

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 17, 2015 Session

DAVID R. SMITH v. THE TENNESSEE NATIONAL GUARD

**Appeal from the Circuit Court for Davidson County
No. 11C3080 Thomas W. Brothers, Judge**

No. M2014-02375-COA-R3-CV- Filed May 29, 2015

This is the second appeal from an action filed by Plaintiff against the Tennessee National Guard in which he contends Defendant violated the Uniformed Service Employment and Reemployment Rights Act of 1994 (“USERRA”) by refusing to rehire Plaintiff after he returned from active duty military service. In the first appeal, we affirmed the grant of Defendant’s Tenn. R. Civ. P. 12.02(6) motion to dismiss for lack of subject matter jurisdiction based upon sovereign immunity from USERRA claims, noting that only the Tennessee General Assembly could waive the state’s sovereign immunity. *See Smith v. Tennessee Nat. Guard*, 387 S.W.3d 570 (Tenn. Ct. App. 2012). Shortly after we issued that opinion, the Tennessee General Assembly enacted Tenn. Code Ann. § 29-20-208, which waives sovereign immunity for USERRA claims that accrue on or after July 1, 2014. Relying on the new statute, Plaintiff filed a Rule 60 motion seeking to have his original lawsuit reinstated. The trial court denied the motion, finding that Plaintiff’s claim was still barred by sovereign immunity because it accrued before July 1, 2014. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which RICHARD H. DINKINS and W. NEAL MCBRAYER, JJ., joined.

Phillip L. Davidson, Brentwood, Tennessee, for the appellant, David R. Smith.

Herbert H. Slatery III, Attorney General and Reporter; Andréé S. Blumstein, Solicitor General; and Michael Markham, Senior Counsel, for the appellee, The Tennessee National Guard.

OPINION

In his second appeal in this case, David R. Smith (“Plaintiff”) contends that the trial court erred when it failed to reinstate his lawsuit against the Tennessee National Guard (“Defendant”) based on a statute enacted after his first appeal. The relevant facts are recited in *Smith v. Tennessee Nat. Guard*, 387 S.W.3d 570, 572 (Tenn. Ct. App. 2012) (“*Smith I*”):

Plaintiff was a full-time employee of the Tennessee National Guard until 2002 when he commenced active duty service in the Active Guard and Reserve. Near the completion of his active duty service in the Active Guard and Reserve, Plaintiff asked the Tennessee National Guard to rehire him pursuant to the Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA). When the Tennessee National Guard refused, Plaintiff filed this action alleging it violated USERRA. The Tennessee National Guard responded to the complaint by filing a Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss for lack of subject matter jurisdiction based upon sovereign immunity from USERRA claims. The trial court granted the motion to dismiss based on the doctrine of sovereign immunity.

In *Smith I*, this court affirmed the trial court’s order dismissing Plaintiff’s claim as barred by sovereign immunity, noting that only the Tennessee General Assembly could authorize suits against the state of Tennessee. *Id.* at 576; *see Williams v. State*, 139 S.W.3d 308, 311 (Tenn. Ct. App. 2004) (quoting *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000)). After this court issued its opinion in *Smith I*, the General Assembly enacted Tenn. Code Ann. § 29-20-208, which states:

Immunity from suit of any governmental entity, or any agency, authority, board, branch, commission, division, entity, subdivision, or department of state government, or any autonomous state agency, authority, board, commission, council, department, office, or institution of higher education, is removed for the purpose of claims against and relief from a governmental entity under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §§ 4301-4334.

The act provided that it was to take effect on July 1, 2014 and “apply to all claims against a governmental entity under [USERRA] accruing on or after such date.” 2014 Tenn. Pub. Acts 574, § 2.

On July 2, 2014, Plaintiff filed a motion under Rule 60.02 of the Tennessee Rules of Civil Procedure seeking to have the trial court reinstate his complaint based on Tenn. Code Ann. § 29-20-208. After a hearing, the trial court denied Plaintiff's motion, finding that Plaintiff's claim was inappropriate for relief under Rule 60 and that it remained barred by sovereign immunity because his cause of action accrued before July 1, 2014.

In September 2014, Plaintiff filed a motion under Tenn. R. Civ. P. 59 seeking to alter or amend the trial court's order denying his Rule 60 motion. Plaintiff argued that the trial court should have considered the legislative history of Tenn. Code Ann. § 29-20-208, which references Plaintiff by name and, according to Plaintiff, indicates that the law was enacted to benefit him and other similarly-situated veterans. Plaintiff also argued that his cause of action did not accrue until July 1, 2014 because no court in Tennessee had subject matter jurisdiction over it before that date.

The trial court denied this motion as well, finding that there was no need to consider legislative history because Tenn. Code Ann. § 29-20-208 was unambiguous. The trial court also reiterated its holding that Plaintiff's claim was barred by sovereign immunity because it accrued before July 1, 2014.

Plaintiff appealed, contending that the trial court erred when it failed to consider the legislative history of Tenn. Code Ann. § 29-20-208 and when it found that Plaintiff's cause of action accrued prior to July 1, 2014. Because we conclude that Plaintiff's claim remains barred by sovereign immunity, we affirm.

ANALYSIS

Statutory construction is a question of law that appellate courts review on a de novo basis without any presumption of correctness. *In re Estate of Tanner*, 295 S.W.3d 610, 613 (Tenn. 2009). Our obligation is to enforce the written language of the statute, and when that language is clear, we apply its plain meaning without complicating the task. *Id.* at 614. We may only reference legislative history and similar sources when a statute is ambiguous. *Id.* The General Assembly is presumed to have knowledge of its prior enactments and to know the state of the law at the time it passes legislation. *Sullivan ex rel. Wrongful Death Beneficiaries of Sullivan v. Chattanooga Med. Investors, LP*, 221 S.W.3d 506, 511-12 (Tenn. 2007) (quoting *Wilson v. Johnson County*, 879 S.W.2d 807, 810 (Tenn. 1994)).

Generally, a cause of action for an injury accrues when the injury occurs. *Cherry v. Williams*, 36 S.W.3d 78, 83 (Tenn. Ct. App. 2000). In this context, "injury" refers to "any wrong or damage done to another's person, rights, reputation, or property." *Id.* (citing *Vance v. Schulder*, 547 S.W.2d 927, 932 (Tenn. 1977)). Under the traditional accrual rule, a cause of action accrued as soon as the injury occurred, whether the

potential plaintiff had knowledge of the injury or not. *See Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 457-58 (Tenn. 2012).

In response to the harsh results that this rule created, the Tennessee Supreme Court has adopted and applied the discovery rule to a variety of claims. *See id.* at 458.¹ The discovery rule provides that a cause of action accrues when the plaintiff knows or, in the exercise of reasonable care and diligence, should have known that an injury has been sustained as the result of wrongful conduct by the defendant. *Gibson v. Trant*, 58 S.W.3d 103, 117 (Tenn. 2001). Although our Supreme Court has not specifically addressed this issue, the discovery rule appears to govern the accrual of claims under USERRA. *See Stovall v. Dunn*, No. M1999-00200-COA-R3-CV, 2002 WL 1284276, at *5 (Tenn. Ct. App. June 11, 2002) (noting that the discovery rule applies to actions for damages under federal civil rights statutes); *see also Johnson v. Memphis Light Gas & Water Div.*, 777 F.3d 838, 843 (6th Cir. 2015) (noting that federal civil rights claims accrue “when the plaintiff knows or has reason to know of the injury which is the basis of his action.”); *accord Baldwin v. City of Greensboro*, 714 F.3d 828, 838-39 (4th Cir. 2013) (holding that USERRA claims, like other federal causes of action, accrue “when the plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action.”).

In the complaint filed on August 8, 2011, Plaintiff alleged that Defendant violated USERRA by refusing to rehire him after he returned from active duty; therefore, Plaintiff was aware that he had suffered an injury as the result of Defendant’s conduct prior to that date. Thus, it is undisputed that Plaintiff’s cause of action accrued prior to July 1, 2014.

With the enactment of Tenn. Code Ann. § 29-20-208, the General Assembly expressly directed that the legislation would only apply to claims that accrue on or after July 1, 2014. *See* 2014 Tenn. Pub. Acts 574, § 2. The General Assembly could have directed that the statute applied to claims that accrued before its effective date. *See Morris v. State*, No. M1999-02714-COA-RM-CV, 2002 WL 31247079, at *1, *3-4 (Tenn. Ct. App. Oct. 8, 2002) (holding that the General Assembly has the authority to “enact retroactive laws waiving the State’s sovereign immunity with regard to past events”). In this instance, it did not. Consequently, the waiver of sovereign immunity for USERRA claims only applies to causes of action that accrue on or after July 1, 2014, and Plaintiff’s cause of action accrued in 2011.

¹Notably, the discovery rule does not govern the accrual of every claim in Tennessee. *See Pero’s Steak & Spaghetti House v. Lee*, 90 S.W.3d 614, 624 (Tenn. 2002) (declining to apply the discovery rule to claims of conversion of negotiable instruments).

For the foregoing reasons, Plaintiff's claim is barred by the doctrine of sovereign immunity.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Plaintiff, David R. Smith.

FRANK G. CLEMENT, JR., JUDGE