

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Windsor House, Inc.,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 11AP-367
	:	(C.C. No. 2010-04815)
Ohio Department of Job and Family	:	
Services,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on December 15, 2011

*Chester Willcox & Saxbe, LLP, Geoffrey E. Webster and
Clint B. Charnes, for appellant.*

*Michael DeWine, Attorney General, and Velda K. Hofacker
Carr, for appellee.*

APPEAL from the Court of Claims of Ohio

TYACK, J.

{¶1} Appellant, Windsor House, Inc. ("Windsor House"), a nursing home operator in Trumbull County, filed a complaint in the Court of Claims of Ohio, seeking payment for capital costs and services that it provided to its residents, including Medicaid recipients. Appellee, the Ohio Department of Job and Family Services ("ODJFS"), filed a motion in the Court of Claims seeking dismissal pursuant to Civ.R. 12(B)(6), on the grounds that Windsor House did not file its complaint timely, that the savings statute did

not apply, and that the action was duplicative of another pending action. The Court of Claims denied the Civ.R. 12(B)(6) motion but sua sponte dismissed the action for lack of subject matter jurisdiction pursuant to Civ.R. 12(H)(3), reasoning that Windsor House's claim was one for reimbursement of compensation allegedly due under a statute and not one for money damages. This appeal followed.

{¶2} Before addressing the basis of the claim and the nature of the relief requested, we elect to examine the facts as set forth in the complaint and the procedural history in order to address ODJFS' contention that the complaint was barred by the statute of limitations, that the savings statute did not apply, and that the complaint was duplicative.

{¶3} Windsor House operates a nursing home known as O'Brien Memorial Health Care Center ("O'Brien"). ODJFS is the state agency charged with administering the Medicaid Program in Ohio. On June 14, 2005, Windsor House mailed ODJFS a request for prior approval for reimbursement of capital costs associated with a non-extensive renovation ("NER") in the amount of \$1,491,410.58. The request was returned for lack of a forwarding address on June 28, 2005. On June 29, 2005, O'Brien's representative contacted the head of the department section responsible for consideration and approval of NER requests. O'Brien then mailed its request to the new address it obtained from ODJFS, where it was received on June 30, 2005. ODJFS advised O'Brien's representative that there would be no issue of timeliness as the department had received the request and would process it.

{¶4} On July 11, 2005, ODJFS notified O'Brien that its request for prior approval had been granted. However, in August of 2006, ODJFS reversed that decision and

denied the request. In a subsequent letter denying O'Brien's appeal of the decision, ODJFS cited Am.Sub.H.B. Section 606.18.06, paragraph (B)(6)(a), stating that the statute required approval of the NER before July 1, 2005. Since the request was not granted until July 11, 2005, ODJFS determined that O'Brien did not qualify for the Capital Compensation Program.

{¶5} Windsor House and two other nursing home operators filed a complaint against ODJFS in the Franklin County Court of Common Pleas on January 4, 2007. Windsor House sought a declaration that ODJFS was obligated to consider its request for reimbursement as timely and to adjust its rate to include its capital costs. The court of common pleas granted a motion to dismiss filed by ODJFS, but did not file a dismissal entry with respect to Windsor House.

{¶6} While the common pleas court action remained pending, Windsor House filed a complaint in the Court of Claims asserting essentially the same claim for declaratory relief along with claims for breach of contract, unjust enrichment, negligence, promissory estoppel, and false pretenses arising from the same set of facts. In the February 20, 2009 complaint, Windsor House asserted it was filing its Court of Claims action pursuant to Ohio's savings statute, R.C. 2305.19. ODJFS moved to dismiss the claim for failure to state a claim upon which relief could be granted on the grounds that the complaint was untimely. The next day, on March 25, 2009, Windsor House filed a Civ.R. 41(A) notice of voluntary dismissal of its claims in the earlier court of common pleas action.

{¶7} The Court of Claims dismissed Windsor House's complaint on June 8, 2009. The Court of Claims found the savings statute inapplicable because the complaint

had been filed before the dismissal of the common pleas court action. In addition, the Court of Claims found that the common law breach of contract claim was barred by the statute of limitations contained in R.C. 2743.16(A), and that the claims were based on an alleged right to reimbursement.

{¶8} Windsor House appealed from the Court of Claims' dismissal and, on January 28, 2010, this court affirmed the dismissal on the grounds that the savings statute did not apply, and therefore the claims were barred by the two-year statute of limitations in R.C. 2743.16(A). *Windsor House, Inc. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 09AP-584, 2010-257, ¶13 ("*Windsor House I*"). The fact that Windsor House commenced its action in the Court of Claims before voluntarily dismissing the court of common pleas action made the savings statute inapplicable. This court discussed the issue of alleged lack of subject matter jurisdiction, but stopped short of ruling on that particular issue, determining that it was rendered moot by the issue of timeliness. *Id.*

{¶9} Windsor House appealed to the Supreme Court of Ohio, which declined to hear the appeal on May 26, 2010. *Windsor House, Inc. v. Ohio Dept. of Job & Family Servs.*, 125 Ohio St.3d 1442, 2010-Ohio-2212.

{¶10} Meanwhile, on March 18, 2010, Windsor House, using the savings statute, filed its second Court of Claims complaint, which is the subject of the current appeal. Its claims were essentially identical to those of the earlier case except it dropped its claim for declaratory relief. On April 21, 2010, ODJFS filed a motion to dismiss pursuant to Civ.R. 12(B)(6) asserting that the complaint was not timely, that the savings statute did not apply, and that the action was duplicative. The Court of Claims denied the motion to dismiss, but sua sponte dismissed the complaint for lack of subject matter jurisdiction.

Specifically, the court held that all the claims were premised on the failure of ODJFS to grant Windsor House capital cost reimbursement pursuant to a statute. In other words, the court held that it lacked subject matter jurisdiction because Windsor House had not stated a claim for money damages against the state.

* * * In any action that is commenced * * * if the plaintiff fails otherwise than upon the merits, the plaintiff * * * may commence a new action within one year after the date of * * * the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later. * * *

{¶11} "The right to voluntarily dismiss a claim under Civ.R. 41(A) has been upheld even where the notice of voluntary dismissal is filed after the court announces its intention to rule in favor of the opposing party, but before the judgment entry journalizing that decision is filed." *Windsor House I* at ¶17, and cases cited therein. Therefore, as this court held in *Windsor House I*, Windsor House was entitled to voluntarily dismiss its claims in the court of common pleas action despite the court's decision granting ODJFS' motion to dismiss. *Id.* The March 25, 2009 voluntary dismissal was a failure otherwise than upon the merits. Since Windsor House filed the present action in the Court of Claims on March 18, 2010, it commenced the new action within one year after its failure otherwise than upon the merits.

{¶12} After reviewing the record and the various filing dates, we find that Windsor House correctly utilized the savings statute and filed its complaint within one year of a prior dismissal other than on the merits. When this court found that the savings statute was inapplicable to the first Court of Claims case, it necessarily follows that the instant

matter is the first instance of Windsor House using the savings statute. Therefore, the Court of Claims was correct to deny ODJFS' motion to dismiss for failure to state a claim.

{¶13} On appeal, Windsor House has asserted the following assignment of error:

The Court of Claims erred in sua sponte dismissing plaintiff-appellant Windsor House, Inc.'s complaint for lack of subject matter jurisdiction.

{¶14} Our standard of review is de novo for a judgment dismissing a complaint for lack of subject matter jurisdiction. *Windsor House I* at ¶8. To dismiss a complaint for lack of subject matter jurisdiction, the court must determine whether the complaint states any claim that the court has the authority to decide. *Id.* at ¶9. The court may consider pertinent materials outside of the complaint and is not confined to the allegations of the complaint. *Id.*

{¶15} The Court of Claims is a court of limited jurisdiction. It has exclusive jurisdiction over civil actions against the state for money damages that sound in law. R.C. 2743.02 and 2743.03. Included within the jurisdiction of the Court of Claims are civil actions presenting claims sounding in equity if they arise out of the same circumstances giving rise to a civil action over which the Court of Claims otherwise would have jurisdiction. *Measles v. Indus. Comm.*, 128 Ohio St.3d 458, 2011-Ohio-1523 ¶ 7; *Interim Healthcare of Columbus v. Ohio Dept. of Admin. Servs.*, 10th Dist. No. 07AP-747, 2008-Ohio-2286, ¶13. In determining whether the Court of Claims has subject matter jurisdiction, it is necessary to examine both the nature of the claim (whether it sounds in law or equity) and the relief sought (whether compensation for an injury to one's person, property, or reputation, or specific relief such as the recovery of specific property or monies). *Ohio Hosp. Assn. v. Ohio Dept. of Human Servs.* (1991), 62 Ohio St.3d 97,

104; *Measles* at ¶9; *Zelenak v. Indus. Comm.*, 148 Ohio App.3d 589, 2002-Ohio-3887, ¶15-18.

{¶16} In general, a claim for restitution relating to a contract dispute constitutes an action in law. *Measles* at ¶9, quoting *Ohio Hosp. Assn.* at 104 ("The claims for violation of the provider agreements and an earlier settlement agreement are within the exclusive jurisdiction of the Court of Claims to the extent that [plaintiffs] alleged that their contractual rights have been violated and seek monetary relief"); see also *Cristino v. Ohio Bur. of Workers' Comp.*, 118 Ohio St.3d 151, 2008-Ohio-2013, syllabus ("A claim against the state for money due under a contract is not a claim of equitable restitution and must be brought in the Ohio Court of Claims.").

{¶17} An action for restitution is one in which money identified as belonging in good conscience to a plaintiff could clearly be traced to particular funds or property in the defendant's possession. *Cristino* at ¶8. In *Great-West Life & Annuity Ins. Co. v. Knudson* (2002), 534 U.S. 204, 212, 122 S.Ct. 708, the United States Supreme Court held that a distinction existed between a claim for a contractual obligation to pay past due sums and a claim that the government had failed to reimburse it for past expenses pursuant to a statutory obligation. Thus, "a claim that seeks to require a state agency to pay amounts it should have paid all along is a claim for equitable relief, not monetary damages." *Interim Healthcare* at ¶17, citing *Zelenak* at ¶19. "If the essence of a claim is not of restitution for money owed under a contract, but instead restitution for the state's unjust enrichment by withholding funds to which a worker had a statutory right, then the ultimate relief sought is equitable restitution." *Measles* at ¶9. Similarly, in *Ohio Hosp. Assoc.*, the Supreme Court of Ohio held that a Medicaid provider with a statutory right to Medicaid reimbursement

could bring an equitable claim for Medicaid funds that had been withheld pursuant to an invalid administrative rule. *Id.* at paragraph three of the syllabus ("The reimbursement of monies withheld pursuant to an invalid administrative rule is equitable relief, not money damages.")

{¶18} At times, creative pleading may obscure the conceptual line between claims for money damages for loss sustained and claims for a specific form of relief. *Zelenak* at ¶15. The prayer for relief does not, in itself, establish subject matter jurisdiction in the Court of Claims. See *Id.* Here, Windsor House characterizes the complaint as one for money damages separate and apart from statutory reimbursement. Windsor House asserts that it has stated legally cognizable claims for money damages sounding in tort, breach of contract, and equity.

{¶19} We disagree. The nature of Windsor House's complaint is one for statutory entitlement to funds. The claims for unjust enrichment, negligence, promissory estoppel, and false pretenses are premised upon a right to reimbursement as set forth in Am.Sub.H.B. No. 530, effective June 30, 2006, concerning capital cost reimbursement. With respect to the breach of contract claim, we agree with the Court of Claims that the only contract involved in the dispute is the provider agreement that authorizes Windsor House to act as a provider. Nowhere in that agreement is there any provision concerning Windsor House's claim for reimbursement of capital costs associated with an NER. This distinguishes the instant case from *Ohio Hosp. Assn.* in which the claims for breach of provider agreements and breach of an earlier settlement agreement were within the exclusive jurisdiction of the Court of Claims. *Id.* at 104.

{¶20} In its complaint, Windsor House also states that it is entitled to damages for interest expense, financing costs, cost of improvements, lost profits, and similar damages recoverable for the breach of contract. Windsor House claims it is entitled to the reasonable value of its continued provision of nursing care and other services to eligible Medicaid recipients and interest it would have accumulated on that money had it been properly reimbursed. In its claim of negligence, Windsor House avers that it does not seek as damages the amount of compensation a rate adjustment would have paid unless that is determined by the court to be an adequate measure of damages to assess for negligence.

{¶21} Stating in the complaint that plaintiff seeks money damages is not in and of itself sufficient to confer jurisdiction in the Court of Claims. Not every claim for monetary relief constitutes money damages. *Interim Healthcare* at ¶15. "Even when the relief sought consists of the state's ultimately paying money, a cause of action will sound in equity if 'money damages' is not the essence of the claim." *Id.* But see *Tiemann v. Univ. of Cincinnati* (1998), 127 Ohio App.3d 312, 319 ("The Court of Claims has jurisdiction over an action for declaratory and injunctive relief arising out of a civil action against the state predicated upon the actions or inaction of a state agency pursuant to R.C. 2743.03(A)(2), and appellees have brought such a suit in the Court of Claims asking for declaratory, injunctive, and 'any further' relief.").

{¶22} We believe more recent pronouncements concerning the distinction between legal and equitable claims of restitution more accurately reflect the jurisdictional underpinnings of the Court of Claims. For example, in *Measles*, the Supreme Court of Ohio clarified that a claim for restitution relating to a contract dispute constitutes an action

at law, but a claim for restitution for the state's unjust enrichment by withholding funds to which a claimant had a statutory right, is a claim for equitable restitution.

{¶23} In *Cristino*, the Supreme Court of Ohio held that the chief factors in deciding whether a restitution claim sounded in equity or in law are the basis for the plaintiff's action and the nature of the underlying remedies sought. *Id.* at ¶7.

{¶24} And In *Santos v. Ohio Bur. of Workers' Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28, the injured parties sought to recoup money that a state agency collected pursuant to a subrogation statute that later was declared to be unconstitutional. Because the plaintiffs sought repayment of funds previously in their possession, their claim sounded in equity.

{¶25} A review of the recent case law leads us to conclude that we must analyze both the nature of the claim and the relief sought in order to decide whether the Court of Claims has subject matter jurisdiction. Here, Windsor House's complaint, although couched as legal actions for tort and contract, does not set forth a valid claim for relief under either theory. Instead, Windsor House's complaint seeks a remedy in equity since it asserts that it is entitled to certain monies pursuant to statute. Accordingly, we find that the Court of Claims was correct in dismissing Windsor House's complaint for lack of subject matter jurisdiction despite its prayer for money damages.

{¶26} The sole assignment of error is overruled, and the judgment of the Court of Claims of Ohio is affirmed.

Judgment affirmed.

BRYANT, P.J., and FRENCH, J., concur.
