[Cite as *Jones v. Ohio Dept. of Job & Family Servs.*, 2006-Ohio-7238.]
IN THE COURT OF CLAIMS OF OHIO

MIYCOL M. JONES   :

    Plaintiff   :

v.   :   CASE NO. 2006-01939-AD

OHIO DEPARTMENT OF JOB AND   :   <u>ENTRY OF DISMISSAL</u>
FAMILY SERVICES
                                   :
    Defendant
                   : : : : : : : : : : : : : : : : :

{¶ 1} On February 15, 2006, plaintiff filed a complaint against defendant, Ohio Department of Job and Family Services (ODJFS), alleging that she was wrongfully charged for the overpayment of unemployment benefits in the amount of $1,920.00, because she was late to her appeal hearing due to family obligations.

{¶ 2} On May 1, 2006, defendant filed a motion to dismiss. Defendant asserted plaintiff's claim should be dismissed pursuant to Ohio Civ. R. 12(B)(1), for lack of subject matter jurisdiction. In support of the motion to dismiss, defendant stated in pertinent part: "The waiver of immunity found within R.C. 2743.02(A)(1) is not all encompassing . . . In *Burke* [sic] *v. Dept. of Public Welfare* (1976), 52 Ohio App. 2d 271, the court held that where the state had previously consented to be sued, the Court of Claims was without jurisdiction." Defendant further states that "[t]he Court of Claims has no jurisdiction over matters, which in effect are simply an attempt to improperly appeal an administrative decision."

{¶ 3} When considering a Civ. R. 12(B)(1) motion to dismiss

for lack of subject matter jurisdiction, the court must determine whether the complaint raises any action cognizable in that court. See *State ex rel. Bush v. Spurlock* (1989), 42 Ohio St. 3d 77, 80; 537 N.E. 2d 641, 644.

{¶ 4} The jurisdiction of the Court of Claims is limited by R.C. 2743.02(A)(1) which provides in part:

{¶ 5} "(A)(1) The state hereby waives its immunity from liability, . . . and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations set forth in this chapter. . .   To the extent that the state has previously consented to be sued, this chapter has no applicability."

{¶ 6} R.C. 2743.02(A)(1) makes it clear that the Court of Claims has jurisdiction to render judgment only as to those complaints which, prior to the enactment of the Court of Claims Act, were precluded by state immunity. Thus, where the state has previously consented to be sued, the Court of Claims lacks jurisdiction. *Fish v. Ohio Dept. of Transp.* (Sept. 29, 1988), Franklin App. No. 88AP-355, unreported 1988 WL 102002.

{¶ 7} It is well established that the Court of Claims does not function as a court of review with the power to overrule an administrative decision in a separate action by collateral attack upon an administrative decision that has become final by way of law. See *Providence Hospital v. McBee* (March 17, 1983), No. 82AP-383, Ohio App. LEXIS 15022; *George v. Ohio Dept. of Human Services*, No. 04AP-351, 2005-Ohio-2292.

{¶ 8} In *Providence Hospital*, the hospital filed a complaint against the hospital debtors for unpaid medical bills. The debtors filed a third party complaint against the Department of Public Welfare in order to compel the department to certify the debtor's eligibility for Medicaid. This complaint was dismissed by the Court of Claims. The dismissal was affirmed by the 10th District Court of Appeals. The appellate court held that the hospital debtors could not collaterally attack an administrative decision through a claim filed in the Court of Claims.

{¶ 9} Furthermore, an action in the Court of Claims cannot become a substitute for the statutorily created right of appealing an administrative decision in a different court. "To hold otherwise would allow the Court of Claims to function as a court of review with the power to overrule an administrative decision by collateral attack. The Court of Claims lack such appellate jurisdiction." *George*, supra, at ¶35. Moreover, "[i]ncurring economic harm by forgoing the administrative appeal process does not invest jurisdiction in the Court of Claims." id. at ¶37. In *George*, the plaintiff sued the Ohio Department of Human Services (ODHS) alleging that it improperly denied medical benefits. The appellate court held that the Court of Claims lacked subject matter jurisdiction over the matter, as it was an attempt to appeal the ODHS' medical eligibility determinations and that the plaintiff should have pursued the statutorily authorized process to seek relief.

{¶ 10} In the case at bar, plaintiff received a letter, "Director's Determination," dated March 17, 2004. In this letter, the ODJFS stated that plaintiff was paid benefits to

which she was not entitled, in the amount of $1,920.00, and that repayment was required. The letter notified plaintiff of her appeal rights.   In her own statement, plaintiff states she missed her appeal hearing because "she was late" due to family situation.

{¶ 11}   Clearly, the agency provides an appeal process for people that do not agree with the agency's decision. Furthermore, this appeal process was in place prior to the enactment of the Court of Claims Act as the state had previously consented to be sued by providing appeal procedures for administrative agencies to follow.   See R.C. 119.12.   The plaintiff had the right to appeal the Director's Determination and therefore, the Court of Claims cannot serve as the proper venue for this complaint.

{¶ 12}   Defendant's motion to dismiss is GRANTED pursuant to Civ.R.   12(B)(1),   lack   of   subject   matter   jurisdiction. Plaintiff's case is DISMISSED.   The court shall absorb the court costs of this case.   The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Case No. 2006-01939-AD   -1-   ENTRY

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