[Cite as *Bleise v. Ohio Dept. of Rehab. & Corr.*, 2024-Ohio-4577.]

IN THE COURT OF CLAIMS OF OHIO

KAREN BLEISE Plaintiff v. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION Defendant	Case No. 2024-00147JD Judge David E. Cain DECISION

{¶1} On May 14, 2024, Defendant, Ohio Department of Rehabilitation and Correction ("ODRC"), filed a Motion to Dismiss pursuant to Civ.R. 12(B)(1) and Civ.R. 12(B)(6). Defendant asserts that the present matter should be dismissed as the Court of Claims lacks jurisdiction over any of Plaintiff's claims, and accordingly, Plaintiff has failed to state a claim for relief. Plaintiff did not respond to Defendant's Motion to Dismiss. For the reasons stated below, the Court GRANTS Defendant's Motion to Dismiss.

Standard of Review

{¶2} Civ.R. 12(B)(1) "permits dismissal where the trial court lacks jurisdiction over the subject matter of the litigation." *Dunkle v. Ohio Dept. of Rehab. & Corr.*, 2014-Ohio-3046, ¶ 6 (10th Dist.). The standard of review for a motion to dismiss for lack of subject-matter jurisdiction, pursuant to Civ.R. 12(B)(1) is "whether any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989). A motion to dismiss filed pursuant to Civ.R. 12(B)(6) tests the sufficiency of the claims asserted in a complaint. *Gordon v. Ohio Dept. of Rehab. & Corr.*, 2018-Ohio-2272, ¶ 13 (10th Dist.). When considering a complaint against a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim, the Court "must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party." *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). For a court to dismiss a complaint, it must appear beyond doubt that the plaintiff

can prove no set of facts entitling her to recovery. *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144 (1991).

Factual Background

{¶3} At all relevant times, Plaintiff was employed as a Corrections Officer at ODRC's Dayton Correctional Institution and her employment was subject to a Collective Bargaining Agreement ("CBA"). Complaint, ¶ 4; *see also* Motion to Dismiss, p. 2; Motion to Dismiss, Exhibit A. On February 15, 2022, Plaintiff was attacked by an inmate resulting in a broken nose, orbital fracture, post traumatic stress disorder, a concussion, traumatic brain injury, and memory loss among other injuries. Complaint, ¶ 5. Following the assault, Plaintiff alleges Defendant denied the severity of her injuries, attempted to blame plaintiff for her injuries, failed to timely call emergency personnel, forced Plaintiff to return to work the following day, and failed to properly complete use of force reports in a purposeful attempt to inflict emotional distress upon Plaintiff. Complaint, ¶ 12. Additionally, Plaintiff argues that Defendant failed to maintain a safe work environment for Plaintiff, which breached their employment contract. Complaint, ¶ 15. Accordingly, Plaintiff brings claims for negligence, intentional infliction of emotional distress, and breach of contract.

Law and Analysis

Negligence

{¶4} R.C. 4117 establishes a framework for resolving public sector labor disputes by creating procedures and remedies to enforce those rights. R.C. 4117.10(A) provides that a collective bargaining agreement between a public employer and the bargaining unit "controls all matters related to the terms and conditions of employment and, further, when the collective bargaining agreement provides for binding arbitration, R.C. 4117.10(A) recognizes that arbitration provides the exclusive remedy for violations of an employee's employment rights." *Gudin v. Western Reserve Psychiatric Hosp.,* 2001 Ohio App. LEXIS 2634 (10th Dist. June 14, 2001); *see also Oglesby v. Columbus,* 2001 Ohio App. LEXIS 438 (10th Dist. Feb. 8, 2001).

{¶5} R.C. 4117.09(B)(1) provides that a party to a bargaining unit agreement "may bring suits for violation of agreements . . . in the court of common pleas of any county wherein a party resides or transacts business." Pursuant to R.C. 4117.09(B)(1), jurisdiction over suits alleging violations of collective bargaining agreements lie with the courts of common pleas alone. *Moore v. Youngstown State Univ.,* 63 Ohio App.3d 238, 242 (10th Dist. 1989).

{¶6} Defendant's Motion to Dismiss was accompanied by the CBA which governs Plaintiff's employment. Article 11 – Health and Safety § 11.03-4 of the CBA governs unsafe working conditions and workplace violence. Motion to Dismiss, Exhibit A, p. ii. "Only disputes involving the interpretation, application or alleged violation of a provision of the Agreement shall be subject to arbitration." Motion to Dismiss, Exhibit A, § 25.03. Because Plaintiff's employment was governed by the CBA between her union, Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO ("AFSCME"), and ODRC, disputes involving unsafe working conditions and workplace violence are to be resolved through arbitration per the CBA.

{¶7} Additionally, R.C. 4123.512(A) states in pertinent part: "(A) The claimant or the employer may appeal an order of the industrial commission made under division (E) of section 4123.511 [4123.51.1] of the Revised Code in any injury or occupational disease case, other than a decision as to the extent of disability to the court of common pleas of the county in which the injury was inflicted or in which the contract of employment was made if the injury occurred outside the state, or in which the contract of employment was made if the exposure occurred outside the state." It has been consistently held that an action in this court cannot act as a substitute for a statutorily created right of appeal in a different court. *Midland Ross Corp. v. Indus. Comm*., 63 Ohio Misc.2d 311 (Ct. of Cl. 1992). Inasmuch as the state of Ohio has previously consented to be sued for workers' compensation benefits in the courts of common pleas, the Court of Claims Act is inapplicable and this Court lacks jurisdiction over such claims. *See Swaney v. Bur. of Workers' Comp.*, Ohio App. LEXIS 2634 (10th Dist. Nov. 10, 1998).

{¶8} R.C. 4123.74 states, "[e]mployers who comply with section 4123.35 of the Revised Code shall not be liable to respond in damages at common law or by statute for any injury, or occupational disease, or bodily condition, received or contracted by any

employee in the course of or arising out of his employment, or for any death resulting from such injury, occupational disease, or bodily condition occurring during the period covered by such premium so paid into the state insurance fund, or during the interval the employer is a self-insuring employer, whether or not such injury, occupational disease, bodily condition, or death is compensable under this chapter." "In enacting R.C. 2745.01, 'the General Assembly intended to limit claims for employer intentional tort situations in which an employer acts with the 'specific intent' to cause an injury to another.'" *Gioiella v. Ohio Dept. of Rehab. & Corr.*, 2017-Ohio-4460, ¶ 38 (Ct. of Cl.), citing *Houdek v. Thyssenkrupp Materials N.A.*, 2012-Ohio-5685, ¶ 24. ODRC is an active participant of the Ohio Worker's Compensation System and accordingly cannot be held liable for injuries that are not intentional torts. Plaintiff however does not allege that Defendant committed an intentional tort that resulted in her injuries.

{¶9} Even if Plaintiff could bring a claim of negligence in this Court, "[t]he language in R.C. 2743.02 that 'the state' shall 'have its liability determined' * * * in accordance with the same rules of law applicable to suits between private parties * * * means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive function involving a high degree of official judgment or discretion." *Wallace v. Ohio Dept. of Commerce*, 2002-Ohio-4210, ¶ 35, citing *Reynolds v. State*, 14 Ohio St.3d 68, 70 (1984). This doctrine is "commonly referred to as sovereign or discretionary immunity." *Bradley v. Ohio Dept. of Rehab. & Corr.*, 2007-Ohio-7150, ¶ 17 (10th Dist.). The judicially created doctrine of sovereign or discretionary immunity provides that "the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion." *Reynolds,* at 70. Accordingly, as far as Plaintiff alleges failure to properly follow internal policies and procedures, or negligence that resulted in the occurrence of the alleged injury causing incident, such a claim would be barred by ODRC's discretionary immunity.

{¶10} In viewing the facts in a light most favorable to Plaintiff, the Court finds that Plaintiff's claims for negligence are barred by the aforementioned statutes and must be dismissed.

Intentional Infliction of Emotional Distress

{¶11} "In order to establish a claim for intentional infliction of emotional distress, a plaintiff must prove '(1) that the defendant intended to cause the plaintiff serious emotional distress, (2) that the defendant's conduct was extreme and outrageous, and (3) that the defendant's conduct was the proximate cause of plaintiff's serious emotional distress.'" *Meminger v. Ohio State Univ.*, 2017-Ohio-9290, ¶ 14 (10th Dist.), quoting *Phung v. Waste Mgt., Inc.*, 71 Ohio St.3d 408 (1994).

{¶12} "To recover for a claim of intentional infliction of emotional distress under Ohio law, 'it is not enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by malice, or a degree of aggravation that would entitle the plaintiff to punitive damages for another tort.'" *Kanu v. Univ. of Cincinnati*, 2018-Ohio-4969, ¶ 13 (10th Dist.), quoting *Mendlovic v. Life Line Screening of Am., Ltd.*, 2007-Ohio-4674 (8th Dist.).

{¶13} "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" *Yeager v. Local Union 20*, 6 Ohio St.3d 369, 375 (1983), quoting Restatement of the Law 2d, Torts, Section 46, comment d (1965). "The issue of whether conduct 'rises to the level of "extreme and outrageous" conduct constitutes a question of law.'" *Meminger*, at ¶ 14, quoting *Jones v. Wheelersburg Local School Dist.*, 2013-Ohio-3685, ¶ 41 (4th Dist.).

{¶14} Defendant argues in its Motion to Dismiss that Plaintiff cannot establish all the elements necessary to sustain a claim of intentional infliction of emotional distress ("IIED"), and that even if they could, the claim would be precluded by R.C. 4117.

{¶15} As to the first element, as discussed earlier, there is no evidence to permit a reasonable inference that Defendant intended for Plaintiff to be harmed, emotionally or otherwise. Even if it could be inferred that Defendant was negligent in some manner, no

reasonable trier of fact could conclude from the evidence presented by the parties that Defendant intended to cause Plaintiff emotional distress. Likewise, as to the second element, it cannot be inferred that Defendant's conduct was so extreme and outrageous that it went beyond all possible bounds of decency so as to be intolerable in a civilized community. Plaintiff argues that Defendant denied the severity of her injuries, failed to transport her to the hospital, required her to return to work, and failed to complete required paperwork following the alleged incident. Complaint, ¶ 12. None of the alleged acts by Defendant arise to the level that a reasonable finder of fact would consider to be "extreme or outrageous." *See Moore v. Impact Community Action*, 2013-Ohio-3215, ¶ 15 (10th Dist.), quoting *Mowery v. Columbus*, 2006-Ohio-1153, ¶ 49 (10th Dist.), quoting *Yeager*.

{¶16} Additionally, while an alleged IIED would constitute an intentional tort, an exception to R.C. 4117, the Court lacks jurisdiction if the factual background creating the intentional tort are subject to the CBA and arbitration procedures. *Fischer v. Kent State Univ.*, 2015-Ohio-3569, ¶ 20 (10th Dist.); *see also Marzano v. Struthers City School Dist. Bd. of Edn.*, 2017-Ohio-7768 (7th Dist.). Here, the underlying facts of Plaintiff's complaint all originate from workplace conditions which are governed by the CBA. *See* R.C. 4117.10(A) and Motion to Dismiss, Exhibit A, § 25.03.

{¶17} Accordingly, Plaintiff has failed to state a claim for an IIED which this Court has jurisdiction over and must be dismissed.

Breach of Contract

{¶18} Finally, Defendant argues Plaintiff's third cause of action for breach of contract is based around an unsafe working environment which the Court lacks jurisdiction over as it requires interpretation of Plaintiff's CBA.

{¶19} Defendant's argument is well taken. It is well established that this Court does not have jurisdiction to determine whether Defendant's conduct violated a collective bargaining agreement. *Fischer*, ¶ 20; citing *Moore* (1989).

{¶20} Therefore, construing the evidence most strongly in favor of Plaintiff, the only reasonable conclusion is that the allegations raised in Plaintiff's Complaint are all related to unsafe working conditions and are governed by the CBA, and whose claims would be dependent upon an analysis or interpretation of the CBA. The Court has no jurisdiction

to enforce or interpret provisions of the CBA. *Id.* Therefore, this court lacks jurisdiction over any claims related to Plaintiff's working conditions or work environment which resulted in her injuries.

Conclusion

{¶21} Based upon the foregoing, Defendant's Motion to Dismiss is GRANTED. Plaintiff's claims for negligence, intentional infliction of emotional distress, and breach of contract are DISMISSED pursuant to Civ.R. 12(B)(1).

DAVID E. CAIN
Judge

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IN THE COURT OF CLAIMS OF OHIO

{¶22} For reasons set forth in the Decision filed concurrently herewith, the Court GRANTS Defendant's Motion to Dismiss filed on May 14, 2024. Plaintiff's Complaint is hereby DISMISSED. Court costs are assessed against Plaintiff. The Clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DAVID E. CAIN
Judge

Filed August 9, 2024
Sent to S.C. Reporter 9/19/24