DOCKET NO. HHBCV216067532S SUPERIOR COURT

JAMES L. CETRAN JUDICIAL DISTRICT OF NEW BRITAIN

V. AT NEW BRITAIN

TOWN OF WETHERSFIELD JULY 20, 2022

MEMORANDUM OF DECISION
ON MOTION TO DISMISS

The defendant, Town of Wethersfield, filed a motion to dismiss on the grounds that the court lacks subject matter jurisdiction on the plaintiff's appeal to the Superior Court from the discharge of the plaintiff, James Cetran, as Wethersfield Chief of Police, pursuant to General Statutes § 7-248. The defendant claims that the plaintiff's failure to name and timely serve the proper defendant in the appeal, the Town Council, precludes the exercise of jurisdiction over this matter.

The plaintiff's amended appeal "is filed pursuant to Connecticut General Statutes § 7-278 by Appellant James L. Cetran ('Chief Cetran') from his dismissal as Chief of the Wethersfield Police Department." Pl's Am. Compl., p. 1. The plaintiff alleges that "[a] special meeting of the Wethersfield Town Council ('Council') was noticed for June 15, 2021: The purpose of this special meeting is to hold a hearing regarding the recommended dismissal of Chief James Cetran as required by [§] 7-278." Id. The plaintiff further claims that a vote of the Town Council on the motion for the dismissal of Chief James Cetran from office, pursuant to § 7-278 for just cause, passed. The plaintiff alleges that "the Council acted illegally, arbitrarily,

and/or without just cause or [sic] hold further proceedings as deemed appropriate to allow Chief Cetran to present his defenses and be heard." Id., p. 15. The plaintiff alleges, in paragraph form, that the Council lacked jurisdiction or venue; acted with procedural irregularities; failed to provide required notice; was against the evidence presented by Cetran; and violated his due process in its decision of dismissal as Chief of Police. Following that hearing, the plaintiff filed this appeal against the Town of Wethersfield, challenging the vote to discharge him as Chief of Police. This appeal was filed, as amended, on July 28, 2021 (See Docket Entry No. 102.)

DISCUSSION

"[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) *Santorso* v. *Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). "[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *New London*, 265 Conn. 423, 430 n.12, 829 A.2d 801 (2003). "[A] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . . The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings . . . ." (Internal quotation marks omitted.) *Keller* v. *Beckenstein*, 305 Conn. 523, 531-32, 46 A.3d 102 (2012).

In ruling on a motion to dismiss, "a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a

manner most favorable to the pleader." (Internal quotation marks omitted.) *Lawrence Brunoli, Inc.* v. *Branford*, 247 Conn. 407, 410-11, 722 A.2d 271 (1999). However, if a complaint, as in this case, "is supplemented by undisputed facts established by affidavits submitted in support of the motion to dismiss . . . and/or public records of which judicial notice may be taken . . . the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Conboy* v. *State*, 292 Conn. 642, 651-52, 974 A.2d 669 (2009). "There is no absolute right of appeal to the courts from a decision of an administrative agency. . . . Appeals to the courts from administrative [agencies] exist only under statutory authority . . . ." (Internal quotation marks omitted.) *Caltabiano* v. *L & L Real Estate Holdings II, LLC*, 122 Conn. App. 751, 758, 998 A.2d 1256 (2010).

The defendant moves to dismiss on the grounds that the plaintiff failed to comply with the requirements of the administrative appeal process in § 7-278 by failing to name and serve the Wethersfield Town Council as the one and only proper defendant in this appeal. The defendant further claims that the named party, the Town of Wethersfield, does not have the power of dismissal of the Chief of Police.[1]

[1] The plaintiff claims that the Town, acting by the Town Manager, is vested with the authority to discharge the head of the police under the Town Charter. See Wethersfield Town Charter § 404; see also footnote 9 of this opinion.

It is undisputed that the plaintiff has brought this appeal pursuant to § 7-278. That statute provides in pertinent part: "No active head of any police department of any town, city or borough shall be dismissed unless there is a showing of just cause by the authority having the power of dismissal and such person has been given notice in writing of the specific grounds for such dismissal and an opportunity to be heard in his own defense, personally or by counsel, at a public hearing before such authority." General Statutes § 7-278. Section 7-278 further provides that "[a]ny person so dismissed may appeal within thirty days following such dismissal to the superior court for the judicial district in which such town, city or borough is located. Service shall be made as in civil process. . . . The court, upon such appeal, and after a hearing thereon, may affirm the action of such authority, or may set the same aside if it finds that such authority acted illegally or arbitrarily, or in the abuse of its discretion, with bad faith, malice, or without just cause."[2]

Our Supreme Court has 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. . . . The appeal provisions of the statute are jurisdictional in nature, and, if not complied with, render the appeal petition subject to dismissal." (Citation omitted; internal quotation marks omitted.) *Hillcroft*

[2] The defendant contends that the plaintiff named and served the Town as the defendant in this case, as demonstrated by the return of service. The plaintiff served a single copy of the process on the Town Clerk in compliance with General Statutes § 52-57 (b) (1). General Statutes § 7-278 requires that "[s]ervice shall be made as in civil process." The defendant does not contend that service of process on the Town was defective, but only that the service that was made was a defective form and method of service had the plaintiff intended to make service on the Town Council.

Partners v. *Commission on Human Rights & Opportunities*, 205 Conn. 324, 326, 533 A.2d 852 (1987).

"[T]he nonjoinder of an indispensable party . . . would create a jurisdictional defect, and therefore require dismissal, *only if* a statute mandates the naming and serving of [a particular] party. . . . For example, our Supreme Court held in *Simko* v. *Zoning Board of Appeals*, 205 Conn. 413, 533 A.2d 879 (1987), that the failure to name the town clerk in a zoning appeal deprived the trial court of subject matter jurisdiction because General Statutes (Rev. to 1986) § 8-8 (b), at that time, provided in relevant part that [n]otice of such appeal shall be given by . . . serving a true and attested copy upon the clerk of the municipality. . . . Conversely, when a party is indispensable but is not required by statute to be made a party, the [trial] court's subject matter jurisdiction is not implicated and dismissal is not required." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Izzo* v. *Quinn*, 170 Conn. App. 631, 638-39, 155 A.3d 315 (2017). As such, the court must examine the relevant statute permitting such appeal.

In *Simko* v. *Zoning Board of Appeals*, 205 Conn. 413, 417, 533 A.2d 879 (1987) (*Simko I*), aff'd en banc, 206 Conn. 374, 538 A.2d 202 (1988), superseded on other grounds, Public Acts 1988, No. 88-79, § 1, our Supreme Court provided: "The determination of who is a necessary or a proper party in a proceeding to review the actions of an administrative agency is primarily governed by statute." Id., 417. The relevant statute in *Simko I* was General Statutes (Rev. to 1986) § 8-8 (b), which provided at that time: "Notice of such appeal shall be given by leaving a true and attested copy thereof with, or at the usual place of abode of, the chairman or

clerk of said board, and by serving a true and attested copy upon the clerk of the municipality." (Emphasis omitted; internal quotation marks omitted.) Id. In analyzing § 8-8 (b), our Supreme Court provided that "[w]e find no ambiguity on the face of [§] 8-8 (b), as amended. The statute clearly mandates that both the zoning board and the clerk of the municipality be named parties to a zoning appeal." Id. On reconsideration, the court went on to hold "that the failure to name the clerk of the municipality in the citation was a jurisdictional defect that rendered the administrative appeal subject to dismissal because a proper citation is essential to the validity of the appeal." *Simko* v. *Zoning Board of Appeals*, 206 Conn. 374, 376, 538 A.2d 202 (1988) (*Simko II*) (affirming *Simko I* on rehearing en banc), superseded on other grounds, Public Acts 1988, No. 88-79, § 1.

Next, in *Fong* v. *Planning & Zoning Board of Appeals*, 212 Conn. 628, 563 A.2d 293 (1989), the Supreme Court analyzed "whether a successful applicant to a planning and zoning board of appeals (board) is an indispensable party to an appeal of the board's decision in his favor and, if so, whether failure to name and serve the applicant deprives the court of subject matter jurisdiction." Id., 629. The plaintiffs in *Fong* brought the appeal pursuant to § 8-8 (a).[3] Id., 630. After determining that the successful applicant was an indispensable party under the

[3] General Statutes (Rev. to 1989) § 8-8 (a) provided: "Any person or persons severally or jointly aggrieved by any decision of said board, or any person owning land which abuts or is within a radius of one hundred feet of any portion of the land involved in any decision of said board, or any officer, department, board or bureau of any municipality, charged with the enforcement of any order, requirement or decision of said board, may, within fifteen days from the date when notice of such decision was published in a newspaper pursuant to the provisions of section 8-3 or 8-7, as the case may be, take an appeal to the superior court for the judicial district in which such municipality is located, which appeal shall be made returnable to said court in the same manner as that prescribed for civil actions brought to said court."

statutory right to appeal in § 8-8 (a), our Supreme Court then analyzed whether failure to join this indispensable party warranted dismissal of the statutory appeal for lack of subject matter jurisdiction, providing that "[t]he failure to join one who is even an indispensable party, however, does not warrant dismissal of a statutory appeal where the statute does not specify that such a person must be served. . . . Only when the statute authorizing the appeal requires a designated person to be made a party does the failure to do so constitute noncompliance with its terms and thus involve subject matter jurisdiction." (Citations omitted; internal quotation marks omitted.) Id., 636-37. In reversing the decision of the Appellate Court, the Supreme Court in *Fong* held that "[t]he Appellate Court, therefore, erred in concluding that the failure to cite and serve [the successful applicant] involved a lack of subject matter jurisdiction and required a dismissal of the plaintiffs' appeal simply because [the successful applicant] was an indispensable party." Id., 637. In reaching this conclusion, the court relied on General Statutes § 52-108[4] and Practice Book § 100 [now Practice Book § 9-19],[5] which prohibit the defeat of an action for nonjoinder or misjoinder of parties, and the language of § 8-8 (d) authorizing the intervention of the successful applicant in the appeal to the Superior Court. Id., 635-36.

[4] General Statutes § 52-108 provides: "An action shall not be defeated by the nonjoinder or misjoinder of parties. New parties may be added and summoned in, and parties misjoined may be dropped, by order of the court, at any stage of the action, as the court deems the interests of justice require."

[5] Practice Book § 9-19 provides: "Except as provided in Sections 10-44 and 11-3 no action shall be defeated by the nonjoinder or misjoinder of parties. New parties may be added and summoned in, and parties misjoined may be dropped, by order of the judicial authority, at any stage of the cause, as it deems the interests of justice require. (See General Statutes § 52-108 and annotations.)"

In *Demar* v. *Open Space & Conservation Commission*, 211 Conn. 416, 559 A.2d 1103 (1989), our Supreme Court analyzed whether the trial court lacked subject matter jurisdiction for failure to serve the commissioner of environmental protection in a statutory appeal under General Statutes § 22-43 (a). Id., 420-21. General Statutes (Rev. to 1989) § 22a-43 (a), at the time provided that "[n]otice of such appeal shall be served upon the inland wetlands agency and the commissioner [of environmental protection]. The commissioner may appear as a party to any action brought by any other person within thirty days from the date such appeal is returned to court."(Internal quotation marks omitted.) Id., 423. The court provided: "Where a decision as to whether a court has subject matter jurisdiction is required, every presumption favoring jurisdiction should be indulged. . . . It is necessary to examine § 22a-43 (a) to determine whether the trial court truly lacked subject matter jurisdiction and properly dismissed the appeal. . . . Necessary parties have been described as [p]ersons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that [matter] which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it. . . . The statute, as plainly written, does not provide that the commissioner 'ought' to be joined but leaves that decision to the commissioner." (Citations omitted; internal quotation marks omitted.) Id., 425-27. The court, therefore, concluded in *Demar* that the trial court retained subject matter jurisdiction where the commissioner was not included as a party in the appeal. Id., 430-31.

Thus, as demonstrated above, where the statute permitting the right to appeal specifically provides for a party to be named and served, the party bringing such appeal must

name and serve that party, in accordance with such statute. If the appealing party fails to do so, then the court will be lacking subject matter jurisdiction. See also *Southern New England Telephone Co.* v. *Board of Tax Review*, 31 Conn. App. 155, 162-63, 623 A.2d 1027 (1993) (dismissing appeal where General Statutes § 12-117a required "citation to such town or city to appear before said court" and plaintiff's citation did not name such town or city as defendant)[6]; *Sarfraz* v. *Weston*, Superior Court, judicial district of Fairfield, Docket No. CV-10-6009465-S (October 15, 2010, *Tobin, J.*) (granting defendant's motion to dismiss for lack of subject matter jurisdiction where plaintiff's appeal brought under § 22a-43 (a) required service of process to the inland wetlands agency in accordance with § 52-57 (b) (5) and plaintiff failed to do so)[7]; *LSRP, LLC* v. *Michelle*, Superior Court, judicial district of Fairfield, Docket No. CV-04-4002838 (April 13, 2005, *Doherty, J.*) (same, but appeal of Bridgeport zoning board of appeals

[6] General Statutes (Rev. to 1993) § 12-117a provided in relevant part: "[A]ny person . . . claiming to be aggrieved by the action of the board of tax review in any town or city with respect to the assessment list for the assessment year commencing October 1, 1989, October 1, 1990 [or] October 1, 1991 . . . may, within two months from the time of such action, make application, in the nature of an appeal therefrom, to the superior court for the judicial district in which such town or city is situated, *which shall be accompanied by a citation to such town or city to appear before said court*. Such citation shall be signed by the same authority and such appeal shall be returnable at the same time and served and returned in the same manner as is required in case of a summons in a civil action." (Emphasis added.)

[7] General Statutes § 22a-43 (a) provides in relevant part: "Notice of such appeal shall be served upon the inland wetlands agency and the commissioner, provided, for any such appeal taken on or after October 1, 2004, *service of process for purposes of such notice to the inland wetlands agency shall be made in accordance with subdivision (5) of subsection (b) of section 52-57*. The commissioner may appear as a party to any action brought by any other person within thirty days from the date such appeal is returned to the court." (Emphasis added.)

brought pursuant to § 8-8, which specifically required service of process in accordance with § 52-57 (b) (5) and plaintiff did not file two copies of process on the clerk).[8]

As previously noted, the appeal in the present case is brought pursuant to § 7-278, which provides in relevant part: "Any person so dismissed may appeal within thirty days following such dismissal to the superior court for the judicial district in which such town, city or borough is located. Service shall be made as in civil process." General Statutes § 7-278. Section 7-278 does not require service of process to be filed in accordance with § 52-57 (b) (5) or that service of process be filed on any particular party, unlike the statutes the defendant in the present case has attempted to compare § 7-278 to: §§ 8-8, 12-117a, and 22a-43. Because § 7-278 does not mandate the serving of a particular party, the nonjoinder of the town council in the present matter, whether they are a necessary party or not, does not require dismissal for lack of subject matter jurisdiction. See *Izzo* v. *Quinn*, supra, 170 Conn. App. 639 ("when a party is indispensable but is not required by statute to be made a party, the [trial] court's subject matter jurisdiction is not implicated and dismissal is not required" [internal quotation marks omitted]); see also *Demarest* v. *Fire Department of Norwalk*, 76 Conn. App. 24, 31, 817 A.2d 1285 (2003) (same).

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[8] General Statutes § 8-8 (f) governs service of legal process for an appeal brought pursuant to this statute, that subsection provides: "Service of legal process for an appeal under this section shall be directed to a proper officer and shall be made as follows . . . . For any appeal taken on or after October 1, 2004, *process shall be served in accordance with subdivision (5) of subsection (b) of section 52-57.* Such service shall be for the purpose of providing legal notice of the appeal to the board and shall not thereby make the clerk of the municipality or the chairman or clerk of the board a necessary party to the appeal." (Emphasis added.)

cases, however, do not directly or implicitly address the issue of whether the failure to name an alleged necessary party under a § 7-278 appeal deprives the court of subject matter jurisdiction. Rather the varied parties named in each case were uncontested. *Anziano* v. *Board of Police Commissioners*, 229 Conn. 703, 704, 643 A.2d 865 (1994), there was a board of police commissioners which conducted the statutory hearing to discharge the chief of police, and was subsequently named a party defendant on appeal. Id.; *Clisham* v. *Board of Police Commissioners*, 223 Conn. 354, 355, 613 A.2d 254 (1992) (same). In the present case, the Town Charter does not provide for a board of police commissioners. In *Lysaght* v. *Newtown*, Superior Court, judicial district of Danbury, Docket No. CV-00-0338910-S (April 16, 2001, *Holden, J.*), the Board of Police Commissioners, following an agreed upon procedure and arbitration, held a special meeting and voted to dismiss the plaintiff pursuant to § 7-278. Id. The plaintiff, who did not waive his rights of appeal, filed an appeal under the § 7-278 naming the Town and the Board as defendants. Id. In *Schnabel* v. *Shew*, Superior Court, judicial district of Hartford, Docket No. CV-93-0528635 (May 20, 1994, *Maloney, J.*) (11 Conn. L. Rptr. 570), the plaintiff brought an appeal pursuant to § 7-278 against the Town Manager from his discharge as chief of police of the Town of Rocky Hill. Id. In *Ambrogio* v. *Carusone*, Superior Court, judicial district of New Haven, Docket No. 285291 (April 19, 1993, *Burns, J.*) (9 Conn. L. Rptr. 69), the statutory appeal was brought against the mayor and Chief Executive Officer of the Town of Hamden in his individual and official capacities. See id. (The parties stipulated to § 7-278 hearing before a State Trial Referee, following the plaintiff's filing of an application for a temporary injunction to refrain the defendant from proceeding with dismissal proceedings

as chief of police.) These cases demonstrate that the proper party may depend on the circumstances presented in each case. The defendant does not claim that the Town of Wethersfield was improperly named a party to the appeal.

The defendant next contends that the Town Council was acting in an administrative capacity in conducting the hearings, and as such is the only proper party on appeal. The Town further contends that the statutory authority creating the right to an appeal requires that the appeal be taken from the authority that held the hearing and made the decision to terminate the employment. The defendant relies on the phrase in the statute that provides that a head of police shall be discharged only upon "a showing of just cause by the authority having the power of dismissal." In *Anziano* v. *Board of Police Commissioners of Madison*, supra, 229 Conn. 707, our Supreme Court noted the procedural rights afforded to a chief of police under the statute in an employment context. "[T]he plaintiff has a property interest in his position as chief of police that is protected by the due process clause of the fourteenth amendment to the United States constitution . . . and by article first, § 8 of the Connecticut constitution." Id. Thus, in accordance with § 7-278, the plaintiff can be removed from office only upon "a showing of just cause by the authority having the power of dismissal . . . ." General Statutes § 7-278. As such, the statute, § 7-278, defines the plaintiff's rights as follows: (1) to be discharged only for "just cause by the authority having the power of dismissal"[9]; (2) to be "given notice in writing of the specific grounds for such dismissal"; and (3) "to have the opportunity to be heard at a

[9] The remaining issues concerning the Council's authority or conduct in the hearing may be properly addressed on the merits of the appeal.

public hearing before such authority." See General Statutes § 7-278. In other words, the statute affords the head of any police department of any town, city, or borough with definitive rights prior to dismissal from his position with that town, city, or borough. The statute, however, as previously noted, does not provide for a particular party to be named and served, such that the failure to name the party deprives the court of subject matter jurisdiction. The Town was properly served with the plaintiff's appeal pursuant to General Statutes § 7-278. In this case, the plaintiff was employed by the Town and was discharged from his position of head of police for the Town of Wethersfield, the named party.

CONCLUSION

For the foregoing reasons, the motion to dismiss for lack of subject matter jurisdiction is denied.

Knox, J.