

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 18, 2014 Session

GULER BOYRAZ v. STATE OF TENNESSEE

Appeal from the Tennessee Claims Commission
No. T20130716 Robert N. Hibbett, Commissioner

No. M2013-02796-COA-R3-CV – Filed May 20, 2015

Former Tennessee State University Professor filed a claim for damages, asserting causes of action for breach of contract and negligent deprivation of statutory rights. On the State's motion to dismiss the claim, the Claims Commission held that it lacked subject matter jurisdiction to hear the breach of contract claim and that the professor failed to state a claim for negligent deprivation of statutory rights; accordingly, the Commission granted the State's motion. Professor appeals. We reverse the dismissal of the breach of contract claim and remand for further proceedings; in all other respects the judgment is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Tennessee Claims
Commission Affirmed in Part and Reversed in Part; Case Remanded**

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P. J., M. S., and ANDY D. BENNETT, J., joined.

Larry L. Crain, Brentwood, Tennessee, for the appellant, Guler Boyraz.

Robert E. Cooper, Jr., Attorney General and Reporter; Joseph F. Whalen, Acting Solicitor General, Mary M. Bers, Senior Counsel, Nashville, Tennessee, for the appellee, State of Tennessee.

OPINION

I. FACTS AND PROCEDURAL HISTORY¹

Dr. Guler Boyraz, a native and citizen of Turkey, applied to Tennessee State University (“TSU”) for a tenure-track position as assistant professor in counseling psychology in 2007; she was employed by letter dated May 5, 2008 for one year at a salary of \$44,000.00. The appointment letter, titled “Notice of Tenure-Track Appointment and Agreement of Employment for Faculty,” was signed by then-President Melvin Johnson and Dr. Boyraz. Since Dr. Boyraz was not a naturalized citizen of the United States at the time of her application to TSU, a necessary condition of her employment was that she maintain H-1B visa status.² TSU, as her sponsoring employer, initiated the process to get Dr. Boyraz the necessary work visa, which was approved in March 2009 and was valid until February 29, 2012.

In June of 2011, Dr. Boyraz began to converse with various administrators at TSU, seeking assistance in applying for permanent resident status. In the course of her efforts, Dr. Boyraz, at the urging of Ronald Ostenfield, TSU’s director of Human Resources, hired an immigration attorney to advise her. In January 2012, Mr. Ostenfield advised Dr. Boyraz that TSU would file both an application for an extension of her visa and for permanent residency. On January 31, 2012, Dr. Boyraz was presented with a letter advising her that in light of the U.S. Department of Labor wage determination,³ TSU would no longer be able to assist her in her application efforts and, due to her work authorization being set to expire on February 29, 2012, she would no longer be employed.

On December 3, 2012, Dr. Boyraz filed a claim for damages with the Tennessee Claims Commission against the Tennessee Board of Regents, the governing board for TSU, asserting causes of action for breach of contract and negligent deprivation of

¹ Dr. Boyraz’ original claim was amended twice; the factual background is derived primarily from the allegations in the Second Amended Complaint. Because the case was resolved pursuant to Tenn. R. Civ. P. 12.02, we treat the allegations of the complaint as true. *Cullum v. McCool*, 432 S.W. 3d 829, 832 (Tenn. 2013).

² One provision of the letter stated that her employment was contingent on “verification of appropriate work authorization that permits lawful employment in the United States and Tennessee State University.”

³ Pursuant to 8 U.S.C. § 1182(a)(5)(A), the Department of Labor is to make a determination that the employment of an alien “will not adversely affect the wages and working conditions of workers in the United States similarly employed.” 20 C.F.R. § 656.40 sets forth the manner in which the determination is to be made. Dr. Boyraz was advised that the Department of Labor had determined her wage to be “Level 2”, which was higher than her annual salary. TSU took no action to challenge the Department of Labor determination.

statutory rights. In due course, the State filed a Motion to Dismiss the claims under Tenn. R. Civ. P. 12.02(1) and 12.02(6) for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted.

The present appeal is from the order granting the motion. Dr. Boyraz articulates the following issues:

- I. Whether the Commissioner erred in granting the State's Motion to Dismiss under rules 12.02 and 12.06 Tenn. R. Civ. P. by finding the Claims Commission lacked subject matter jurisdiction under Tenn. Code Ann. § 9-8-307(a)(1)(L) to adjudicate Plaintiff's claims against TSU on its breach of the Plaintiff's employment contract.⁴
- II. Whether the Commissioner erred in granting the State's Motion to Dismiss under rules 12.02 and 12.06 Tenn. R. Civ. P. by finding the Claims Commission lacked subject matter jurisdiction under Tenn. Code Ann. §9-8-307(a)(1)(N) to adjudicate the Plaintiff's claims against TSU based on its negligent deprivation of statutory rights under Tenn. Code Ann. §50-1-102.

II. STANDARD OF REVIEW

Because the Claims Commission hears cases without a jury, we review the Commission's factual findings and legal conclusions using the standard in Tenn. R. App. P. 13(d). *Bowman v. State*, 206 S.W.3d 467, 472 (Tenn. Ct. App. 2006). Therefore, the Commission's factual findings are reviewed *de novo* with a presumption of correctness unless the evidence preponderates otherwise; legal conclusions are reviewed *de novo* and are not entitled to a presumption of correctness. *Id.* (citing *Beare Co. v. State*, 814 S.W.2d 715, 717 (Tenn. 1991); *Dobson v. State*, 23 S.W.3d 324,328-29 (Tenn. Ct. App. 1999); *Sanders v. State*, 783 S.W.2d 948, 951 (Tenn. Ct. App. 1989); *Turner v. State*, 184 S.W.3d 701,704 (Tenn. Ct. App. 2005); *Crew One Productions, Inc. v. State*, 149 S.W.3d 89,92 (Tenn. Ct. App. 2004); *Belcher v. State*, No. E2003-00642-COA-R3-CV, 2003 WL 22794479, at 4* (Tenn. Ct. App. 2003)).

III. ANALYSIS

It is long established that the State of Tennessee, as a sovereign, is immune from lawsuits ““except as it consents to be sued.”” *Stewart v. State*, 33 S.W. 3d 785, 790 (Tenn. 2000) (quoting *Brewington v. Brewington*, 215 Tenn. 475, 480, 387 S.W.2d

⁴ We believe the Claimant mistakenly cited Tenn. R. Civ. P. 12.02 and 12.06, when she intended to cite Tenn. R. Civ. P. 12.02(1) and 12.02(6).

777,779 (1965)). The rule of sovereignty is both constitutional and statutory. See Tenn. Const., art I, § 17. It provides that “[s]uits may be brought against the State in such manner and in such courts as the Legislature may by law direct.” *Id.* TSU is covered by sovereign immunity because “the State and its agencies (such as TSU) may not be sued in its own courts except under the conditions and in the manner established by the legislature.” *Runions v. Tennessee State University*, 2009 WL 1939816, at *2 (Tenn. Ct. App. 2009).

Under this constitutional authority, the legislature created the Tennessee Claims Commission to have exclusive jurisdiction to adjudicate all monetary claims asserted against the State. *Stewart*, 33 S.W.3d at 790. The jurisdiction of the Claims Commission is limited to claims that fall within certain specified categories as defined by the statute. See Tenn. Code Ann. §9-8-307(a). If a claim falls outside of these specified categories, then the State retains its immunity from suit, and Dr. Boyraz may not seek relief against the State.

A. BREACH OF CONTRACT

The parties do not dispute that Tenn. Code Ann. § 9-8-307(a)(1)(L)⁵ grants the Commission the authority to hear the breach of contract claim or that the May 5, 2008 letter satisfies the requirement that the contract be in writing; they dispute whether Dr. Boyraz had a written contract which was in effect on January 31, 2012.

Tennessee case law establishes that the mere expiration of the designated term in a written contract does not eliminate the obligations created by the contract. Instead, “[w]here one enters into the service of another for a definite period, and continues the employment after the expiration of that period, without any new contract, the

⁵ Tenn. Code Ann. § 9-8-307(a)(1)(L) provides:

(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of “state employees,” as defined in § 8-42-101, falling within one (1) or more of the following categories:

* * *

(L) 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; . . .

In order to constitute a written contract under § 9-8-307(a)(1)(L), there must be a document and intent by the State to be bound. *Gardner v. University of Memphis College of Business*, 2003 WL 1872640, at *3 (Tenn. Ct. App. 2003).

presumption is that the employment is continued on the terms of the original contract.” *Srygley v. City of Nashville*, 175 Tenn. 417, 135 S.W. 2d 451,451 (1940); *Crye-Leike, Inc. v. Carver*, 415 S.W.3d 808, 822 (Tenn. Ct. App. 2011) (continuation of a contract beyond the expiration period resulted in an implied contract under the same terms and conditions as the original written agreement, citing *Pyles v. Cole*, 34 Tenn. App. 601,604, 241 S.W.2d 841,843 (1951)).

Dr. Boyraz was appointed as a tenure-track assistant professor in the May 5, 2008 letter. In executing this agreement, both parties agreed to be held to certain contractual obligations. The initial term of the agreement was established in paragraph 6 which states, “[t]his appointment is on an annual basis only, subject to renewal by Tennessee State University, and annual approval by the Tennessee Board of Regents, for a maximum probationary period of seven years.” Thus, even though Dr. Boyraz’ initial appointment as a professor was for the 2008-2009 year, she continued beyond that year, consistent with the terms and conditions of the contract, until the uncertainty regarding her visa status arose and she was issued the January 31, 2012 letter. The May 5, 2008 letter and the conduct of the parties, satisfied the requirement at Tenn. Code Ann. § 9-8-307(a)(1)(L) that there be a written contract between Dr. Boyraz and the State.

This is further reflected considering that the May 5, 2008 contract was expressly made subject to Tennessee Board of Regent Policy⁶ providing that, “[w]hen tenure-track appointments of faculty are not to be renewed for further services, the faculty member shall receive notice of his/her non-retention for the ensuing academic year[.]” *TBR Academic Tenure for Universities*, 5:02:03:60 (IV)(A)(1). At no time during Dr. Boyraz’ employment with TSU did she receive a notice of non-renewal; rather, the January 31, 2012, letter informed her that “if [she was] unable to establish eligibility to work beyond February 29, 2012, [her] authorization to work at TSU [would] expire, effective, Wednesday, February 29, 2012.” This letter acknowledged that her continued employment was under the specific condition in the May 5, 2008 letter that she maintain her visa status and terminated the contractual relationship at that time.

Accordingly, we reverse the Commission’s decision and remand the case for determination of Dr. Boyraz’ breach of contract claim.

Dr. Boyraz also contends that email communications between various TSU administrators and either her or her lawyer, specifically relating to TSU’s sponsorship of Dr. Boyraz for permanent residency status, created a written contract. Our holding that contractual obligations exist under the initial appointment letter pretermits our consideration of this issue. We recognize, however, that the email communications may

⁶ Paragraph one of the agreement states, “[t]his appointment is made subject to the laws of the State of Tennessee, the requirements and policies of the Tennessee State University.”

be relevant in the determination of the nature and extent of the contractual obligations which arose from the May 5, 2008 letter and which existed in January 2012; our holding should not be construed as a limitation on the consideration of the email communications for this purpose.

B. Negligent Deprivation of Statutory Rights

Dr. Boyraz contends that jurisdiction for the negligent deprivation of statutory rights claim exists pursuant to Tenn. Code Ann. § 9-8-307(a)(1)(N), which provides:

(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of “state employees,” as defined in § 8-42-101, falling within one (1) or more of the following categories:

* * *

(N) Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. The claimant must prove under this subdivision (a)(1)(N) that the general assembly expressly conferred a private right of action in favor of the claimant against the state for the state’s violation of the particular statute’s provisions;

Dr. Boyraz alleges that the rights she was deprived of are those arising from Tenn. Code Ann. § 50-1-102(a)(1).⁷

The Commission held that it lacked subject matter jurisdiction over Dr. Boyraz’s claims of negligent deprivation of statutory rights stating “a careful reading of the statute

⁷ Tenn. Code Ann. § 50-1-102(a)(1) states:

(a)(1) It is unlawful for any person to induce, influence, persuade or engage workers to change from one place to another in this state, or to bring workers of any class or calling into this state to work in any type of labor in this state through or by means of false or deceptive representations, false advertising or false pretenses, concerning the kind and character of the work to be done, or the amount and character of compensation to be paid for the work, or the sanitary or other conditions of the employment, or as to the existence or nonexistence of a strike or other trouble pending between employer and employees, at the time of or prior to the engagement.

Dr. Boyraz contends that this statute “specifically provides individuals with a private right of action against false and misleading statements made for the purpose of encouraging them to accept employment” and that the representation that TSU would serve as her employer-sponsor for securing an H-1B visa was such a misleading statement.

does not show that the General Assembly intended to give a private right of action against the State of Tennessee.”

Tenn. Code Ann. § 9-8-307(a)(1)(N) requires that there be a statutory right at issue, with the additional requirement that there be proof that the legislature conferred a private right of action against the State. While Tenn. Code Ann. § 50-1-102(c)(1) creates a cause of action for false or deceptive representations made to induce a person with reference to various terms or conditions of employment, the statute does not expressly confer a private right to enforce the claim against the State. Statutory provisions relating to claims against the State are to be strictly construed, as any such statute is in derogation of the common law rule of sovereign immunity. *See, e.g., Norman v. Tennessee State Board of Claims*, 533 S.W.2d 719, 722 (Tenn. 1975). In construing such statutes, courts presume the General Assembly purposefully chose the words used in the statute. *Stewart*, 33 S.W.3d at 792. Tenn. Code Ann. § 50-1-102 does not mention the State; we presume this was purposeful and that the Legislature did not intend to create a private cause of action against the State for violation of the statute. Accordingly, we affirm the dismissal of the negligent deprivation of statutory rights claim.

IV. CONCLUSION

For the foregoing reasons, the judgment of the Tennessee Claims Commission is affirmed in part and reversed in part. The case is remanded to the Tennessee Claims Commission for further proceedings in accordance with this opinion.

RICHARD H. DINKINS, JUDGE