

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

| | | |
|-------------------------------|---|-------------------------|
| JENNIFER PARSONS, | : | Case No. 09CA3302 |
| | : | |
| Plaintiff-Appellant, | : | |
| | : | |
| v. | : | <u>DECISION AND</u> |
| | : | <u>JUDGMENT ENTRY</u> |
| | : | |
| DEPARTMENT OF YOUTH SERVICES, | : | |
| OHIO RIVER VALLEY JUVENILE | : | |
| CORRECTIONAL FACILITY, | : | |
| | : | Released 1/15/10 |
| | : | |
| Defendant-Appellee. | : | |

APPEARANCES:

James H. Banks and Nina M. Najjar, Dublin, Ohio, for appellant.

Richard Cordray, OHIO ATTORNEY GENERAL, and Jack W. Decker, PRINCIPAL ASSISTANT ATTORNEY GENERAL, Columbus, Ohio, for appellee.

Harsha, J.

{¶1} Jennifer Parsons appeals the trial court’s dismissal of her action against the Ohio Department of Youth Services (“ODYS”), a state agency and Parsons’ former employer, for lack of subject-matter jurisdiction. In her complaint, Parsons presumably alleged violations of R.C. 4112.02, breach of contract, interference with contractual relations, intentional infliction of emotional distress, and violations of the Family Medical Leave Act (“FMLA”). Parsons contends that the trial court erroneously found that the Court of Claims had exclusive, original jurisdiction over these claims. Because Parsons’ complaint requested monetary damages in addition to equitable relief for ODYS’s alleged wrongdoing, the trial court properly concluded that the Court of Claims had exclusive, original jurisdiction over her claims.

I. Facts

{¶2} Parsons worked at the Ohio River Valley Juvenile Correctional Facility (“ORV”) from approximately September 23, 2007 until August 13, 2008. ORV is operated by ODYS. Parsons filed suit against ODYS in the Court of Claims in September 2008. Then in January 2009, she filed a complaint against ODYS in the Scioto County Court of Common Pleas. The Court of Claims stayed proceedings in Parsons’ original suit pending final disposition of the action in the common pleas court.

{¶3} In her January 2009 complaint, Parsons alleged that after declining the sexual advances of an ORV Unit Administrator, she was subjected to sexual harassment, gender discrimination, and retaliation in violation of R.C. 4112.02. Parsons’ complaint cited numerous examples of such conduct, including the fact that she had been denied FMLA medical and sick leave. Parsons also alleged breach of contract, interference with contractual relations, and intentional infliction of emotional distress. Parsons sought the following remedies: (1) an injunction “requiring [ODYS] to rescind any/all discipline imposed upon [Parsons] and further ordering [ODYS] to reinstate [Parsons] with full back pay, seniority and benefits”; (2) an order finding that “the acts and conduct of [the Unit Administrator] were such that no immunity is afforded him”; (3) “compensatory and/or punitive damages in excess of Twenty-Five Thousand Dollars”; (4) attorney fees and costs; and (5) “such other and further relief as may be deemed just by the Court.”

{¶4} In response, ODYS filed a Civ.R. 12(B)(1) motion to dismiss for lack of subject-matter jurisdiction. ODYS argued that Parsons’ claims fell within the exclusive,

original jurisdiction of the Court of Claims. After the trial court granted the motion to dismiss, Parsons filed this appeal.

II. Assignment of Error

{¶15} Parsons assigns the following error for our review:

THE TRIAL COURT ERRED IN DISMISSING PLAINTIFF'S COMPLAINT.
[Order of 6/16/09].

III. Subject-Matter Jurisdiction

{¶16} The legal standard for deciding a Civ.R. 12(B)(1) motion to dismiss for lack of subject-matter jurisdiction is “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, 537 N.E.2d 641 (per curiam). A determination of whether a court has subject-matter jurisdiction involves a question of law that we review de novo. *Roll v. Edwards*, 156 Ohio App.3d 227, 2004-Ohio-767, 805 N.E.2d 162, at ¶15, citing *Shockey v. Fouty* (1995), 106 Ohio App.3d 420, 424, 666 N.E.2d 304.

{¶17} Under Section 16, Article I of the Ohio Constitution, “[s]uits may be brought against the state, in such courts and in such manner, as may be provided by law.” R.C. 2743.02(A)(1) provides that “[t]he state hereby waives its immunity from liability * * * and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties * * *.” Moreover, R.C. 2743.03(A)(1) provides that the Court of Claims “has *exclusive, original jurisdiction* of all civil actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code * * *.” (Emphasis added). The term “state” includes “all departments” of the state. R.C. 2743.01(A). ODYS is an administrative department of the state. R.C. 121.02(O).

{¶8} In her complaint, Parsons alleged violations of R.C. 4112.02, breach of contract, interference with contractual relations, and intentional infliction of emotional distress. In her brief, Parsons also claims that her complaint properly set forth a FMLA claim. ODYS argues that Parsons never identified this claim as a separate theory of relief until she filed this appeal. However, even if we presume that Parsons' complaint sufficiently put ODYS on notice that she sought relief under the FMLA, the trial court properly concluded that it lacked subject matter jurisdiction over Parsons' claims.

{¶9} Initially, Parsons contends that the common pleas court had subject-matter jurisdiction over her claims because she is seeking equitable relief, and "Ohio Revised Code Chapter 2743 provides that civil claims for equitable relief may be heard in common pleas courts." However, R.C. 2743.03(A)(2) provides:

If the claimant in a civil action as described in [R.C. 2743.03(A)(1)] also files a claim for a declaratory judgment, injunctive relief, or other equitable relief against the state that arises out of the same circumstances that gave rise to the civil action described in division (A)(1) of this section, the court of claims has exclusive, original jurisdiction to hear and determine that claim in that civil action. This division does not affect, and shall not be construed as affecting, the original jurisdiction of another court of this state to hear and determine a civil action in which the *sole relief* that the claimant seeks against the state is a declaratory judgment, injunctive relief, or other equitable relief.

(Emphasis added).

{¶10} Thus, when the sole relief sought against the state is equitable, a court of common pleas may hear the action. However, "[i]f a cause of action involves a civil suit for money damages against the state, the Court of Claims has exclusive, original jurisdiction even when ancillary relief--such as an injunction or declaratory judgment--is sought in the complaint." *State ex rel. Blackwell v. Crawford*, 106 Ohio St.3d 447, 2005-

Ohio-5124, 835 N.E.2d 1232, at ¶20. As the Tenth District noted in *Ohio Edison Co. v. Ohio Dept. of Transp.* (1993), 86 Ohio App.3d 189, 193, 620 N.E.2d 217:

If such actions could be maintained in the court of common pleas, then any party seeking to evade the jurisdiction of the Court of Claims could do so simply by appending a claim for equitable relief to a request for monetary damages from the state. This would defeat the intent of the Court of Claims Act generally to establish the Court of Claims as the court of exclusive jurisdiction for claims against the state.

{¶11} In her complaint, Parsons sought monetary damages, e.g. compensatory damages, and equitable relief, e.g. an injunction, for ODYS's alleged misconduct. Moreover, Parsons does not challenge the trial court's implicit finding that her request for equitable relief arose out of the same circumstances that gave rise to her request for monetary damages. Therefore, Parsons cannot show that her request for equitable relief vests the common pleas court with jurisdiction to consider her claims.

{¶12} Next, Parsons contends that the trial court had jurisdiction over her putative FMLA claim because common pleas courts "have jurisdiction of federal claims, even for monetary damages against the State" and "it cannot be disputed that Common Pleas Courts have jurisdiction of claims against the State under federal statutes." However, none of the decisions Parsons cites support these statements. Most of the cited decisions involve actions against a state officer or employee under Section 1983, Title 42, U.S. Code. Under R.C. 2743.02(F), the Court of Claims has exclusive, original jurisdiction to determine whether a state officer or employee is entitled to immunity under R.C. 9.86. These sections "do not apply to claims brought under federal law." *Conley v. Shearer*, 64 Ohio St.3d 284, 292, 1992-Ohio-133, 595 N.E.2d 862. R.C. 9.86 expressly limits its coverage to "any civil action that arises under the law of this state."

However, these sections do not address the jurisdiction of the Court of Claims to consider federal claims brought directly against the state.

{¶13} State courts have concurrent subject-matter jurisdiction with federal courts over actions brought under the FMLA. Section 2617(a)(2), Title 29, U.S. Code. However, under R.C. 2743.03(A)(1)-(A)(2), it is clear that the Court of Claims has exclusive, original subject-matter jurisdiction in actions against the state for money damages – even when the plaintiff seeks such damages under a federal law such as the FMLA. See *Manning v. Ohio State Library Bd.* (1991), 62 Ohio St.3d 24, 29-33, 577 N.E.2d 650; *Ewing v. Univ. of Akron*, Summit App. No. 22005, 2004-Ohio-4442, at ¶6. “No one disputes the general and unassailable proposition * * * that States may establish the rules of procedure governing litigation in their own courts.” *Manning* at 31, quoting *Felder v. Casey* (1988), 487 U.S. 131, 138, 108 S.Ct. 2302, 101 L.Ed.2d 123. Moreover, while a “federal right cannot be defeated by the forms of local practice,” *Parsons* has not shown that applying the Court of Claims Act to FMLA actions presents an obstacle to the administration of justice or infringes a litigant’s rights in any way. *Id.* at 31-32, quoting *Felder* at 138, in turn, quoting *Brown v. Western Ry. of Alabama* (1949), 338 U.S. 294, 296, 70 S.Ct. 105, 94 L.Ed. 100. Thus we reject *Parsons*’ argument that the trial court had jurisdiction to consider a claim for monetary damages under the FMLA against the state.

{¶14} In her brief, *Parsons* repeatedly references the Eleventh Amendment to the United States Constitution and its impact on a state’s immunity against suit, but she fails to explain how this amendment permits a common pleas court to consider her claims. *Parsons* also contends that the Court of Claims “does not have jurisdiction over

claims based upon violation of constitutional provisions.” However, Parsons’ complaint does not allege that ODYS violated any constitutional provision, thus we fail to see the relevance of this argument. Finally, Parsons argues that the Court of Claims does not have jurisdiction over claims against state employees or officers when they act outside the scope of their employment or their acts are “intentional, deliberate or reckless.”

However, Parsons did not name a state employee or officer as a defendant in this case, and we fail to see the import of this argument to Parsons’ contention that the common pleas court had subject-matter jurisdiction over her claims against a state agency.

{¶15} Because Parsons has not shown that her complaint raised any cause of action cognizable by the trial court, the court did not err in dismissing her action against ODYS for lack of subject-matter jurisdiction. We affirm the trial court’s judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

McFarland, P.J. & Kline, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.