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NO. COA13-577

NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

SHIRA L. HEDGEPEETH,  
Plaintiff,

v.

Forsyth County  
No. 12 CVS 7048

WINSTON-SALEM STATE UNIVERSITY,  
DONALD J. REAVES (Chancellor of  
Winston-Salem State University),  
BRENDA A. ALLEN (Provost of  
Winston-Salem State University),  
CAROLYNN BERRY (Associate Provost  
of Winston-Salem State  
University),  
Defendants.

Appeal by plaintiff from order entered 27 February 2013 by  
Judge Richard L. Doughton in Forsyth County Superior Court.  
Heard in the Court of Appeals 9 October 2013.

*Shira L. Hedgepeth pro se.*

*Attorney General Roy Cooper, by Special Deputy Attorney  
General Kimberly D. Potter, for the State.*

BRYANT, Judge.

Where plaintiff fails to exhaust her administrative remedies pursuant to N.C. Gen. Stat. § 150B-43 *et seq.* prior to filing a complaint in the trial court, we affirm the trial court's judgment granting defendants' motion to dismiss.

Plaintiff Shira L. Hedgepeth ("plaintiff") began employment with defendant Winston-Salem State University ("WSSU") in August 2008. Plaintiff served as an Instructional Technologist and provided support to faculty using technology as part of their teaching.

During the summer of 2010, defendant Associate ProvostCarolynn Berry, under the direction of defendant Provost Brenda Allen, sent out a call for course development of Liberal Learning Seminars to be offered in the fall of 2010. The e-mail sent by Berry stated that individuals would be compensated for the development and instruction of each course up to \$5000.00.

After discussing the email with and receiving her supervisor's approval, plaintiff developed two courses. Plaintiff testified that after completing the two courses, WSSU informed her that although she would not be compensated for the creation of the courses, she would be compensated for teaching the courses. Plaintiff taught the courses during the fall 2010

and spring 2011 semesters, but received no compensation for her teaching.

During the summer of 2010, WSSU hired an outside consultant, The Robinson Group, to conduct an assessment of WSSU's Information Technology Department. The Robinson Group interviewed several individuals, including plaintiff, to assess and restructure WSSU's information technology needs.

Around the middle of September 2010, defendant Chancellor Donald J. Reaves approved the appointment of plaintiff as Interim Director of Academic Technologies. When plaintiff inquired as to when her salary would be adjusted to reflect this new appointment, The Robinson Group advised her that the adjustment would occur around 15 October 2010. Plaintiff was also advised by The Robinson Group that WSSU needed to formally post her position for hiring. The position of Director of Academic Technologies, at a salary of \$85,000.00 per year, was posted in mid-December 2010.

Plaintiff, at the advice of The Robinson Group, applied for the position. On 15 February 2011, plaintiff was offered the position at a salary of \$78,000.00. Plaintiff accepted the position and her salary was adjusted to \$78,000.00 at that time.

On 19 October 2012, plaintiff filed a complaint in Forsyth County Superior Court for breach of employment agreement for course development against defendants WSSU, Berry, and Allen; breach of employment agreement for promotional compensation against defendants WSSU, Allen, and Reaves; violation of the North Carolina Wage & Hour Act against all defendants; fraud and unfair trade practices against all defendants; and unjust enrichment against all defendants.

On 20 December 2012, defendants moved to dismiss all of plaintiff's claims pursuant to N.C.R. Civ. P. 12(b)(1), (b)(2), and (b)(6) based on sovereign immunity, lack of subject matter jurisdiction, lack of personal jurisdiction, and failure to state a claim upon which relief can be granted. On 25 February 2013, the trial court heard arguments on defendants' motion to dismiss. An order granting defendants' motion to dismiss was entered 27 February 2013.

Plaintiff appeals.

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On appeal, plaintiff argues that the trial court erred in: (I) dismissing her complaint pursuant to N.C.R. Civ. P. 12(b)(1) because defendants waived their sovereign immunity by entering into contracts with her; (II) dismissing her complaint pursuant

to N.C.R. Civ. P. 12(b)(2) because her complaint demonstrated grounds for exercise of personal jurisdiction; and (III) dismissing her complaint pursuant to N.C.R. Civ. P. 12(b)(6) because her complaint adequately pled all elements of a claim for breach of contract.

I.

Plaintiff first argues that the trial court erred in dismissing her complaint pursuant to N.C.R. Civ. P. 12(b)(1) because defendants waived their sovereign immunity by entering into contracts with her. We disagree.

A motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction may be raised at any time. Subject matter jurisdiction is a prerequisite for the exercise of judicial authority over any case or controversy. An action is properly dismissed for lack of subject matter jurisdiction when the plaintiff has failed to exhaust his administrative remedies. [W]here the legislature has provided by statute an effective administrative remedy, that remedy is exclusive and its relief must be exhausted before recourse may be had to the courts.

*Hentz v. Asheville City Bd. of Educ.*, 189 N.C. App. 520, 522, 658 S.E.2d 520, 521-22 (2008) (citations and internal quotation omitted). We review a motion to dismiss pursuant to N.C.R. Civ. P. 12(b)(1) *de novo*. *Country Club of Johnson Cnty., Inc. v. U.S.*

*Fid. & Guar. Co.*, 150 N.C. App. 231, 238, 563 S.E.2d 269, 274 (2002).

Plaintiff contends that the trial court erred in granting defendants' motion to dismiss her two contract claims. Specifically, plaintiff argues that defendants waived their sovereign immunity by entering into valid contracts with her. We find that we do not need to reach the issue of whether plaintiff held valid contracts with defendants, as plaintiff has failed to show that she has exhausted her administrative remedies prior to filing a complaint in Superior Court.

"An action is properly dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction where the plaintiff has failed to exhaust administrative remedies." *Johnson v. Univ. of N.C.*, 202 N.C. App. 355, 357, 688 S.E.2d 546, 548 (2010) (citation omitted). As a member of the UNC-system of colleges and universities, defendant WSSU is subject to N.C. Gen. Stat. § 150B-43<sup>1</sup> *et seq.* See *Huang v. N.C. State Univ.*, 107 N.C. App. 710, 713, 421 S.E.2d 812, 814 (1992).

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<sup>1</sup> "Any party or person aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to the party or person aggrieved by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute." N.C.G.S. § 150B-

The actions of the [UNC System], of which [WSSU] is a part, are specifically made subject to the judicial review procedures of N.C.G.S. § 150B-43. The University is, however, exempt from all administrative remedies outlined in the APA. Because no statutory administrative remedies are made available to employees of the University, those who have grievances with the University have available only those administrative remedies provided by the rules and regulations of the University and must exhaust those remedies before having access to the courts.

*Id.* at 713-14, 421 S.E.2d at 814. Under the administrative remedies of the UNC System, an aggrieved employee can "appeal first to the Committee, then to the Trustees, and finally to the Board [of Governors]." *Id.* at 714, 421 S.E.2d at 815.

"[B]efore a party may ask the courts for relief from a University decision [here, UNC system member WSSU]: (1) the person must be aggrieved; (2) there must be a contested case; and (3) the administrative remedies provided by the University must be exhausted." See *id.* at 714, 421 S.E.2d at 814. "To obtain judicial review of a final decision under this Article [4 of Chapter 150B], the person seeking review must file a petition [for judicial review] within 30 days after the person is served with a written copy of the decision." N.C. Gen. Stat. § 150B-45(a) (2011). An aggrieved party can bypass the filing of a

petition for judicial review only when the complaint alleges that General Statutes, Chapter 150B, is an inadequate administrative remedy. See *Affordable Care, Inc. v. N.C. State Bd. of Dental Exam'rs*, 153 N.C. App. 527, 534, 571 S.E.2d 52, 58 (2002) (“[T]he burden of showing the inadequacy of the administrative remedy is on the party claiming the inadequacy, and the party making such a claim must include such allegation in the complaint.”) (citation and internal quotation omitted); *Huang*, 107 N.C. App. at 714, 421 S.E.2d at 815 (holding that as “Huang did not exhaust his University remedies prior to filing his claim in superior court . . . the court therefore did not have jurisdiction.”).

Here, plaintiff is clearly an aggrieved party and a contested case concerning plaintiff's contract claims exists. However, as plaintiff did not exhaust her administrative remedies prior to filing her complaint in Superior Court, this Court lacks jurisdiction over her claim. We note that although WSSU conceded that plaintiff went through WSSU's faculty grievance process, it is unclear whether plaintiff continued to follow the appropriate grievance process by appealing to the Trustees and the Board of Governors. Assuming that plaintiff did follow the administrative grievance process as set forth in



*Huang*, plaintiff failed to file a petition for judicial review pursuant to N.C.G.S. § 150B-43 *et seq.* Moreover, plaintiff has not shown that she could bypass filing a petition for judicial review because exhausting her administrative remedies would be inadequate. See *Affordable Care*, 153 N.C. App. at 534, 571 S.E.2d at 58 (holding that where the plaintiffs only alleged to have exhausted all administrative remedies without showing that an exhaustion of their administrative remedies was inadequate, “plaintiffs [have] failed to carry their burden of establishing exhaustion of all available administrative remedies.”).

Here, plaintiff “used the [WSSU] campus grievance process,” but failed to either file a petition for judicial review or demonstrate that an exhaustion of her university administrative remedies would provide inadequate relief. Therefore, plaintiff failed to exhaust her administrative remedies prior to filing her complaint against defendants.

As we hold that the trial court did not err in granting defendants’ motion to dismiss pursuant to N.C.R. Civ. P. 12(b)(1), we need not reach plaintiff’s other arguments on appeal.

Affirmed.

Judges HUNTER, Robert C., and STEELMAN concur.

Report per Rule 30(e).