

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE **FILED**
EASTERN GRAND DIVISION

JUL 15 2009

Tennessee Claims Commission
CLERK'S OFFICE

KC TOWING,

Claimant,

v.

STATE OF TENNESSEE,

Defendant.

Claim Nos. 20080676 and 20080677

(Consolidated)

Regular Docket

COMPUTER
DOCKETED _____
C/D=COMM _____
DCA _____
AG _____
ALJ _____
FEE PAID _____
NOTICE SENT _____
FILED _____

DECISION

THESE CLAIMS CAME on to be heard on June 17, 2009, before the undersigned in the Jefferson County Chancery Court Courtroom in Dandridge, Tennessee. At that time, Ms. Edna Green, a lay person, appeared on behalf of KC Towing. Appearing on behalf of the Defendant State of Tennessee was Assistant Attorney General Rebecca Lyford, Esq.

These claims arises out of disputes the Claimant has with the State regarding wrecker and storage charges it contends are owed to it. These charges were incurred in connection with two vehicles which were towed to Claimant's storage lot in Morristown, Tennessee, one of which, in fact, is still there.

The Claimant applied for and was accepted into a wrecker rotation system maintained by the Tennessee Highway Patrol on November 14, 2006. (See Exhibit B.) The principles in KC Towing, Ms. Green and Mr. Robert K. Collier, signed an application to participate in the rotation system and agreed to be bound by the Tennessee Department of Safety's Wrecker Service Standards Manual. (See Exhibit A.)

By participating in this program, Claimant is required to meet certain standards developed by the Tennessee Highway Patrol and is inspected annually by a representative of the Department of Safety. In return for meeting and maintaining the standards required of it, KC Towing was placed on the rotation whereby it would obtain a turn in responding to THP calls where the owner of the vehicle had not made other arrangements to have the vehicle towed.

Case number 20080677 involves services rendered by the Claimant involving a 1985 Chevrolet Camaro vehicle which Ms. Green testified, as a person interested in vintage cars, is worth approximately One Thousand Dollars (\$1,000.00). This vehicle was towed by KC Towing to its lot on January 31, 2007, since the driver was cited for driving on a revoked license. Pursuant to Tennessee Code Annotated, Section 55-50-504, the officer immediately seized the vehicle.

According to Ms. Green's testimony, if the Tennessee Highway Patrol seizes and subsequently seek a forfeiture of a vehicle, it must obtain a forfeiture warrant within five days of the date the vehicle is taken control of. It appears in this case that the Trooper who filed the charges against the owner of the vehicle did not obtain a forfeiture warrant within five days of January 31, 2007, since his wife apparently was involved in a serious motor vehicle accident.

Ms. Green testified that pursuant to Department of Safety regulations, on the fifteenth day following the seizure and tow of the Camaro vehicle, she notified the owner that it was there and that he was responsible for the charges which had accrued. Ms. Green testified that the owner at that point indicated he would pay the accrued storage charges, tow fee, and administrative costs but that this was not possible since the State had placed a hold on the vehicle at Trooper Bales' request and the hold had not been released. (See Exhibit H.) Ms. Green testified that she notified the Department of Safety on February 14, 2007, that the automobile had not been re-claimed by its owner and was still on the KC Towing lot. Ms. Green also testified that thirty (30) days after the January 31, 2007, seizure she once again notified the Department of Safety that the Camaro vehicle

was still there but that she received no response whatsoever from the Patrol office in Fall Branch. Subsequently, on March 7, 2007, the seized vehicle was released (but not to the owner) by the Department of Safety pursuant to a document signed by Sergeant Potts and the owner of the vehicle. (See Exhibit C.) In connection with this vehicle, KC Towing claims damages of One Hundred Twenty-Five Dollars (\$125.00) for a rotation tow charge, thirty-six (36) days of storage at Twenty-Five Dollars (\$25.00) per day, and an administrative fee of Fifty Dollars (\$50.00), for a total of One Thousand Seventy-Five Dollars (\$1,075.00). This vehicle is still stored at KC Towing.

The second claim, number 20080676, involves towing, storage, and administrative charges regarding a 1986 Ford Mustang automobile which was involved in a fatal motor vehicle accident on September 15, 2007. The officer investigating that accident, Trooper Jarnigan, placed a hold on this vehicle since the accident, as stated, involved a fatality. (See Exhibit I.) Ms. Green testified that the owners of the vehicle and the family of the victim inquired of KC Towing regarding picking up the vehicle but were informed that the Highway Patrol had a hold on the vehicle. Ms. Green went on to state that pursuant to regulations, KC Towing notified the Highway Patrol on October 1, 2007, that the vehicle had been at KC Towing's lot for fifteen (15) days but received no response from that agency. Again, pursuant to regulations, thirty (30) days after the accident, KC Towing once again contacted the Highway Patrol and it "verbally" released the vehicle for the family to pick up. According to Ms. Green, that vehicle was never picked up and was later sold for salvage by KC for Two Hundred Fifty Dollars (\$250.00). In connection with this claim, KC Towing originally sought Nine Hundred Sixty-Two and 50/100 Dollars (\$962.50) but agreed, at hearing, that the computation was made using an incorrect daily charge and that those charges should be reduced by One Hundred Fifty Dollars (\$150.00). Additionally, eventually, the Mustang was sold for scrap metal and as stated, KC was able to recover Two Hundred Fifty Dollars (\$250.00). Therefore, reducing the

originally sought claim by Four Hundred Dollars (\$400.00), results in a final claim regarding this vehicle of Five Hundred Sixty-Two and 50/100 Dollars (\$562.50).

These claims were originally filed on the Commission's small claims docket. However, by an Order entered September 3, 2008, both claims were placed on the Commission's regular docket.

The claims were denied by the Division of Claims Administration on the ground that there was no evidence showing that any damages claimed by KC Towing were proximately caused by any negligence on the part of THP and, further, that the storage fees sought by Claimant were the responsibility of the owner of the respective vehicles.

It was the Claimant's vigorously held position at the hearing that with regard to the Camaro vehicle in case number 20080677, that had the Tennessee Highway Patrol advised it had not been able to timely obtain a forfeiture warrant, that the owner of the vehicle would have been able to pay the accrued charges up to that point – approximately fifteen (15) days worth – therefore, it would have received payment for services it had rendered up to that point in connection with towing and storing the vehicle. The Claimant appears to assert that the State, through the Tennessee Highway Patrol, was negligent in the handling of the tow and storage of this vehicle and that accordingly, it lost One Thousand Seventy-Five Dollars (\$1,075.00).

The Claimant's contentions are basically the same in case number 20080676 in that it alleges the Tennessee Highway Patrol allowed the hold on the Mustang vehicle to continue for thirty (30) days and that accordingly, costs accrued which it has been unable to collect.

The State presented evidence, with regard to both vehicles, that a partner in KC Towing, Keith Collins, signed documents indicating his company accepted responsibility of the subject vehicles and their inventory. (See Exhibits H and I.)

Lieutenant David Burns of the Tennessee Highway Patrol testified on behalf of the State that he has been in charge of the wrecker rotation system since December of 2007. He testified that

participation in the system is voluntary for all wrecker operators who meet the requirements of the Tennessee Department of Safety. Lieutenant Burns also testified that the only time the State pays for wrecker tows and storage was when it decides to impound a vehicle at its own facility. On those occasions, the vehicle is towed to such a facility and the State pays for the storage at private facilities up until that date and the towing expenses involved in originally picking up the vehicle and later moving it to the impoundment lot. He confirmed that a forfeiture warrant was never signed in connection with the Camaro vehicle. Trooper Burns also testified that if an owner does not pay storage charges, then after thirty (30) days, the wrecker owner has a garage keeper's lien. (See Tenn. Code Ann. 66-19-103.) Burns also confirmed that the administrative fee claimed by KC Towing was appropriate since it was originally included on that firm's application with the State. Additionally, a charge of Thirty-One and 50/100 Dollars (\$31.50) for waiting time on the date the Mustang was picked up was also appropriate based on the customary practices of the Tennessee Highway Patrol.

The initial issue in this case is identifying what section of the jurisdictional provision of the Tennessee Claims Commission Act, Tennessee Code Annotated, Section 9-8-307, KC Towing's claims fall under in discussing a possible waiver of sovereign immunity. The only negligence basis which would appear conceivably to apply here is Tennessee Code Annotated, Section 9-8-307(a)(1)(F), involving the negligent care, custody, or control of personal property.

"[A]t common law, the [S]tate was absolutely immune from tort liability, as were cities and counties"¹ *Lucas v. State*, 141 S.W.3d 121, 125 (Tenn. 2004). "This doctrine of sovereign immunity 'has been a part of the common law of Tennessee for more than a century[,] and [it] provides that suit may not be brought against a governmental entity unless that governmental entity

¹ "The immunity of the [S]tate and the separate immunities of cities and counties developed along different paths through statutory modifications and partial abrogations of immunity." *Lucas*, 141 S.W.3d at 125.

has consented to be sued.” *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000) (quoting *Hawks v. Westmoreland*, 960 S.W.2d 10, 14 (Tenn. 1997)) (second alteration in original). Hence, “[i]t is now a well-settled principle of [both] constitutional and statutory law in this state that ‘[t]he State of Tennessee, as a sovereign, is immune from suit except as it consents to be sued.’” *Stewart*, 33 S.W.3d at 790 (quoting *Brewington v. Brewington*, 387 S.W.2d 777, 779 (Tenn. 1965)) (third alteration in original).

“The longstanding tradition in this state has been that governmental entities may prescribe the terms and conditions under which they consent to be sued including when, in what forum, and in what manner suit may be brought.” *Cruse v. City of Columbia*, 922 S.W.2d 492, 495 (Tenn. 1996) (citation omitted). This is because “our legislature has always had the authority to waive its protections.” *Id.* The Constitution of the State of Tennessee accordingly provides that “[s]uits may be brought against the State in such manner and in such courts as the Legislature may by law direct.” Tenn. Const. art. I, § 17. “Pursuant to [this] constitutional power to provide for suits against the [S]tate, the legislature created the Tennessee Claims Commission in 1984 to hear and adjudicate certain monetary claims against the State of Tennessee.” *Stewart*, 33 S.W.3d at 790. However, the Claims Commission’s “jurisdiction is limited only to those claims specified in Tennessee Code Annotated section 9-8-307(a). If a claim falls outside of the categories specified in section 9-8-307(a), then the [S]tate retains its immunity from suit, and [the] claimant may not seek relief”² *Id.*; *cf.* Tenn. Code Ann. § 20-13-102(a) (1994).

² “We are not concerned in this case with the separate statutory development of the limited abrogation of sovereign immunity made applicable to cities and counties by the Tennessee Governmental Tort Liability Act [since t]his act is not and never has been applicable to the State of Tennessee or its agencies and departments.” *Lucas*, 141 S.W.3d at 126 (citing *Tenn. Dep’t of Mental Health v. Hughes*, 531 S.W.2d 299 (Tenn. 1975)).

“[T]he entire statutory purpose of the Tennessee Claims Commission Act is to establish the state's liability in tort based on the traditional tort concepts of duty and the reasonably prudent persons' standard of care.” *Lucas*, 141 S.W.3d at 130. The statute, however, works as a limitation on liability; it provides, “For causes of action arising in tort, the [S]tate shall only be liable for damages up to the sum of three hundred thousand dollars (\$300,000) per claimant and one million dollars (\$1,000,000) per occurrence.” *Id.* (quoting Tenn. Code Ann. § 9-8-307(e)). Moreover, “[t]he [S]tate may assert any and all defenses, including common law defenses, [and] any absolute common law immunities available.” *Id.*

“The courts of this [S]tate have [also] held that any statute granting jurisdiction to hear a claim against the [S]tate must be strictly construed, as any such statute is in derogation of the common law rule of sovereign immunity.” *Stewart*, 33 S.W.3d at 790. However, the legislature amended section 9-8-307(a) in 1985 to reflect “its intention as to the jurisdictional reach of the Claims Commission” *Id.* at 791. The provision established “the intent of the general assembly that the jurisdiction of the Claims Commission be liberally construed to implement the remedial purposes of this legislation.” Tenn. Code Ann. § 9-8-307(a)(3). Therefore, “courts [must] defer to this expressed intention in cases where the statutory language legitimately admits of various interpretations.” *Stewart*, 33 S.W.3d at 791. This “policy of liberal construction of statutes, however, only requires th[e] court to give ‘the most favorable view in support of the petitioner’s claim,’ and . . . ‘does not authorize the amendment, alteration[,] or extension of its provisions beyond [the statute’s] obvious meaning.” *Id.* (quoting *Pollard v. Knox County*, 886 S.W.2d 759, 760 (Tenn. 1994); *Brady v. Reed*, 212 S.W.2d 378, 381 (Tenn. 1948)). A liberal construction in favor of jurisdiction should be given “only so long as (1) the particular grant of jurisdiction is ambiguous and admits of several constructions, and (2) the ‘most favorable view in support of the

petitioner's claim' is not clearly contrary to the statutory language used by the [g]eneral [a]ssembly." *Stewart*, 33 S.W.3d at 791.

Negligence actions require acts or omissions by State employees and under subsection F of Tennessee Code Annotated, Section 9-8-307(a)(1), it is possible for a Claimant to recover if it is able to prove that the State has been negligent in its care, custody, or control of the Claimant's personal property.

However, here, there is no claim by KC Towing that its personal property was damaged by negligence on the part of a state employee.

On the other hand, the State argues that Section XII(8) of the wrecker agreement explicitly provides as follows:

(8) The vehicle owner/operator shall be responsible for payment of towing and related services charges prior to delivery or release of the vehicle by the towing company. (See Exhibit A.)

The principals in KC Towing agreed on November 14, 2006, that they had read and understood and would comply with the provisions of the Department of Safety's Wrecker Service Standard Manual, of which the above-referenced section XII(8) is a part.

The commission finds that claimant has not made out a claim under Tennessee Code Annotated, Section 9-8-307(a)(1)(F) sine it has not shown negligent care, custody or control of its personal property.

Additionally, Tennessee Code Annotated, Section 9-8-307(a)(1)(L), providing for jurisdiction in the Claims Commission over claims alleging breach of contract does not apply since there is no evidence in this record, as required by that subsection, of a "written contract between the claimant and the state which was executed by one (1) or more state officers or employees with authority to execute [such a] contract".

Therefore, there is simply no jurisdictional basis upon which this Commission can entertain

KC Towing's claim.

However, the Claimant is not without a possible remedy. First of all, the Wrecker Service Standards Manual is explicitly clear that the vehicle owner is responsible for the charges resulting from rendition of services by KC Towing.

Tennessee Code Annotated, Section 66-19-103 provides for a garage keeper's or towing firm's lien and, in fact, Ms. Green informed the Commission that she had utilized and complied with all provisions required by that Code Section in order to enforce such a lien in both instances involved in this case.

In the case of the Camaro vehicle dealt with in claim number 20080677, clearly the vehicle which KC Towing now has in its possession and can claim a towing firm's lien against would almost completely satisfy the claim it has filed in connection with its pick up and storage since Ms. Green testified that for persons with knowledge of cars, this vehicle is still worth approximately One Thousand Dollars (\$1,000.00).

With regard to case number 20080676, KC Towing was able to dispose of the scrap from the Mustang vehicle and therefore cover some of its expenses involved with towing and storing that vehicle, albeit at an approximate Five Hundred Dollar (\$500.00) loss.

On the other hand, as testified to by Trooper Burns, maintenance of a rotation system has afforded KC Towing, and others, with an opportunity for access to work on a regular basis in a system created and operated by the State of Tennessee. Certainly, the benefits of having such an organized system outweigh instances such as the two now before the Commission where unreimbursed charges from vehicle owners have resulted.

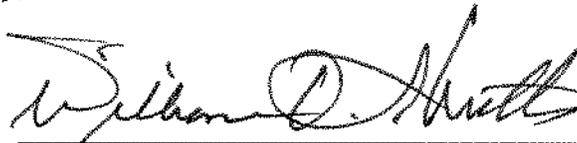
Nevertheless, under the very strictly construed waiver of sovereign immunity which the General Assembly of the State of Tennessee has enacted, there is no simply no jurisdiction in this

Commission to entertain the allegations made by KC Towing here. Fortunately, as just discussed, other avenues of relief are available to a towing firm in circumstances such as this.

The Commission would observe that Ms. Green's presentation at the hearing was orderly and polite, and the Commission understands her perplexity at what happened in these two circumstances. In the interest of fairness, it would behoove the Department of Safety to monitor closely storage of vehicles left on independent business operators' premises and to respond in a timely fashion to inquires regarding whether or not forfeiture warrants will be obtained. Such information provided to firms such as KC Towing in a prompt fashion will enable such firms to utilize whatever legal procedures they may have available to them and to obtain payment for services rendered to vehicle owners with whom they have come into contact.

Accordingly, these consolidated claims are respectfully **DISMISSED**.

ENTERED this the 12th day of July, 2009.



William O. Shults, Commissioner
P.O. Box 960
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CERTIFICATE

I certify that a true and exact copy of the foregoing Decision has been transmitted to:

KC Towing
c/o Edna Green
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Morristown, TN 37814

Rebecca Lyford, Esq.
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202-0207

This the 15 day of July, 2009.



Marsha Richeson, Administrative Clerk