

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED
CLAIMS COMMISSION
MIDDLE DIVISION
2015 JUL -5 A 9:56

LUIS DEL MAZO)
)
) Claim No. T20151070
 Claimant,)
)
 vs.)
)
 STATE OF TENNESSEE,)
) Regular Docket
 Defendant.)

ORDER GRANTING MOTION TO DISMISS

This regular docket claim came before Robert N. Hibbett, Commissioner and judge of the facts and the law. The State has filed a Motion to dismiss, arguing the following main points: first, that this claim was filed after the statute of limitations had expired; second, that this Tribunal lacks jurisdiction over claims alleging deprivation of constitutional rights, intentional torts, criminal conduct, and unwritten contracts; and third, that this Tribunal lacks jurisdiction over claims against non-state employees or entities. The Tribunal finds that the State's memorandum of law is correct and the Motion to Dismiss is well taken.

Many of the claims in this action arise from judgments issued by Judge Phillip Robinson. *See* Verified Affidavit of Administrative Claim with the

Division of Claims Administration (herein after referred to as "Complaint"), ¶ 6. The Claimant appealed the decisions of Judge Robinson on August 8, 2013, and the Claimant's motion to stay the lower court proceedings was denied on October 18, 2013. *Id.* at ¶ 29. Claimant filed a complaint with the Division of Claims administration (DCA) on December 16, 2014. *See* Complaint. Young Williams is a private company which contracts with the State of Tennessee to collect child support payments, and administered the account of the Claimant. *See* Affidavit of Daphne Davidson. Ms. Davidson, and Ms. Cower, who are specifically referenced in the Complaint, were employees of Young Williams at all times relevant to the claims stated in this action. *See* Affidavit of Daphne Davidson.

A claim must be filed in the DCA within the statute of limitations which would apply in circuit court. Tenn. Code Ann. § 9-8-402(b). The claims in this action are governed by a one year statute of limitations. Tenn. Code Ann. 28-3-104. The statute of limitations period begins to run when the plaintiff knew or "through the exercise of reasonable diligence should have known of the injury that forms the basis of his action. *Weber v. Moses*, 938 S.W.2d 387, 393 (Tenn. 1996). Even if the claims in this case were caused by a state official, those actions

would have concluded on August 8, 2013, when the Claimant filed an appeal regarding Judge Robinson's custody payment ruling. These claims were filed on December 16, 2014; therefore, the Claimant did not raise these claims within one year, as required by the statute of limitations. Thus, the Claimant is barred from raising the claims stated in this action.

Even if the Claimant had timely filed this action, this Tribunal would still not have jurisdiction over these claims because the Claims Commission has no subject matter jurisdiction over claims alleging constitutional violations, or claims alleging intentional tortious acts by non-state employees, or claims arising from non-written contracts. According to the Constitution of the State of Tennessee, "[s]uits may be brought against the State in such manner and in such courts as the Legislature may direct." Tenn. Const. Art. I, § 17. The legislature, in Tenn. Code Ann. § 9-8-307(a)(1)(A) through (V) has conferred jurisdiction upon the Claims Commission over certain areas, such as negligence by a state employee and written contracts entered into by the State. These provisions are to be "strictly construed and the jurisdiction cannot be enlarged by implication." *Daley v. State*, 869 S.W.2d 338, 340 (Tenn. Ct. App. 1993).

This Tribunal does not have jurisdiction over claims alleging the deprivation of constitutional rights. 1989 Tenn. Pub. Acts No. 491, Section 1. See *Shell v. State*, 893 S.W.2d 416 at 418-19 (Tenn. 1995). Nor does this Tribunal have jurisdiction over claims alleging intentional tortious conduct, such as false imprisonment, malicious prosecution, and the intentional infliction of emotional distress. *Conley v. State*, 141 S.W.3d 591, 597 (Tenn. 2004); *Shell v. State*, 893 S.W.2d at 421; *People's Protective Lift Ins. Co. v. L.L. Neuhoff*, 407 S.W.2d 190, 199 (Tenn. Ct. App. 1966); *Sullivan v. Young*, 678 S.W.2d 906, 911 (Tenn. Ct. App. 1984); *Brown v. Soca Industries, Inc.*, 741 S.W.2d 916, 919 (Tenn. Ct. App. 1987); *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997). Similarly, the Tribunal has no jurisdiction over claims alleging violations of criminal law or for claims alleging excessive child support payments. See Tenn. Code Ann. § 9-8-307(a)(1)(A)-(V); *Glass v. State*, 2007 WL 443695 (Tenn. Ct. App. Dec. 19, 2007); *Fossett v. State*, 1997 WL 714877 (Tenn. Ct. App. Nov. 18, 1997). Lastly, this Tribunal does not have jurisdiction over the negligent revocation of a real estate license. Tenn. Code Ann. § 9-8-307(a)(2). In order for this Tribunal to have jurisdiction over a claim, the Claimant must cite to specific statutory language conferring a cause of action against the State. Tenn. Code Ann. § 9-8-307(a)(1)(N). The Claimant has cited no

specific statutory provision upon which this Tribunal would have jurisdiction over the claims raised in Count 1, Count 2, Count 3, Count 4, or the “Breach of Duty” Component of Count 6 of Complaint.

This Tribunal does not have jurisdiction to hear claims based upon the actions of non-state employees or non-state entities. Tenn. Code Ann. § 9-8-307(a). A state employee is defined as the following: “any person who is employed in the service of and whose compensation is payable by the state, . . . but does not include any person employed on a contractual percentage basis. Tenn. Code Ann. 8-42-101(3). Young Williams is a private company which serves as an independent contractor with the State of Tennessee. *See* Daphne Davidson Affidavit. The persons upon whom the Claimant bases his claims, Ms. Davidson and Ms. Cowan are employees of Young Williams and are also non-state employees. *See* Daphne Davidson Affidavit. Therefore, this Tribunal lacks jurisdiction over the claims stated in Count 5 of Complaint.

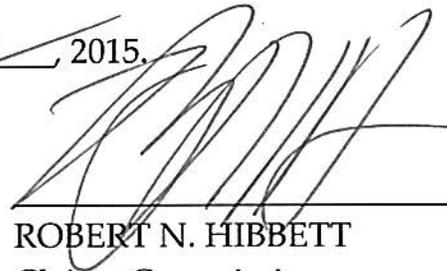
The Tribunal may only hear claims alleging breach of a written contract. The Claimant has cited no contract in this action, let alone a written contract, upon which a claim may be based. Therefore, the Tribunal has no jurisdiction over the Breach of Contract claim in Count 6 of Complaint.

Finally, with respect to the claims against Judge Phillip Robinson, the doctrine of judicial immunity bars all claims relevant to this action. *Mireles v. Waco*, 502 U.S. 9, 9-10 (1991); *Pierson v. Ray*, 386 U.S. 547, 554 (1967). Therefore, this Tribunal has no jurisdiction over any claims listed in his Complaint against Judge Robinson.

IT IS, THEREFORE, ORDERED:

1. That this claim is respectfully dismissed with prejudice.
2. All other motions and pleadings are rendered moot.
3. This is a final order.

ENTERED this 3 day of June, 2015.



ROBERT N. HIBBETT
Claims Commissioner
Sitting as the Trial Court of Record

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 5th day of June, 2015.

Paula Merrifield
PAULA MERRIFIELD
Administrative Clerk
Tennessee Claims Commission