

IN THE COURT OF APPEALS OF TENNESSEE  
EASTERN SECTION

**FILED**

December 11, 1996

Cecil Crowson, Jr.  
Appellate Court Clerk

BARBARA WOODALL, ) C/ A NO. 03A01-9608-CH-00258  
 )  
Plaintiff - Appellant, ) KNOX CHANCERY  
 )  
v. ) HON. FREDERICK D. McDONALD,  
 ) CHANCELLOR  
STATE OF TENNESSEE DEPARTMENT )  
OF HUMAN SERVICES, ) AFFIRMED  
 ) AND  
Defendant - Appellee. ) REMANDED

W ANDREW FOX, Knoxville, for Plaintiff - Appellant.

CHARLES W BURSON, Attorney General and Reporter,  
WILLIAM J. MARETT, JR., Assistant Attorney General, Nashville,  
for Defendant - Appellee.

O P I N I O N

Franks. J.

Responding to a motion to dismiss, the Trial Court dismissed plaintiff's action on the grounds that judicial review was premature.

Plaintiff, an employee of the Tennessee Department of Human Services, filed proceedings against the agency asserting that she was entitled to back pay for work performed outside her required duties.<sup>1</sup> At the fifth step of the appeals process, the Tennessee Civil Service Commission (?Commission?) denied her a hearing on the grounds that her complaint was ?non-grievable? under Tenn. Comp. Rules and Regulations 1120-11-.08 (10), (12) (1994).

She then filed this action in the Chancery Court of Knox County for judicial review of the Commission's action. The Trial Court determined that the dispute remained before the Commission until it apprised plaintiff of her recourse for its finding that the dispute was non-grievable.

Among the grounds set forth in the motion to dismiss was that venue was improper in the Knox County Chancery Court, and while the Trial Judge pretermitted this issue in his order, it is raised again on appeal by defendant.

Defendant argues that the case should be before the Chancery Court in Davidson County. Venue is established in the statute setting forth procedures for judicial review:

Proceedings for review are instituted by filing a petition for review in the chancery court of Davidson County, unless another court is specified by statute . . . A person who is aggrieved by a final decision of the department of human services in a contested case may file a petition for review in the chancery court located either in the county of the official residence of the commissioner or in the county in which any one (1) or more of the petitioners reside.

T. C. A. § 4-5-322(b)(1).

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<sup>1</sup> This claim is based on T. C. A. §8-30-224, which provides compensation for an employee assigned to perform the majority of duties and responsibilities of a person with a higher level job classification.

The language regarding the Department of Human Services was added to afford venue for judicial review of the administrative decisions made by the Department. Chapter 478, Public Acts, 1980 (p. 78-79). However, this amendment does not establish venue in plaintiff's home county in this case.

The Department of Human Services is the final arbiter in the grievance proceeding only for "permanent" or "executive" employees. Department of Personnel Rule 1120-11-.06.<sup>2</sup>; T.C.A. §8-30-328(7).<sup>3</sup> The grievances of "career employees" and/or "regular employees" are appealed beyond the agency to the Commission. Accordingly, the local venue option for Department of Human Services decisions does not apply in

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<sup>2</sup> This rule states that  
(1) The Commission will serve as the final step for all grievances by career employees.  
(2) The agency appointing authority will serve as the final step for all grievances by permanent employees.

Dept. Of Personnel Rule 1120-11-.06

The term "career service" is defined by statute as "all offices and positions of trust and employment in the state service which have been placed under civil service provisions of this chapter." T.C.A. § 8-30-101(3). "Permanent employee" is defined as "an employee who holds a regular appointment in a permanent position in the executive service." Rule 1120-1-.01(62).

The statute also divides employees in executive and career services - executive service includes the higher ranking members of boards, agencies, the governor's office; "all other regular full-time positions in state service shall be in the career service." 8-30-208(c).

<sup>3</sup> The statute states that the grievance procedure for a "regular employee" shall end in the final step of "a request for review to the commission, and all decisions upon such requests for review shall be final. For all other employees, the final step shall be the appointing authority." T.C.A. § 8-30-328(7).

A "regular appointment" is "the appointment of a person to a permanent position in either the career or executive service for an indeterminate amount of time." Id. (75). The statute defines "regular employee" as "an employee who has been appointed to a position in the career service in accordance with part 3 of this chapter after completing the employee's working test period" (T.C.A. § 8-30-101(20)) or as "an employee who holds a civil service position of a permanent nature after satisfactorily completing an initial probationary period." T.C.A. §8-30-328(2).

all cases due to the distinctions made in the relevant statutes and regulations. This case was brought as an appeal from the decision by the Commission, not from a decision of the Department of Human Services. Venue is therefore properly in the Davidson County Chancery Court.

We affirm the Trial Court's order of dismissal under the familiar rule that a judgment of a Trial Court which is correct in result, though rendered upon a different, incomplete or erroneous ground, is affirmed. *Hopkins v. Hopkins*, 572 S.W2d 639 (Tenn. 1978).

The judgment of the Trial Court is affirmed on the ground that venue does not lie in the Knox County Chancery Court, and the cause is remanded with the cost of the appeal assessed to the appellant.

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Herschel P. Franks, J.

CONCUR:

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Houston M. Goddard, P. J.

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Clifford E. Sanders, Sp. J.