noah Snyder.
JDAG sent to all counsel of
Record. J. Errico, AC*

Judicial District of New Britain
SUPERIOR COURT
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ASSISTANT CLERK

Clerk's June 1, 2018 letter, and, instead, filed the present complaint for declaratory judgment.

The defendant argues that the plaintiff did not serve a copy of the Writ, Summons, Complaint and Exhibits (the "Process") at the FOIC office in the manner required by Connecticut General Statutes § 1-206(d).

Discussion of the Law and Ruling

A motion to dismiss properly tests the jurisdiction of the court. See Practice Book § 10-30. There is no inherent or constitutional right to judicial review of administrative actions. *Neyland v. Board of Education*, 195 Conn. 174, 183, 487 A.2d 181 (1985). Our Supreme Court has repeatedly held that "appeals to the courts from administrative officers or boards may be taken only when a statute provides authority for judicial intervention." (Internal quotation marks omitted.) *Id.* The Supreme Court has further held that "[a] statutory right to appeal may be taken advantage of only by strict compliance with the statutory provisions by which it is created." *Royce v. Freedom of Information Commission*, 177 Conn. 584, 587, 418 A.2d 939 (1979). "The appeal provisions of the statute are jurisdictional in nature, and, if not complied with, render the appeal petition subject to dismissal." (Internal quotation marks omitted.) *Hillcroft Partners v. Commission on Human Rights & Opportunities*, 205 Conn. 324, 326, 533 A.2d 852 (1987).

"[O]nce the question of lack of jurisdiction of a court is raised, [i]t must be disposed of no matter in what form it is presented. . . and the court must fully resolve it before proceeding further with the case. . ." *Esposito v. Specyalski*, 268 Conn. 336, 348, 844 A.2d 211 (2004) citing *Figueroa v. C & S Ball Bearing*, 237 Conn. 1, 4, 675 A.2d 845 (1996). If it becomes apparent to the court that such jurisdiction is lacking the appeal must be dismissed. *Esposito v. Specyalski*, 268 Conn. at 348 citing *State v. Anonymous*, 240 Conn. 708, 718, 694 A.2d 766 (1997).

Appeals of the FOIC's decisions are governed by two statutes: Connecticut General Statutes § 4-183, which is part of the Uniform Administrative Procedure Act; and Connecticut General Statutes § 1-206, which is part of the Freedom of Information Act. Section 4-183(c)(1) generally governs administrative appeals. It provides in relevant part that "[w]ithin forty-five days after mailing of the final decision under section 4-180 ... a person appealing as provided in this section shall serve a copy of the appeal on the agency that rendered the final decision at its office or at the office of Attorney General in Hartford and file the appeal with the clerk of the superior court ..."

Appeals of the FOIC's decisions are also governed by § 1-206(d), which specifically applies to the FOIC. It provides in relevant part: "Any party aggrieved by the decision of said commission may appeal therefrom in accordance with the provisions of section 4-183 ... Notwithstanding the provisions of subsection (c) of section 4-183 and section 52-64, *all process shall be served upon said commission at its office.*" Emphasis added.

The provisions in § 1-206(d) except the FOIC from the general rules of Connecticut General Statutes § 4-183(c), which, as stated above, provide for service of process on state commissioners by service on the Attorney General's office, and from General Statutes § 52-64, which provides that service of process on the state, including its commissions, may be made by serving the Attorney General's office. Section 1-206(d) is not ambiguous; its "notwithstanding" provision expressly supercedes the effect of §§ 4-183 and 52-64.¹ Even if it were ambiguous, it would control the service of process on the commission. "[W]hen general and specific statutes conflict they should be harmoniously construed so the more specific statute controls." *McKinley v. Musshorn*, 185 Conn. 616, 624, 441 A.2d 600 (1981).

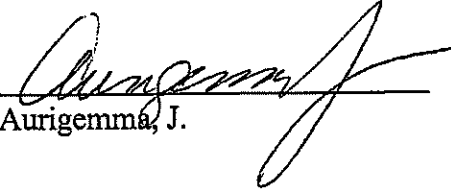
In this action, the plaintiff has neither made personal service upon the FOIC office, nor served the process by certified or registered mail addressed to the FOIC. In the Affidavit of Service filed on September 12, 2018(#100.32) the State Marshal attests that the Process was left with a Clerk of the Office of the Connecticut Attorney General at 55 Elm Street, Hartford, Connecticut. The FOIC's address is 18-20 Trinity Street, Hartford, Connecticut.

The plaintiff concedes that he may have erred in serving defendant Murphy by State Marshal at the Attorney General's office, but argues that that error should be excused because he is an indigent and incarcerated plaintiff. While "[i]t is established policy of the Connecticut courts to be solicitous of pro se litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the pro se party . . . such solicitude does not confer an attendant license not to comply with relevant rules of procedural and substantive law." *Zaneski-Nettleton v. Department of Social Services*, No HHB-CV-1650185, 2018 WL 1054555, at *7(January 29, 2018, Huddleston, J.)

The plaintiff also argues that the DOC prohibits the use of registered or certified mail, prohibits the requesting of a return-receipt except for speedy trial requests and claims that he has been denied requests for exception. The plaintiff mischaracterizes the policy of the DOC with respect to certified mail. The DOC administrative directive 10.7 provides that in his/her discretion the Unit Administrator may allow an inmate to use certified mail for good cause shown. The plaintiff has not submitted any affidavit or other evidence that he requested to serve defendant Murphy by certified mail.

For the foregoing reasons, the motion to dismiss is granted.

By the court,


Aurigemma, J.