

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

LASHAWNDA COBURN,

Claimant,

v.

STATE OF TENNESSEE,

Defendant.

Claims Commission No. 20090493
Small Docket

FILED

JUL 17 2009

Tennessee Claims Commission
CLERK'S OFFICE

COMPUTER _____
DOCKETED _____
C/S-COMM _____
DCA _____
AG _____
ALJ _____
FEE PAID _____
NOTICE SENT _____
FILED _____

ORDER

THIS MATTER CAME before the undersigned, Commissioner of the Tennessee Claims Commission, Eastern Grand Division, on the State's Motion to Dismiss and/or in the Alternative for Summary Judgment.

Pursuant to Tennessee Code Annotated, Section 9-8-403(a)(2), this claim is on the small claims docket and shall proceed upon affidavits filed with the Commission without an in-person hearing unless a filing fee is paid requesting an in-person hearing. The Commission would note that the Claimant has not requested an in-person hearing and has not paid the \$25.00 filing fee for an in-person hearing. Therefore, this claim shall proceed in accordance with Tennessee Claims Commission Rule 0310-1-1-.01(2)(d)(1) and shall be heard upon the Notice of Appeal, Claim for Damages form, Complaint Form, Affidavits on file, attached exhibits, the State's Answer, the State's Motion, and upon the record as a whole.

Further, motions pending before the Tennessee Claims Commission are to be decided without oral argument pursuant to Tennessee Claims Commission Rules, Rule 0310-1-1-.01(5)(a) unless otherwise ordered. There has been no order for oral argument in this matter.

Further, there has been no motion by either party for oral argument. Therefore, the State's Motion is properly before the Commission and will be heard on the record.

On October 22, 2008, Ms. Coburn filed a claim with the Division of Claims Administration seeking Four Hundred Forty-four 67/100 Dollars (\$444.67). This claim arose out of a theft of her personal property, predominately clothing, which was taken from the laundry room at South Carrick Hall on the campus of the University of Tennessee, Knoxville, on August 2, 2008. The circumstances of this claim are set out in articulate detail by Ms. Coburn in a letter dated October 15, 2008, directed to Jennifer Lane at the Office of Risk Management at UTK in Knoxville.

On November 13, 2008, the Division of Claims Administration denied the claim on the ground that "... there is no evidence to indicate that the proximate cause of your loss was the negligence of UT officials."

Consequently, on January 9, 2009, Ms. Coburn filed a Notice of Appeal with this Commission. Attached to that Notice of Appeal is again a very articulate recitation of the basis for the claim.

On May 20, 2009, the University of Tennessee filed a Motion to Dismiss or in the Alternative for Summary Judgment which of course contends that this claim should be dismissed.

The evidence in this file seems to clearly establish that Ms. Coburn is a victim of a theft committed by certain employees working at the University of Tennessee on August 2, 2008. Ms. Coburn, an industrial engineering student, had worked as a Summer Conference Assistant at the University in 2008. Ms. Coburn's outrage at the theft of her personal property by these two employees of the University is justified and understandable.

The Tennessee Claims Commission is a body created by the General Assembly of the State of Tennessee in 1984 which considers claims, in certain categories, involving acts or omissions of State employees.

Normally, the State, and its various institutions are absolutely protected against suit by something known as the doctrine of sovereign immunity. The Tennessee Claims Commission Act is a partial waiver of that immunity.

The core issue in this case is whether the State's sovereign immunity against suit has been waived in a situation such as the circumstances alleged by Ms. Coburn.

“[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 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

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.

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).

“[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

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)).

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.

The purpose of sovereign immunity is to preserve the financial viability of the State and its government for the good of all of its citizenry. Otherwise, the State and its institutions could potentially be subjected to an array of crippling lawsuits and potential financial insolvency.

When it enacted the Tennessee Claims Commission Act in 1984, the General Assembly included therein Section 9-8-307(d) which in part provides as follows: “(d) . . . the State will not be liable for willful, malicious, or criminal acts by State employees or for acts on the part of State employees done for personal gain. . . .”

In this case, it is clear that the employees identified by Ms. Coburn in her claim committed acts in taking her clothing from the laundry room at South Carrick Hall on August 2, 2008, which could be classified as criminal.

In light of that circumstance, this Commission simply has not been empowered by the Legislature of the State to pay Ms. Coburn for her loss.

The claimant's outrage at this theft is justified.

However, in light of the jurisdiction granted to the Commission by the Legislature, we simply do not have the power to order judgment in this case and therefore, this claim must be respectfully **DENIED**.

IT IS SO ORDER, this 15 day of July, 2009.



William O. Shults, Commissioner
P.O. Box 960
Newport, TN 37822-0960
(423) 613-4809

CERTIFICATE

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

Lashawnda Coburn
3228 Kirkwall
Memphis, TN 38128

Rhonda Alexander
The University of Tennessee
Office of the General Counsel
719 Andy Holt Tower
Knoxville, TN 37996-0170

This the 17 day of July, 2009.


Clerk