

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
EASTERN DIVISION

FILED

SEP 14 2009  
Tennessee Claims Commission  
CLERK'S OFFICE

ANTHONY L. FUGATE,  
Claimant,

v.

STATE OF TENNESSEE,  
Defendant.

Claim No. 20090773  
Regular Docket

COMPLETED \_\_\_\_\_  
DOCKETED \_\_\_\_\_  
C/B-COMM \_\_\_\_\_  
DCA \_\_\_\_\_  
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FEE PAID \_\_\_\_\_  
NOTICE SENT \_\_\_\_\_  
FILED \_\_\_\_\_

ORDER GRANTING STATE'S MOTION TO DISMISS

THIS MATTER IS BEFORE the undersigned on the Defendant State's Motion to Dismiss, the Claimant's Objection to State's Motion to Dismiss Claim, and the record as a whole.

Motions pending before the Tennessee Claims Commission ("the Commission") are to be decided without oral argument pursuant to Tennessee Claims Commission 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.

**Procedural History**

This claim was originally filed by Mr. Fugate with the Division of Claims Administration ("the Division") on January 12, 2009, as the result of events which occurred on January 14, 2008. On April 13, 2009, the claim was transferred from the Division to the Commission for resolution.

Subsequently, on May 20, 2009, the State filed a Motion to Dismiss pursuant to the Tennessee Rules of Civil Procedure, Rule 12.02(6), which provides as follows:

**12.02. How Presented.** – Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion in writing: . . . . (6) failure to state a claim upon which relief can be granted,....

In response, the Claimant filed an Objection to State's Motion to Dismiss Claim on July 24, 2009.

It is the State's Motion which is now before the Commission for resolution.

According to his claim, Mr. Fugate is a citizen and resident of Hawkins County, Tennessee. He is of African-American descent and alleges that he suffers from a mental illness. Mr. Fugate's claim arose out of actions allegedly taken by a former Tennessee Highway Patrolman, Leon T. Marshall, who had been with the Patrol for almost exactly one year before the claimed events occurred. According to Mr. Fugate's filings, Trooper Marshall was later dismissed from his position with the Patrol on May 30, 2008.

The allegations initially set out by Mr. Fugate in his notice of claim are lengthy. However, because the content of those allegations are extremely important to the Commission's decision on the State's Motion, they will be addressed in some detail here.

First, the Claimant alleges that rights protected by both the state and federal constitutions were violated by actions taken by the Trooper, "acting under color of State law". Those actions, characterized as tortious by Mr. Fugate, include: (1) accessing Mr. Fugate's drivers license and non-public criminal records for purposes not related to his duties as a law enforcement officer; (2) assault on the Claimant both by putting him in fear of bodily injury and by physically searching, seizing, arresting, and handcuffing Mr. Fugate without cause; (3) removing Mr.

Fugate from his home and detaining and confining him without justification; (4) falsely arresting Claimant on a stalking charge without cause; (5) violating Claimant's civil rights by intimidating Mr. Fugate who the Trooper knew to be mentally ill, by virtue of placing him in fear when he traveled about Hawkins County and sought to patronize local businesses and carry out normal life activities; (6) engaging in a second stalking episode against the Claimant for the express purpose of frightening, intimidating, threatening or harassing a known mentally ill African-American citizen; (7) committing "the offense of official oppression"; (8) by tortiously harassing Mr. Fugate, causing him to be subjected to "inappropriate behavior and mistreatment"; (9) by denying Claimant the right to counsel; and (10) depriving him of liberty without due process and equal protection.

The Claimant alleges in his claim that Trooper Marshall previously had engaged in aggressive conduct, before the episode complained of in this claim, in October of 2007, in Sullivan County, Tennessee, in connection with theft allegations lodged against a Ms. Fields. The Claimant alleges that Trooper Marshall was disciplined regarding this episode by a superior officer with the Tennessee Highway Patrol. Because of this earlier episode, Mr. Fugate alleges that the State was placed on notice regarding the sorts of behavior Mr. Marshall might engage in. The Claimant alleges that Trooper Marshall's behavior created "a reasonably foreseeable nuisance" for both the Claimant and other individuals in the State.

Mr. Fugate goes on to allege that Trooper Marshall's supervisors and superiors with the Tennessee Highway Patrol failed to "adequately and properly train, re-train, supervise, oversee, transfer, or terminate" Trooper Marshall and that accordingly, his claim for relief falls under Tennessee Code Annotated, Section 9-8-307(a)(1)(B) where sovereign immunity is waived when

the State creates or maintains a nuisance. That provision of the Act reads as follows:

**9-8-307. Jurisdiction Claims Waiver of actions Standard for tort liability Damages Immunities Definitions Transfer of claims.**

(a) (1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of state employees, as defined in 8-42-101(3), falling within one (1) or more of the following categories:

(B) Nuisances created or maintained;

The Claimant alleges Trooper Marshall's conduct of January 14, 2008, began initially when he accessed Mr. Fugate's driver's license records and non-public criminal history records, and that officials at the Tennessee Department of Safety, Tennessee Highway Patrol, even to the Commissioner level, were "negligent" in safeguarding access to those records. The negligence, the Claimant alleges, played a role in creating the nuisance complained of by Claimant.

In another paragraph of his claim, also based on Tennessee Code Annotated, Section 9-8-307(a)(1)(B), Mr. Fugate alleges Department of Safety personnel were negligent in their failure to adequately train officers in dealing with racial diversity and mental illness, thereby contributing to Trooper Marshall becoming a nuisance.

Finally, in support of his claim, Mr. Fugate also invokes Tennessee Code Annotated, Section 9-8-307(a)(1)(N) for the proposition that both Trooper Marshall, as well as his superiors at the Department of Safety, negligently deprived him of state and federal constitutional rights, as well "the statutory rights created under Tennessee law, including, but not limited to T.C.A. § 4-21-701, which creates a civil cause of action for malicious harassment". Tennessee Code Annotated, Section 9-8-307(a)(1)(N) provides as follows:

**9-8-307. Jurisdiction Claims Waiver of actions Standard for tort liability Damages Immunities Definitions Transfer of claims.**

(a) (1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of state employees, as defined in 8-42-101(3), falling within one (1) or more of the following categories:

(N) Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. The claimant must prove under this subdivision (a)(1)(N) that the general assembly expressly conferred a private right of action in favor of the claimant against the state for the state's violation of the particular statute's provisions;

Tennessee Code Annotated, Section 4-21-701 reads as follows<sup>1</sup>:

**4-21-701. Creation of civil action. – Damages.** – (a) There is hereby created a civil cause of action for malicious harassment.

(b) A person may be liable to the victim of malicious harassment for both special and general damages, including, but not limited to, damages for emotional distress, reasonable attorney's fees and costs, and punitive damages.

In its Motion to Dismiss, the State alleges that Mr. Fugate has not established a claim for nuisance since he has alleged no damage to real or personal property. Regarding this issue, the State observes that Mr. Fugate, realizing there is no viable negligent supervision claim under the Tennessee Claims Commission Act, has tried to characterize his complaints here as constituting a nuisance which can be a cognizable cause of action under the Act.

With regard to Mr. Fugate's claim brought under Tennessee Code Annotated, Section 9-8-307(a)(1)(N), the State argues that Mr. Fugate's claim for malicious harassment as defined in Tennessee Code Annotated, Section 4-21-701 in actuality involves intentional acts over which the Commission does not have jurisdiction.

Mr. Fugate has filed an Objection to the State's Motion to Dismiss. In that document, Mr. Fugate seems to argue that his real complaint is based on acts or omissions of Department of

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<sup>1</sup> In his claim, Mr. Fugate indicates he also has filed a lawsuit against Trooper Marshall in his individual capacity styled *Anthony L. Fugate v. Leon T. Marshall*, in the Hawkins County Circuit Court, Civil Action No.: 09CV0015.

Safety and Tennessee Highway Patrol supervisory personnel. He claims that the State's negligence in failing to properly monitor Trooper Marshall created a nuisance. However, the Claimant disagrees that nuisance claims are limited solely to actions involving real or personal property.

On page 2 of his Objection, Mr. Fugate says the legal question before the Commission now is, "Can a person by their conduct be or become a nuisance to other persons and/or become a threat to the health, safety and welfare of the citizens he has taken an oath to protect?" Mr. Fugate argues that Trooper Marshall's actions were foreseeable to the State in light of his past disciplinary problems, his recent appointment to the force, his lack of training, and his failure to follow superiors' orders resulting in creating a situation in which the State should have realized that Trooper Marshall was a nuisance to the general public, including Mr. Fugate.

Mr. Fugate goes on to argue in his objection that his action against the State in this case "is not for Trooper Marshall's tort per se, but rather for the negligence of supervisory personnel of the State, Department of Safety, and the Tennessee Highway Patrol". He claims that but for the failures of state officials, Fugate would never have been in a position to commit an intentional tort. He goes on to state that in light of these circumstances, "...the action against the State is not for an intentional tort, but rather for the negligent deprivation of Claimant's statutory rights, which is clearly within this Commission's authority and jurisdiction to review". Therefore, the crux of Mr. Fugate's objection and the stated basis for his claim is that the state was negligent in its supervision, both by omission and commission, of Trooper Marshall. He argues that the State has a duty of care "in the hiring [of], training [of], and granting of police powers" to individuals charged with enforcing the law.

The State's failures are, according to the Claimant, sufficient to give this Commission jurisdiction to review his claims on the merits.

## Sovereign Immunity

The core issue in this case is whether the Claimant has established a viable cause of action under Tennessee Code Annotated, Sections 9-8-307(a)(1)(B) and (N), in light of the allegations and other materials in this case presently before the Commission.

“[A]t common law, the [S]tate was absolutely immune from tort liability, as were cities and counties. . . .”<sup>2</sup> *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 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

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<sup>2</sup> “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.

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 . . . .”<sup>3</sup> *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 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

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<sup>3</sup> “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)).

[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.

With that principle in mind, the drafters of the Constitution of Tennessee embedded as a paramount principle of governance the concept that only the Legislature of the State could determine those circumstances in which the shield of sovereign immunity would be lowered and suit against the State permitted. Article I, Section 17 of our Constitution provides as follows:

Section 17. That all courts shall be open; every man, for an injury done him and his lands, goods, person or reputation, shall have remedy by due course of law and right and justice administered, without sale, denial or delay. Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct. (Emphasis supplied.)

The General Assembly itself later enacted statutory law which reiterates the concept of the sovereign immunity of this State. Tennessee Code Annotated, Section 20-13-102(a) reads as follows:

20-13-102. Actions Against State Prohibited. – (a) No court in the state shall have any power, jurisdiction or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds, property, and all such suits shall be dismissed as to the state or such officers, on motion, plea or demurrer of the law officer of

the state, or counsel employed for the state. See also *Brewington v. Brewington*, 387 SW2d 777, 778-779 (1965).

However, in 1984, the General Assembly made a significant change to the law of sovereign immunity with the enactment of The Tennessee Claims Commission Act, Tennessee Code Annotated, Section 9-8-301, *et seq.* In Tennessee Code Annotated, Section 9-8-307(a)(1), the Legislature set out very clearly those areas in which the State has relinquished its immunity to the financial extent permitted by other provisions of that Act.

An adjunct principle to the State's decision, through its Legislature, to partially waive its sovereign immunity rights is the rule that statutes waiving immunity, because they are in derogation of the common-law, must be strictly construed. *State ex Rel Allen v. Cook*, 106 SW2d 858, 860 (1937); *Stokes v. University of Tennessee*, 737 SW2d 545, 547, (Tenn. Ct. App., 1987).

The Supreme Court has made it abundantly clear that if a particular cause of action is not enumerated in Tennessee Code Annotated, Sections 9-8-307, this Commission does not have jurisdiction since sovereign immunity has been waived only in the areas set out therein.<sup>4</sup> *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000).

**Mr. Fugate's claim considered under**

**Tennessee Code Annotated, Section 9-8-307(a)(1)(B) [Nuisance]**

The evolution of the Tennessee Claims Commission's jurisdiction has been discussed at length above. It is clear that the jurisdiction is clearly delineated and narrowly parsed. The categories of possible viable claims are set out in Tennessee Code Annotated, Sections 9-8-307(a)(1)(A) – (V). As the State has argued in its Motion, nowhere in the recitation of those

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<sup>4</sup> Briefly, the Commission did have jurisdiction of cases involving alleged negligent deprivation of constitutional rights. However, in 1989, the words "or constitutional" were deleted from Tennessee Code Annotated, Section 9-8-307(a)(1)(N). See *Shell v. State*, 893 S.W.2d 416, 418-420 (Tenn. 1995).

jurisdictional pegs is found a claim based on negligent training or supervision of state employees.

The Claimant therefore, and quite cleverly, has seemingly attempted to identify a subsection of section 9-8-307 within which he could fit his claim in this case. First, he has attempted to argue that the State's failure to properly train and supervise Trooper Marshall, created a nuisance for both the Claimant, as well as other citizens.

However, the Tennessee law of nuisance does not support such a claim.

The classic definition of a nuisance in Tennessee is as follows:

A nuisance has been defined as anything which annoys or disturbs the free use of one's property, or which renders its ordinary use or physical occupation uncomfortable. *Caldwell v. Knox Concrete Products, Inc.*, 391 S.W.2d 5, 9 (Tenn. Ct. App. 1965).

In *City of Nashville v. Nevin*, 12 Tenn. App. 336, it was said that a nuisance extends to everything that endangers life or health, gives offense to the senses, "violates the laws of decency, or obstructs the reasonable and comfortable use of property". *Id.*; see also *Sherrod v. Dutton*, 635 S.W.2d 117, 119 (1982) and *Leggett v. Dorris*, No. M2008-00363-COA-R3-CV, 2009 WL 302290 at \*3 (Tenn. Ct. App.).<sup>5</sup>

Additionally, where a nuisance is established, the measure of damages is the "injury to the value of the use and enjoyment of the property, which is usually shown by evidence of the extent that the rental value of the property is diminished by the nuisance". See *Tate v. City of Martin*, 614 S.W.2d 46, 48 (Tenn. 1981).

In this case, based on these authorities, it is clear that the Claimant is not alleging injury or damages because of an interference with the free use and enjoyment of his property.

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<sup>5</sup> Also in this state, nuisances can be private or public. Private nuisances "annoy or disturb the free use of one's property, or render its ordinary use or physical occupation uncomfortable". Public nuisances interfere with "the public's use and enjoyment of a public place". (See *Lane v. W.J. Curry and Sons*, 92 S.W.3d 355, 364 – 365 (Tenn. 2002).)

Therefore, clearly, Mr. Fugate's attempts to characterize what Trooper Marshall allegedly did to him simply cannot fit within the jurisdictional proviso set out in Tennessee Code Annotated, Section 9-8-307(a)(1)(B).

**Mr. Fugate's claim considered under**  
**Tennessee Code Annotated, Sections 9-8-307(a)(1)(N)**

Mr. Fugate also attempts to assert his claim before this Commission invoking the provisions of Tennessee Code Annotated, Section 9-8-307(a)(1)(N), which of course grants jurisdiction in cases where there has been a negligent deprivation of a statutory right, created under Tennessee law, by the General Assembly, and "expressly confer[ing] a private right of action in favor of the claimant against the state for the state's violation of a particular statute's provision". In this connection, the Claimant has alleged violations of both the state and federal constitutions<sup>6</sup>, as well as Tennessee Code Annotated, Section 4-21-701, creating a cause of action for malicious harassment.

First of all, in connection with this claim, the allegations made in Mr. Fugate's claim clearly involve intentional acts on the part of a Tennessee Highway Patrol officer. As specifically set out in Tennessee Code Annotated, Section 9-8-307(b), "the state will not be liable for willful, malicious, or criminal acts of state employees".

Secondly, Mr. Fugate's invocation of Tennessee Code Annotated, Section 4-21-701 to provide the statutory right required to proceed under Tennessee Code Annotated, Section 9-8-307(a)(1)(N), warrants the Commission's study of our supreme court's decision in *Washington v. Robertson County*, 29 S.W.3d 466 (Tenn. 2008). *Washington* presents two problems for Mr. Fugate's claim. First, the Court referenced a counterpart criminal statute, Tennessee Code

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<sup>6</sup> As noted in footnote 4, there has been no jurisdiction with this Commission since 1989 over claims alleging negligent deprivation of constitutional rights.

Annotated, Section 39-17-309(b), as providing the elements necessary to pursue a civil malicious harassment claim. The Court went on to set out what such a claim would require:

Accordingly, we conclude that a claim of malicious harassment requires not only that a person acted maliciously, i.e., ill-will, hatred or spite, but also that a person unlawfully intimidated another from the free exercise or enjoyment of a constitutional right by injuring or threatening to injure or coercing another person or by damaging, destroying or defacing any real or personal property of another person. *Id.* at 473.

The *Washington* Court's utilization of terms such as "maliciously", "ill-will, hatred, or spite", and "intimidation" clearly partake of the intentional sort of actions which Tennessee Code Annotated, Section 9-8-307(d) clearly provides the State will not be liable for, under the Tennessee Claims Commission Act, should an employee engage in such activities. See also in this connection *Luster v. Smoot*, No. 2000-02191-COA-R3-CV, 2002 WL 826927, \*3 (Tenn. Ct. App.); *Surber v. Cannon*, No. M1998-00928-COA-R3-CV, 2001 WL 120735, \*5 (Tenn. Ct. App.); and *Shell v. State*, 893 S.W.2d 416, 421 (Tenn. 1995).

For these reasons, Mr. Fugate's claim is also not viable under Tennessee Code Annotated, Section 9-8-307(a)(1)(N) since the Claimant has not shown that the Legislature "expressly conferred a private right of action in favor of the claimant against the state" for the State's violation of [a] particular statute's provisions".

The State has filed a Motion under Tennessee Rules of Civil Procedure, Rule 12.02(6) for failure to state a claim upon which relief can be granted.

In *Cavnar v. State*, the motion to dismiss standard was discussed at some length. There, the Court wrote:

A motion to dismiss a complaint for failure to state a claim for which relief can be granted tests the legal sufficiency of the plaintiff's pleading. *Givens v. Mullikin*, 75 S.W.3d 383, 406 (Tenn. 2002); *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 696 (Tenn. 2002). The motion requires the court to

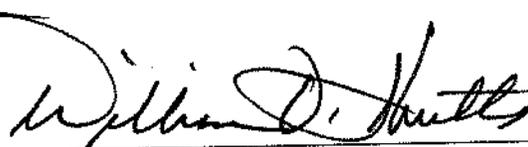
review the complaint alone, *Mitchell v. Campbell*, 88 S.W.3d 561, 564 (Tenn. Ct. App. 2002), and to look to the complaint's substance rather than its form. *Kaylor v. Bradley*, 912 S.W.2d 728, 731 (Tenn. Ct. App. 1995). Dismissal under Tenn. R. Civ. P. 12.02(6) is warranted only when the alleged facts will not entitle the plaintiff to relief, *Crews v. Buckman Labs. Int'l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002) or when the complaint is totally lacking in clarity and specificity. *Dobbs v. Guenther*, 846 S.W.2d 270, 273 (Tenn. Ct. App. 1992).

A Tenn. R. Civ. P. 12.02(6) motion admits the truth of all the relevant and material factual allegations in the complaint but asserts that no cause of action arises from these facts. *Davis v. The Tennessean*, 83 S.W.3d 125, 127 (Tenn. Ct. App. 2001); *Pendleton v. Mills*, 73 S.W.3d 115, 120 (Tenn. Ct. App. 2001). Accordingly, courts reviewing a complaint being tested by a Tenn. R. Civ. P. 12.02(6) motion must construe the complaint liberally in favor of the plaintiff by taking all factual allegations in the complaint as true, *Stein v. Davidson Hotel*, 945 S.W.2d 714, 716 (Tenn. 1997), and by giving the plaintiff the benefit of all the inferences that can be reasonably drawn from the pleaded facts. Robert Banks, Jr. & June F. Entman, Tennessee Civil Procedure § 5-6(g), at 254 (1999).

Here, it is clear from what has been discussed above that even taking all of the allegations made by the Claimant and construing them in his favor, that Mr. Fugate cannot and has not established a viable cause of action under either subsections B or N of Tennessee Code Annotated, Section 9-8-307(a)(1).

For these reasons, Mr. Fugate's claim against the State of Tennessee must be and is **DISMISSED**.

ENTERED this the 10<sup>th</sup> day of September, 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 forwarded to:

**William C. Talman, Esq.**  
**P.O. Box 506**  
**Knoxville, TN 37901-0506**

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

This the 14 day of September, 2009.



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Marsha Richeson, Administrative Clerk