

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

KHRISTAN MANIGAULT,	:	O P I N I O N
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2015-T-0037
SHARON CHILSON, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2014 CV 02239.

Judgment: Affirmed.

Edward L. Gilbert, Edward L. Gilbert Co., L.P.A., One Cascade Plaza, Suite 825, Akron, OH 44308 (For Plaintiff-Appellant).

Mike DeWine, Ohio Attorney General, State Office Tower, 30 East Broad Street, 25th Floor, Columbus, OH 43215, and *Mindy Worly*, Assistant Attorney General, Criminal Justice Section, Corr. Unit, 150 East Gay Street, 16th Floor, Columbus, OH 43215 (For Defendants-Appellees).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Khristan Manigault, appeals from the judgment of the Trumbull County Court of Common Pleas, dismissing her complaint for lack of subject matter jurisdiction. At issue is whether appellant could maintain her federal causes of action against appellees, Sharon Chilson, et al., as individuals, in the trial court, even though she has a case pending against the Ohio Department of Rehabilitation and Corrections

(“ODRC”), appellees’ employer, in the Ohio Court of Claims that is premised upon the same incident and factual allegations. For the reasons that follow, we answer the question in the negative and affirm the judgment of the trial court.

{¶2} On December 11, 2014, appellant filed a lawsuit against the ODRC and appellees in the Court of Claims. Appellant subsequently filed a motion for immunity determination, pursuant to R.C. 2743.02(F), requesting the Court of Claims to set a hearing to determine whether appellees were immune from liability. At the time of briefing, the Court of Claims had not entered a determination on this motion.

{¶3} On December 18, 2014, appellant filed suit in the Trumbull County Court of Common Pleas against appellees. The complaint alleged Fourth Amendment violations; Fourteenth Amendment Due Process violations; invasion of privacy; and assault.

{¶4} On January 8, 2015, appellees filed a motion to dismiss pursuant to Civ.R. 12(B)(1) and Civ.R. 12(B)(6). In the motion, appellees argued appellant, by electing to pursue the cause of action against the ODRC in the Court of Claims, completely waived any cause, based upon the same acts, that she had against any employee of the ODRC, pursuant to R.C. 2743.02(A)(1).

{¶5} On January 26, 2015, appellant responded to the motion to dismiss. Appellant did not directly oppose appellees’ argument. Instead, she acknowledged that the Court of Claims has exclusive jurisdiction, pursuant to statute, to determine whether appellees are immune from suit. Because the Court of Claims had not issued an immunity determination vis-à-vis appellees, appellant requested the trial court to stay the proceedings until such determination is made.

{¶6} On March 18, 2015, the trial court entered its judgment dismissing appellant’s complaint without prejudice for lack of subject-matter jurisdiction. Appellant filed the instant timely appeal and assigns the following as error:

{¶7} “The trial court committed prejudicial error in granting appellees’ motion to dismiss based on its opinion that the Court of Claims has exclusive jurisdiction of Manigault’s claims under R.C. 2743.02(F).”

{¶8} Subject-matter jurisdiction is the power conferred upon a court, either by constitutional provision or by statute, to decide a particular matter or issue on its merits. *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 75 (1998). A motion to dismiss for lack of subject-matter jurisdiction is made pursuant to Civ.R. 12(B)(1), and “[t]he standard of review for a dismissal pursuant to Civ.R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint.” *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989). An appellate court reviews an appeal of a dismissal for lack of subject-matter jurisdiction pursuant to Civ.R. 12(B)(1) under a de novo standard. *Washington Mut. Bank v. Beatley*, 10th Dist. Franklin No. 06AP-1189, 2008-Ohio-1679, ¶8.

{¶9} Alternatively, “[a] motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint.” *State ex rel. Hanson v. Guernsey Cty. Bd. Of Commrs.*, 65 Ohio St.3d 545, 548 (1992). In considering the propriety of the dismissal, “we accept all factual allegations in the complaint as true and draw all reasonable inferences in the non-moving party’s favor.” *Transky v. Ohio Civil Rights Comm’n.*, 193 Ohio App.3d 354, 2011-Ohio-1865, ¶11 (11th Dist.). If, after considering the complaint accordingly, there is no set of facts

consistent with appellant's allegations that would permit recovery, the judgment of dismissal will be affirmed. *Id.* A court of appeals reviews a trial court's judgment dismissing a complaint pursuant to Civ.R. 12(B)(6) also using a de novo standard. *Goss v. Kmart Corp.*, 11th Dist. Trumbull No. 2006-T-0117, 2007-Ohio-3200, ¶17.

{¶10} Appellant argues that even though the Court of Claims has exclusive jurisdiction to determine whether appellees enjoy immunity as it relates to her state claims, that court does not have jurisdiction to adjudicate appellant's federal claims. If the Court of Claims rules that appellees do not have immunity, the trial court can proceed in determining their personal liability over both her state and federal claims. Because, however, the federal claims are only cognizable in a federal or state court, appellant maintains the trial court erred when it dismissed them. We do not agree.

{¶11} In 1975, the Ohio Legislature enacted the Court of Claims Act, codified under R.C. Chapter 2743. *Morway v. Durkin*, 181 Ohio App.3d 195, 2009-Ohio-932, ¶23 (7th Dist.) The Act functions to waive the state of Ohio's immunity from liability and have the Court of Claims adjudicate such liability. R.C. 2743.02(A)(1). If a claimant elects to pursue redress under R.C. Chapter 2743., however, she must waive any related claims she has against the state's employees. R.C. 2743.02(A)(1). To wit, a claimant "filing a civil action in the court of claims results in a complete waiver of any cause of action, based on the same act or omission, that the filing party has against any officer or employee * * *." *Id.* If, however, the Court of Claims "determines that the act or omission was manifestly outside the scope of the officer's or employee's office or employment or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner[,]" the waiver is deemed void. *Id.*

{¶12} In support of its judgment dismissing appellant's complaint, the trial court cited R.C. 2743.02(F), which provides, in relevant part:

{¶13} A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer's or employee's conduct was manifestly outside the scope of the officer's or employee's employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims that has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action. * * *

{¶14} The filing of a claim against an officer or employee under this division tolls the running of the applicable statute of limitations until the court of claims determines whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code.

{¶15} While the foregoing provision is relevant to whether appellant may ultimately proceed against appellees, it does not provide a basis for precluding the prosecution of appellant's federal claims. R.C. 2743.02(F) merely requires a claimant who wishes to prosecute a state action against a state employee or officer, to initiate its action in the Court of Claims so that tribunal can make an immunity determination. This has nothing to do with appellant's federal claims.

{¶16} Pursuant to R.C. 2743.02(A)(1), however, *if* a claimant elects to take advantage of the state's consent to be sued in the Court of Claims, that claimant voluntarily waives *any* claim she has relating to a state employee or officer arising out of the same conduct as the cause being prosecuted in that court. Only by voluntarily filing suit in the Court of Claims does a claimant agree that she waives all cognate claims, *including* her federal claims. *Morway, supra*, ¶32; *see also Staton v. Henry*, 12th Dist.

Butler No. CA97-10-184, 1998 Ohio App. LEXIS 1762, *11 (Apr. 27 1998); *Leaman v. Ohio Dept. of Mental Retardation & Developmental Disabilities*, 825 F.2d 946, 952 (6th Cir.1986) (en banc). “The rationale behind this [waiver] provision is that the state waives its sovereign immunity and consents to be sued in the Court of Claims in exchange for the plaintiff’s waiver of any cause of action against any state officer or employee.” *Staton, supra*, citing *Leaman, supra*.

{¶17} Moreover, at oral argument, appellant’s counsel conceded that appellant, upon filing the action in the Court of Claims, could not assert her federal claims in a separate, federal action. In *Leaman, supra*, the Sixth Circuit concluded that, by filing an action in the Ohio Court of Claims, the plaintiff waived any federal claim in federal court for monetary damages against state employees. In *Leaman*, the plaintiff argued that her filing of the suit in the Court of Claims should have no adverse impact on her federal cause of action because the Ohio waiver statute was limited to claims arising under state law. An en banc panel of the Sixth Circuit interpreted the Ohio Court of Claims Act to create a “quid pro quo” in which the state agreed to lift its immunity in consideration for a plaintiff’s waiver of *all* claims against any state employee. The court observed:

{¶18} The constitutionality of such an offer can hardly be doubted in light of *Town of Newton v. Rumery*, 480 U.S. 386 (1987), where the Supreme Court, applying “traditional common-law principles” incorporated in federal law, * * * held that a man who accepted a municipality’s offer to dismiss criminal charges against him in exchange for a waiver of any claims he might have against the town and its officers could not repudiate the waiver and sue the town and its officers under 42 U.S.C. § 1983. The Supreme Court flatly rejected the argument that agreements such as that accepted by Mr. Rumery are “inherently coercive,” and thus invalid per se; Mr. Rumery’s voluntary decision to accept the town’s offer, the Court said, reflected “a highly rational judgment” that the obvious and certain benefits offered by the agreement would “exceed the

speculative benefits of prevailing in a civil action [under § 1983].” (Citations omitted). *Leaman, supra*, at 954.

{¶19} The *Leaman* court added:

{¶20} The inducement offered for Ms. Leaman’s waiver (an opportunity to bring a direct action for damages against the State of Ohio) obviously lacked the potential for coercion inherent in the inducement (dismissal of criminal charges) offered for the waiver in *Rumery*. That being so, the benefits offered in the Ohio Court of Claims Act being no less “obvious” than those offered Mr. Rumery, and Ms. Leaman’s election to accept Ohio’s offer being no less “rational” than the election made by Mr. Rumery, we think the district court’s decision to dismiss Ms. Leaman’s case was even more clearly correct than the corresponding decision in Mr. Rumery’s case.

{¶21} The court in *Leaman* accordingly held that a plaintiff’s election to pursue a sovereign state’s “deep pockets” in the Court of Claims waived not only state causes of action, but federal claims as well. *Id.*

{¶22} The ruling in *Leaman*, which produced six dissenting judges, remains valid law in the Sixth Circuit. See, e.g., *Turker v. Ohio Dep’t of Rehabilitation and Corrections*, 157 F.3d 453, 457 (6th Cir. 1998). Its ruling is also instructive in this case. If, by filing her lawsuit in the Court of Claims, appellant waived her federal claims in federal court, it therefore follows that she is precluded from seeking the same relief in a state court. See *Leaman, supra*, 953-954; see also R.C. 2743.02(A)(1) (“filing a civil action in the court of claims results in a complete waiver of *any* cause of action * * *.”)

{¶23} Given the foregoing, we conclude the underlying complaint was properly dismissed, but for a reason different than that enunciated by the trial court. The trial court determined it did not have subject-matter jurisdiction over the federal claims pursuant to R.C. 2743.02(F). Appellant was not asking the trial court to render an immunity determination and, as a result, R.C. 2743.02(F) is immaterial to the analysis.

The trial court does have jurisdiction to hear appellant's federal claims; appellant, however, voluntarily waived her right to pursue these claims pursuant to R.C. 2743.02(A)(1). By initiating suit against the ODRC in the Court of Claims, appellant completely waived her state and federal claims against appellees *unless* the Court of Claims first determines appellees are not entitled to immunity. Under such circumstances, the waiver is deemed void and appellant may pursue those claims in a different tribunal.

{¶24} Based upon the foregoing, we conclude the trial court correctly dismissed the complaint against appellees as the claims alleged were waived when appellant initiated her action in the Court of Claims.

{¶25} Appellant's assignment of error lacks merit.

{¶26} For the reasons discussed in this opinion, the judgment of the Trumbull County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J., concurs,

COLLEEN MARY O'TOOLE, J., concurs with a Concurring Opinion.

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{¶27} While I agree with the majority's well-reasoned opinion, I write separately to question whether the requirement of R.C. 2743.02, that a plaintiff must waive their federal claims in order to be able to file in the Court of Claims, is equitable. Plaintiff's federal claims are separate and distinct from her state law claims and are adjudicated

under a different set of laws and rules. Provided the Court of Claims case is adjudicated first, any judgment plaintiff might receive in later litigating her federal claims can be reduced by the amount she might receive at the Court of Claims.