

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 10, 2024 Session

ZACHARY C. CROUCH v. THE UNIVERSITY OF TENNESSEE

Appeal from the Chancery Court for Knox County
No. 205117-3 Christopher D. Heagerty, Chancellor

No. E2023-00023-COA-R3-CV

This appeal involves claims of breach of contract and employment discrimination filed by a graduate student/teaching assistant at the University of Tennessee in Knoxville. The plaintiff claimed that he was fired for discriminatory reasons and that the University of Tennessee had breached its employment contract with him. The trial court dismissed the breach of contract claim based on sovereign immunity and lack of subject matter jurisdiction. The court dismissed the employment discrimination claims by reason of the applicable statute of limitations. The plaintiff has appealed. Discerning no reversible error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed; Case Remanded

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and JOHN W. MCCLARTY, J., joined.

Zachary C. Crouch, Knoxville, Tennessee, Pro Se.

Caitlyn Luedtke Elam, Knoxville, Tennessee, for the appellee, the University of Tennessee.

OPINION

I. Factual and Procedural Background

On July 20, 2022, the plaintiff, Zachary C. Crouch, filed a *pro se* complaint against the University of Tennessee (“UT”) in the Knox County Chancery Court (“trial court”). In his complaint, Mr. Crouch averred that he had entered into a contract of employment with UT in August 2019 for “graduate work” through the nuclear

engineering program. Mr. Crouch further averred that he was fired in January 2020 without good cause and that he accordingly lost his stipend, tuition waiver, and medical insurance. According to Mr. Crouch, his employment contract stated that funding for his position would continue until Mr. Crouch obtained his Ph.D. unless he failed to maintain satisfactory grades or the funding agency ran out of funds, neither of which occurred in his case. Mr. Crouch thereby claimed that UT had breached its contract with him.

Mr. Crouch also claimed that he was fired due to a disability. Mr. Crouch averred that he had autism and acknowledged that he had engaged in “unusual communications,” but he asserted that the communications were not threatening. Mr. Crouch stated that he had suffered from panic attacks, anxiety, stress, and possibly post-traumatic stress disorder (“PTSD”), and that at times of extraordinary stress, he would “say things that he did not mean to say.” Mr. Crouch further averred that he was ultimately fired due to his sexual orientation. Mr. Crouch therefore claimed that his employment was terminated for discriminatory reasons. Accordingly, Mr. Crouch sought damages in the amount of ten million dollars.

On September 7, 2022, UT filed a motion to dismiss pursuant to Tennessee Rule of Civil Procedure 12.02(1). In support, UT posited that the trial court lacked subject matter jurisdiction over Mr. Crouch’s claims by reason of sovereign immunity. In the alternative, UT asserted that Mr. Crouch’s employment discrimination claims were barred by the applicable one-year statute of limitations.

Mr. Crouch filed a copy of the offer letter that a UT representative had sent to him in June 2019, wherein he had been offered a “Graduate Research and Teaching Assistantship position in the Department of Nuclear Engineering” at UT Knoxville. UT’s representative included in the letter that Mr. Crouch would be required to work twenty hours per week and that the assistantship could continue throughout his pursuit of a graduate degree so long as he maintained full-time enrollment, performed satisfactorily in degree progression, and the funds remained available.

On January 24, 2023, the trial court entered an order dismissing Mr. Crouch’s claims, to which it attached and incorporated its memorandum opinion. With reference to Mr. Crouch’s claim of breach of contract, the court determined that although Tennessee Code Annotated § 9-8-307(a)(1)(L) provided for a waiver of the State’s sovereign immunity for breach of contract claims, the statute also provided that the Tennessee Claims Commission maintained exclusive jurisdiction to adjudicate such claims. The court thus concluded that it lacked subject matter jurisdiction to adjudicate the breach of contract claim.

Respecting Mr. Crouch’s claims that he was fired due to a disability or for discriminatory reasons, the trial court found that such claims would fall within the purview of the Tennessee Disability Act (“TDA”), codified at Tennessee Code Annotated

§ 8-50-103, or the Tennessee Human Rights Act (“THRA”), codified at Tennessee Code Annotated §§ 4-21-302, *et seq.* Although the court concluded that it possessed subject matter jurisdiction to adjudicate such claims, it also determined that these claims were barred by the one-year statute of limitations applicable to such claims. For factual support, the court found that according to Mr. Crouch’s complaint, he was fired in January 2020, and the court identified this as the date of the alleged discriminatory practice by UT. Mr. Crouch’s complaint was not filed until July 2022, which was more than one year following the purported discriminatory act. As such, the court determined that Mr. Crouch’s claims were untimely filed and dismissed them. Meanwhile, Mr. Crouch had filed a premature notice of appeal with this Court on January 4, 2023, which this Court treated as timely following entry of the final order pursuant to Tennessee Rule of Appellate Procedure 4(d).

II. Issue Presented

Mr. Crouch presents the following issue for this Court’s review, which we have restated verbatim:

Whether the Chancery Court erred in holding that [UT] can use sovereign immunity for the counts listed in the Complaint which are briefly mentioned as follows:

- Count I: Breach of Contract
- Count II: Firing Due to Discrimination
- Count III: Firing Due to a Disability

III. Standard of Review

As our Supreme Court has explained concerning review of a motion to dismiss for lack of subject matter jurisdiction:

A motion to dismiss for lack of subject matter jurisdiction falls under Tennessee Rule of Civil Procedure 12.02(1). The concept of subject matter jurisdiction involves a court’s lawful authority to adjudicate a controversy brought before it. *See Meighan v. U.S. Sprint Communications Co.*, 924 S.W.2d 632, 639 (Tenn. 1996); *Standard Sur. & Casualty Co. v. Sloan*, 180 Tenn. 220, 230, 173 S.W.2d 436, 440 (1943). Subject matter jurisdiction involves the nature of the cause of action and the relief sought, *see Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn.1994), and can only be conferred on a court by constitutional or legislative act. *See Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977); *Computer Shoppe, Inc. v. State*, 780 S.W.2d 729, 734 (Tenn. Ct. App. 1989). Since a determination of whether subject matter jurisdiction exists is a question of law, our standard of review is de

novo, without a presumption of correctness. *See Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999).

Northland Ins. Co. v. State, 33 S.W.3d 727, 729 (Tenn. 2000).

IV. Subject Matter Jurisdiction

The trial court granted UT's motion to dismiss predicated upon, *inter alia*, the trial court's lack of subject matter jurisdiction. Our Supreme Court has explained as follows concerning a subject matter jurisdiction challenge:

Challenges to a court's subject matter jurisdiction call into question the court's "lawful authority to adjudicate a controversy brought before it," *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000), and, therefore, should be viewed as a threshold inquiry. *Schmidt v. Catholic Diocese of Biloxi*, 2008-CA-00416-SCT (¶ 13), 18 So. 3d 814, 821 (Miss. 2009). Whenever subject matter jurisdiction is challenged, the burden is on the plaintiff to demonstrate that the court has jurisdiction to adjudicate the claim. *See Staats v. McKinnon*, 206 S.W.3d 532, 543 (Tenn. Ct. App. 2006); 1 Lawrence A. Pivnick, *Tennessee Circuit Court Practice* § 3:2 (2011 ed.) ("Pivnick").

Litigants may take issue with a court's subject matter jurisdiction using either a facial challenge or a factual challenge. *See, e.g., Schutte v. Johnson*, 337 S.W.3d 767, 769-70 (Tenn. Ct. App. 2010); *Staats v. McKinnon*, 206 S.W.3d at 542. A facial challenge is a challenge to the complaint itself. *See Schutte v. Johnson*, 337 S.W.3d at 769. Thus, when a defendant asserts a facial challenge to a court's subject matter jurisdiction, the factual allegations in the plaintiff's complaint are presumed to be true. *See, e.g., Staats v. McKinnon*, 206 S.W.3d at 542-43.

Alternatively, "[a] factual challenge denies that the court actually has subject matter jurisdiction as a matter of fact even though the complaint alleges facts tending to show jurisdiction." *Staats v. McKinnon*, 206 S.W.3d at 543. Thus, the factual challenge "attacks the facts serving as the basis for jurisdiction." *Schutte v. Johnson*, 337 S.W.3d at 770.

Redwing v. Catholic Bishop for the Diocese of Memphis, 363 S.W.3d 436, 445-46 (Tenn. 2012). In this case, UT's motion to dismiss mounted a facial challenge to the trial court's subject matter jurisdiction, which "asserts that the complaint, considered from top to bottom, fails to allege facts that show that the court has power to hear the case." *See Schutte v. Johnson*, 337 S.W.3d 767, 769 (Tenn. Ct. App. 2010) (quoting *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994)).

Article I, Section 17 of the Tennessee Constitution establishes the sovereign immunity of the State, providing that “[s]uits may be brought against the State in such manner and in such courts as the Legislature may by law direct.” See *Northland Ins. Co.*, 33 S.W.3d at 729. Our legislature has enacted a statutory provision that also reflects this principle of sovereign immunity, Tennessee Code Annotated § 20-13-102 (West August 11, 2009, to current), which states:

- (a) No court in the state shall have any power, jurisdiction or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds or property, and all such suits shall be dismissed as to the state or such officers, on motion, plea or demurrer of the law officer of the state, or counsel employed for the state.
- (b) No statutory or other provision authorizing the University of Tennessee and its board of trustees to sue and be sued shall constitute a waiver of sovereign immunity.

Accordingly, it is well settled that the State possesses sovereign immunity from lawsuits “except as it consents to be sued.” *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000) (quoting *Brewington v. Brewington*, 387 S.W.2d 777, 779 (Tenn. 1965)). “The rule of sovereign immunity in Tennessee is both constitutional and statutory. It is not within the power of the courts to amend it.” *Sweeney v. State*, 744 S.W.2d 905, 906 (Tenn. Ct. App. 1987) (quoting *Jones v. L & N Railroad Co.*, 617 S.W.2d 164, 170 (Tenn. Ct. App. 1981)). It is also well settled that UT is “clothed with sovereign immunity” as an arm of the State. See *Stokes v. Univ. of Tenn. at Martin*, 737 S.W.2d 545, 546 (Tenn. Ct. App. 1987); *Lawson v. Univ. of Tenn.*, No. E1999-02516-COA-R9-CV, 2000 WL 116312, at *3 (Tenn. Ct. App. Jan. 28, 2000).

As our Supreme Court has previously elucidated concerning the legislature’s statutory waiver of sovereign immunity:

[C]ourts will interpret a statute as waiving the State’s sovereign immunity only if the legislation waives sovereign immunity “in ‘plain, clear, and unmistakable’ terms.” *Mullins [v. State]*, 320 S.W.3d [273,] 283 [(Tenn. 2010)] (quoting *Northland Ins. Co. v. State*, 33 S.W.3d 727, 731 (Tenn. 2000)). A “waiver of sovereign immunity must be explicit, not implicit.” *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 853 (Tenn. 2008). In other words, statutes waiving sovereign immunity must “clearly and unmistakably” express the General Assembly’s intent to permit claims against the State. *Davidson [v. Lewis Bros. Bakery]*, 227 S.W.3d [17,] 19

[(Tenn. 2007)] (quoting *Scates v. Bd. of Comm'rs of Union City*, 196 Tenn. 274, 265 S.W.2d 563, 565 (1954)).

Smith v. Tenn. Nat'l Guard, 551 S.W.3d 702, 709 (Tenn. 2018).

One such statute that clearly waives the State's sovereign immunity for certain enumerated claims is Tennessee Code Annotated § 9-8-307(a)(1) (West June 1, 2022, to current), which provides for "monetary claims against the state based on the acts or omissions of 'state employees' . . . falling within one (1) or more of the following categories." As applicable here, subsection (L) provides for:

Actions for breach of a written contract between the claimant and the state which was executed by one (1) or more state officers or employees with authority to execute the contract[.]

The statute itself further provides, however, that "exclusive jurisdiction" for adjudicating such claims lies with the Tennessee Claims Commission. Tenn. Code Ann. § 9-8-307(a)(1) ("The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state . . .").

In the case at bar, accepting the factual allegations in Mr. Crouch's complaint as true, *see Redwing*, 363 S.W.3d at 445-46, Mr. Crouch's first claim was premised on breach of his alleged contract for employment with UT. As such, this claim was within the exclusive jurisdiction of the Tennessee Claims Commission, *see* Tenn. Code Ann. § 9-8-307(a)(1)(L), and the trial court lacked subject matter jurisdiction to adjudicate the breach of contract claim. We therefore affirm the trial court's dismissal of this claim for lack of subject matter jurisdiction.

With respect to Mr. Crouch's remaining claims of alleged employment discrimination, we note that Mr. Crouch's issue on appeal is framed as "[w]hether the Chancery Court erred in holding that [UT] can use sovereign immunity" as a shield against such claims. However, the trial court's dismissal of the employment discrimination claims was not based on sovereign immunity. Rather, the court's dismissal of those claims was predicated upon the applicable statute of limitations. Inasmuch as Mr. Crouch failed to raise the issue of whether the trial court properly determined such claims to be untimely, we conclude that he has waived consideration of this issue on appeal. *See Hodge v. Craig*, 382 S.W.3d 325, 334 (Tenn. 2012) ("Appellate review is generally limited to the issues that have been presented for review." (citing Tenn. R. App. P. 13(b)); *Logan v. Estate of Cannon*, 602 S.W.3d 363, 383 n.4 (Tenn. Ct. App. 2019). Accordingly, we affirm the trial court's dismissal of all claims asserted by Mr. Crouch.

V. Conclusion

For the foregoing reasons, we affirm the trial court's dismissal of Mr. Crouch's claims. Costs on appeal are assessed to the plaintiff, Zachary C. Crouch. This case is remanded to the trial court for collection of costs assessed below.

s/Thomas R. Frierson, II

THOMAS R. FRIERSON, II, JUDGE