

IN THE UTAH COURT OF APPEALS

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Shari D. Harper,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20080314-CA
v.)	
)	F I L E D
)	(July 10, 2008)
Michael Roundy, John Rogerson,)	
and Weber Human Services,)	2008 UT App 267
)	
Defendants and Appellees.)	

Second District, Ogden Department, 070907161
The Honorable Ernest W. Jones

Attorneys: Shari D. Harper, Huntsville, Appellant Pro Se
 Tim Dalton Dunn and Kathleen M. Liuzzi, Salt Lake
 City, for Appellees

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Shari D. Harper appeals the Order of Dismissal entered on March 5, 2008. This case is before the court on a sua sponte motion for summary disposition. Harper filed her notice of appeal prior to the entry of the order denying her post-judgment motion, and she did not file a timely notice of appeal after entry of the order denying her post-judgment motion. Thus, the only issues properly before this court are those pertaining to the order of dismissal. See Utah R. App. P. 4(b) ("To appeal from a final order disposing of any motion listed in Rule 4(b), a party must file a notice of appeal or an amended notice of appeal within the prescribed time measured from the entry of the order."). Accordingly, Harper's notice of appeal was effective to confer jurisdiction only over an appeal from the order dismissing her complaint. See *id.*

Weber Human Services (WHS) is an interlocal agency formed pursuant to the Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 to -314 (2007), to provide mental health services in Weber and Morgan counties. As an interlocal entity, WHS is a political subdivision of the state of Utah. See *id.* § 17B-1-102(17) (Supp. 2007). Therefore, claims against WHS and its employees are

subject to the notice of claim requirements of the Governmental Immunity Act of Utah (Immunity Act). See id. §§ 63-30d-401 to -403 (2004 & Supp. 2007). "[F]ailure to comply with the notice requirement of the [Immunity Act] deprives the trial court of subject matter jurisdiction, and therefore compliance with the act is a precondition to maintaining an action." Nielson v. Gurley, 888 P.2d 130, 134 (Utah Ct. App. 1994). Harper was required to serve a notice of claim on WHS under the Immunity Act prior to bringing her action against WHS and its employees. See Utah Code Ann. § 63-30d-401 (Supp. 2007). A claimant may institute an action in the district court only after either the governmental entity's denial or the expiration of the sixty-day period for approval or denial of the claim. See id. § 63-30d-403 (2004). If a claimant files a complaint against the entity or its employees before the period for approval or denial of the claim has elapsed, the district court lacks subject matter jurisdiction over the cause of action and must dismiss the case. See Wheeler v. McPherson, 2002 UT 16, ¶ 9, 40 P.3d 632 ("Compliance with the Immunity Act is a prerequisite to vesting a district court with subject matter jurisdiction over claims against governmental entities.").

Harper did not serve the requisite notice of claim on WHS and has not offered proof of service. Accordingly, she did not comply with the notice requirements of the Immunity Act, and the district court lacked subject matter jurisdiction. The Immunity Act grants the state and its political subdivisions "broad background immunity" and "defines narrower parameters where governmental immunity is waived and legal liability may arise." Id. ¶ 10. However, "[i]n order to sue a governmental entity under these parameters, potential plaintiffs must first provide, as a prerequisite to filing suit, formal 'notice of claim' to the appropriate governmental officials." Id. (emphasis added). "[T]he Immunity Act demands strict compliance with its requirements to allow suit against governmental entities." Id. ¶ 13. Harper asserts that she alleged claims for "fraud and willful misconduct" that fall outside the Immunity Act's notice requirements. However, the district court correctly ruled that it could not reach the question of whether Defendants are immune from suit because Harper's failure to comply with the notice requirements precluded the court's jurisdiction over her case. The district court also correctly ruled that issues regarding whether Defendants Roundy and Rogerson were acting within the course and scope of their employment were not properly before the court because it lacked subject matter jurisdiction.

Harper also alleged that Defendants committed malpractice in the course of providing her with mental health services. As a prerequisite to suing a Utah health care provider for malpractice, a litigant must give notice to the health care

provider ninety days before commencement of the action, see Utah Code Ann. § 78-14-8 (2002), and participate in a prelitigation panel, see id. § 78-14-12(2). If these prelitigation requirements are not met, the district court lacks jurisdiction and the complaint must be dismissed. Harper failed to give WHS at least ninety days prior notice of her intent to commence a malpractice action. In addition, she also alleged that John Rogerson and Michael Roundy worked for WHS at the time her claims arose--Rogerson as a licensed clinical social worker and Roundy as a licensed psychiatrist. She alleged that Defendants breached the standard of care by misdiagnosing her and causing her to be involuntarily committed. These allegations brought the case within the coverage of the Utah Health Care Malpractice Act (the Malpractice Act); therefore, Harper was required to comply with its notice requirements in order to bring her case within the jurisdiction of the district court. Harper did not provide proof of appropriate service of the required notice, which must be served in the same manner as for service of a summons and complaint or by certified mail. See id. § 78-14-8. Instead, on the same date that she filed a complaint in district court, she left a letter at WHS with a copy of the complaint attached and alleges that this was her notice of intent to commence action. Neither the timing nor the manner of alleged service complied with the Malpractice Act's requirements.

The district court did not err in granting the motion to dismiss based upon its findings that Harper failed to comply with the requisite notice requirements. Accordingly, we affirm.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge