

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
December 7, 2022 Session

FILED
04/05/2023
Clerk of the
Appellate Courts

CHRISTOPHER TURNER v. STATE OF TENNESSEE

**Appeal from the Claims Commission of the State of Tennessee Middle Division
No. 0546-GL-21-0502754-001 James A. Haltom, Commissioner**

No. M2021-01470-COA-R3-CV

This appeal arises from a complaint filed with the Claims Commission in which Christopher Turner (“Plaintiff”) seeks monetary damages for being incarcerated by the State of Tennessee (“the State”) beyond his sentence expiration date due to the failure of the Tennessee Department of Correction to award the pretrial jail credits and “street time” ordered by the criminal court as provided by his plea agreement. The amended complaint alleged “negligent care, custody, and control of persons,” “negligent care of personal property,” “negligent operation of machinery or equipment (computer systems),” and “breach of written contract.” The State filed a motion to dismiss for lack of subject matter jurisdiction. The Claims Commissioner granted the motion and dismissed the case on the ground that the Commission lacked jurisdiction because “the allegations in the Complaint fall outside the categories set forth in Tennessee Code Annotated § 9-8-307.” Plaintiff appeals. We affirm the Commission’s determination that it did not have subject matter jurisdiction over the claims asserted. However, both parties contend, and we agree, that instead of dismissing Plaintiff’s claims for lack of jurisdiction, the Commission was required to transfer the case to the Board of Claims. *See* Tenn. Code Ann. § 9-8-402(a)(5) (“Claims not within the jurisdiction of the claims commission shall be sent to the board of claims.”). Accordingly, we affirm in part, reverse in part, and remand with instructions to transfer the case to the Board of Claims.

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

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

Drew Justice, Murfreesboro, Tennessee, for the appellant, Christopher Turner.

Herbert H. Slattery, III, Attorney General and Reporter, Andrée Sophia Blumstein, Solicitor General, and Katherine C. Redding, Senior Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS AND PROCEDURAL HISTORY

This appeal arises from the dismissal of Plaintiff's complaint pursuant to a Tennessee Rule of Civil Procedure 12.02(1) motion for lack of jurisdiction. Accordingly, the relevant facts are derived from the amended complaint.

The amended complaint provides the following overview:

These claims arise from the State's negligent imprisonment of an inmate well past his lawful expiration date. Said error arose from the State's improper supervision of employees, the employees' failure to read the order of incarceration signed by the judge, and their failure to enter said information properly into a computer records system. Further, all these wrongs were committed while in breach of an express written contract with the Plaintiff.

Additional facts alleged in the amended complaint are as follows. On March 15, 2005, Plaintiff was arrested and held for charges in Davidson County, Tennessee. Plaintiff received a 12-year sentence for those charges on January 26, 2006, and was ordered to serve four months in jail, with the remainder of his sentence to be served on community corrections. The following October, while serving on community corrections, Plaintiff was arrested on new charges.

Plaintiff subsequently entered into a plea agreement, "conced[ing] the violation and plac[ing] his sentence into effect." In response to questions from the judge, Plaintiff, through counsel, stated that "he wants to make sure he gets all the appropriate jail and Community Corrections credit that he deserves." In response, the judge stated: "You'll get all credits to which you're entitled." Immediately following this colloquy, the judge asked, "Do you admit you violated your Community Corrections?" Plaintiff answered, "Yes." Immediately thereafter, the court announced that Plaintiff "violated [his] Community Corrections, sustains the petition, places the agreement into effect."

The amended judgment that was entered the same day memorialized the plea agreement, stating:

Effective 8/29/07, the original judgment in this case, of 12 yrs @ 30% is amended to reflect that the Defendant's Probation Violation or Community Correction violation is sustained.

Therefore, the Court finds:

The Probation/Community Correction is revoked and the previously imposed judgment is place[d] into effect. . . .

The [D]efendant is granted the following jail credit: 3-15-05 to 5-26-06, 5-26-06 to 11-3-06, 11-16-06 to Date.

Enter[ed] this 29th day of August, 2007.

The amended judgment was signed by the criminal court judge, “Approved for Entry” with a signature by Assistant District Attorney General Jennifer Stribling, and filed in the Criminal Court for Davidson County the same day.

Plaintiff also pled guilty to the October 2006 charges and received a 9-year sentence to be consecutive with the original 12-year sentence, less the credits granted by the amended judgment, any additional credits granted for good behavior, and program credits. Ultimately, however, Plaintiff alleged that “the Tennessee Department of Correction failed to apply any of Plaintiff’s pretrial credits or street time” from the agreement.

On April 25, 2021, Plaintiff filed a claim with the Tennessee Division of Claims and Risk Management. On May 5, 2021, the claim was transferred to the Claims Commission pursuant to Tennessee Code Annotated § 9-8-402(c). On June 4, 2021, Plaintiff filed a formal complaint, which alleged that Plaintiff’s jail credit time was not calculated correctly and that he was imprisoned beyond his lawful release date. The complaint alleged that the Claims Commission had jurisdiction under Tennessee Code Annotated § 9-8-307(a)(1)(E), and he sought \$300,800 in damages. More specifically, the complaint alleged that “[Plaintiff] was released on April 14, 2021, about a week after his lawyer contacted the Department of Correction with the supporting documentation about his missing credits.” Plaintiff believes that “his sentence expired about 9–10 months (or 270–300 days) earlier than his final release.”

The State responded by filing a motion to dismiss, asserting that the Claims Commission lacks subject matter jurisdiction to hear matters related to sentence calculations and sentence reduction credits.

On August 9, 2021, Plaintiff filed an amended complaint asserting additional grounds for relief, including claims for: 1) “negligent care, custody, and control of persons,” 2) “negligent care of personal property,” 3) “negligent operation of machinery or equipment,”¹ and 4) “breach of written contract.” Plaintiff sought \$300,000 in damages for “emotional distress and loss of enjoyment of life” and any further appropriate relief.

¹ The context of this claim is stated in the amended complaint as follows:

By only entering into their computer that the Plaintiffs freedom had been revoked, all while failing to enter the rightful time credits as well, one or more State employees of the Department of Correction negligently operated said machinery or equipment (i.e., the computer). They thereby violated a duty of care to the Plaintiff and caused harm.

Based on the amended complaint, the Commissioner denied without prejudice the State's motion to dismiss the original complaint.

The State then filed a motion to dismiss the amended complaint, arguing that the gravamen of the amended complaint is for the negligent deprivation of a statutory right, over which the Claims Commission lacks subject matter jurisdiction. The principal contention was that the amended complaint should be dismissed based on this court's rulings in *Mosley v. State*, 475 S.W.3d 767, 773 (Tenn. Ct. App. 2015), and *Draper v. State*, No. E2002-02722-COA-R3-CV, 2003 WL 22092544, at *3 (Tenn. Ct. App. Sept. 4, 2003).

Plaintiff filed a response in opposition to the motion contending, inter alia, that *Mosley* was distinguishable. He also asserted that if the Claims Commission does not have jurisdiction over his claims, they should be transferred to the Board of Claims, pursuant to Tennessee Code Annotated § 9-8-108(a)(1) and § 9-8-402(a)(5).

The Commissioner granted the motion to dismiss. The Commissioner concluded that the Commission "does not have jurisdiction to consider the claim. The allegations in the [Amended] Complaint fall outside the categories set forth at Tenn. Code Ann. § 9-8-307 and thus fails to confer subject matter jurisdiction onto the Commission." After discussing the reasoning and ruling in *Mosley*, the Commissioner further reasoned:

[*Mosley*] was attempting to couch a claim for deprivation of statutory rights as a claim of negligence, to avoid having to point to language in the statute which confers a right of action. The same is true here. Claimant's causes of action under Tenn. Code Ann. § 9-8-307(a)(1)(E), (F), (M), and (L) all derive from an alleged deprivation of statutory right, which the Claims Commission lacks jurisdiction. *See Mosley*; *see also Williams v. State*, 139 S.W.3d 308 (Tenn. Ct. App. 2004); *Haynie v. State*, No. M2009-01340-COA-R3-CV, 2010 WL 366689 (Tenn. Ct. App. Feb. 2, 2010).

This appeal followed.

ISSUES

Although Plaintiff raised several issues,² we have determined that the dispositive issue is whether the alleged claims are within the categories set forth in Tennessee Code

² Issues stated by Plaintiff are as follows:

I. In this Claims Commission case, seeking compensation for illegal imprisonment, the Plaintiff alleged four claims: (A) Negligent control of persons, (B) Negligent care of personal property, (C) Negligent operation of equipment, and (D) Breach of written contract. . . . Without any specific discussion of any of the claims, the Claims Commission simply dismissed them all. It said that the State had violated a statutory right in committing the acts, and that the right was non-compensable, thereby warranting dismissal for lack of

Annotated § 9-8-307, over which the Claims Commission has jurisdiction. *See Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000).

STANDARD OF REVIEW

We review the decision of the Claims Commission “pursuant to the same rules of appellate procedure which govern interlocutory appeals and appeals from final judgments in trial court civil actions.” Tenn. Code Ann. § 9-8-403(a)(1).

A challenge to the Claims Commission’s subject matter jurisdiction is an assertion that the commission lacks the authority to adjudicate the controversy before it. *See Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 712 (Tenn. 2012). Subject matter jurisdiction can only be conferred by the constitution or a legislative act. *Id.* When a party challenges a court’s subject matter jurisdiction, the court must “determine the gravamen of the case and identify the source of its power to adjudicate that type of controversy.” *Word v. Metro Air Servs., Inc.*, 377 S.W.3d 671, 674 (Tenn. 2012). The question of whether the Claims Commission has subject matter jurisdiction over a case is a question of law, which we review de novo with no presumption of correctness. *Id.*

ANALYSIS

Parties may contest a court’s subject matter jurisdiction through either a “facial” or “factual” challenge. *Staats v. McKinnon*, 206 S.W.3d 532, 542 (Tenn. Ct. App. 2006). The process for considering a motion to dismiss for lack of subject matter jurisdiction differs depending on which type of challenge is at issue. *Id.*

Facial challenges assert that the complaint fails to allege facts that show that the court has the power to hear the case. *Id.*; *see Redwing v. Cath. Bishop for Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn. 2012). Thus, the process for addressing a facial challenge to a court’s subject matter jurisdiction resembles the process for addressing a motion to dismiss for failure to state a claim upon which relief can be granted: we will assume that the factual allegations in the complaint are true. *Redwing*, 363 S.W.3d at 445–46; *Staats*, 206 S.W.3d at 542.

By contrast, factual challenges deny that the court has subject matter jurisdiction even though the complaint alleges facts tending to show jurisdiction. *Redwing*, 363 S.W.3d

jurisdiction. Did the Plaintiff allege one or more valid claims, falling within the ordinary jurisdiction of the Claims Commission?

II. If not, then under principles of equitable estoppel, has the State nonetheless consented to jurisdiction by transferring the case to the Claims Commission in the first place?

III. If not, then rather than dismissing the case outright, should the Claims Commission have at least transferred the case to the Board of Claims, which has jurisdiction over any claims over which the Claims Commission does not?

at 446. Factual challenges dispute the complaint’s allegations regarding jurisdiction and put at issue the sufficiency of the evidence used to prove facts that would bring the case within the court’s subject matter jurisdiction. *Staats*, 206 S.W.3d at 543. Although this type of challenge creates genuine issues of material fact, it does not require the court to convert the motion to dismiss into a motion for summary judgment. *Id.* (citing *Chenault v. Walker*, 36 S.W.3d 45, 55–56 (Tenn. 2001)). Instead, the court must preliminarily resolve these factual issues and determine “whether the evidence in favor of finding jurisdiction is sufficient to allow the case to proceed.” *Id.* (quoting *Chenault*, 36 S.W.3d at 56).

The case at bar presents a facial challenge, which was put at issue upon the State’s filing of a Rule 12.02 motion to dismiss for lack of subject matter jurisdiction.

A motion to dismiss for lack of subject matter jurisdiction falls within the purview of Tenn. R. Civ. P. 12.02(1). 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”).

Redwing, 363 S.W.3d at 445.

Thus, we shall determine whether Plaintiff has demonstrated that the claims fall within the jurisdiction of the Claims Commission, specifically Tennessee Code Annotated § 9-8-307. *See Staats*, 206 S.W.3d at 542; *see also Redwing*, 363 S.W.3d at 445.

In *Stewart v. State*, our Supreme Court provides a survey of the scope of sovereign immunity, the jurisdiction of the Claims Commission, and the interpretation of our statute and its exceptions, abbreviated here:

This doctrine of sovereign immunity “has been a part of the common law of Tennessee for more than a century and [it] provides that suit may not be brought against a governmental entity unless that governmental entity has consented to be sued.” *Hawks v. City of Westmoreland*, 960 S.W.2d 10, 14 (Tenn. 1997). Despite this general grant of immunity, however, the courts of this state have frequently recognized that the Tennessee Constitution has modified this rule of absolute sovereign immunity by providing that “[s]uits may be brought against the State in such manner and in such courts as the

Legislature may by law direct.” Tenn. Const. art. I, § 17; *see also Kirby v. Macon County*, 892 S.W.2d 403, 406 (Tenn. 1994).

Pursuant to its constitutional power to provide for suits against the state, the legislature created the Tennessee Claims Commission in 1984 to hear and adjudicate certain monetary claims against the State of Tennessee. *See* Tenn. Code Ann. §§ 9-8-301 to 307 (1999). While the Claims Commission has exclusive jurisdiction to hear claims arising against the state, *cf.* Tenn. Code Ann. § 20-13-102(a) (1994), this jurisdiction is limited only to those claims specified in Tennessee Code Annotated section 9-8-307(a). If a claim falls outside of the categories specified in section 9-8-307(a), then the state retains its immunity from suit, and a claimant may not seek relief from the state.

Stewart v. State, 33 S.W.3d at 790 (footnotes omitted).

The Commissioner granted the State’s motion to dismiss the amended complaint, reasoning: “The Tennessee Claims Commission does not have jurisdiction to consider the claim” because “the allegations in the Complaint fall outside the categories set forth at Tenn. Code Ann. § 9-8-307 and thus fails to confer subject matter jurisdiction onto the Commission.” In reaching this decision, the Commissioner cited *Mosley*, which the Commissioner found strikingly similar to the present case. We agree with the Commissioner’s conclusion that the allegations set forth in Count I, Count II, Count III, and Count IV of the amended complaint fall outside the categories set forth at Tennessee Code Annotated § 9-8-307, and thus, the Claims Commission does not have jurisdiction to consider those claims.

With regard to Counts I, II, and III (the negligence claims), Plaintiff has failed to offer any meaningful basis for distinguishing the claim at issue in *Mosley*. In concluding that the Claims Commission lacked subject matter jurisdiction over the claim asserted in *Mosley*, this court observed that

Mr. Mosley’s claim is clearly predicated on the State’s alleged failure to comply with certain statutes concerning the calculation of his sentence and the application of certain sentence-reducing credits. Assuming *arguendo* that the State was negligent in calculating Mr. Mosley’s sentence and corresponding credits, but for the State’s negligence in following the correct statutory provisions, Mr. Mosley would not have suffered any alleged damages because his sentence and credits would have been correctly calculated.

Mosley v. State, 475 S.W.3d at 772. In the present case, the alleged breach and damages of Counts I, II, and III are predicated upon violation of statutory sentencing credit provisions. Thus, consistent with *Mosley* to fall within the jurisdiction of the Claims

Commission, Plaintiff must show pursuant to Tennessee Code Annotated section 9-8-307(a)(1)(N) that the General Assembly has conferred a private right of action.

As for Count IV, the breach of contract claim, while it may appear to state a separate basis for a claim, at its core, it ultimately fails to provide a basis for subject matter jurisdiction for the same reason Plaintiff's negligence claims lack subject matter jurisdiction. That is, Plaintiff is ultimately advancing a statutory violation claim rather than a breach of contract claim. Plaintiff contends that in exchange for conceding his community corrections violation, he received pretrial jail and community corrections credits.

However, these credits are required by statute to be provided,³ and the length of time to be awarded is set by an established bright line.⁴ The award of pretrial jail credits is mandatory not discretionary. *State v. Brown*, 479 S.W.3d 200, 212 (Tenn. 2015) (observing under the current version of the provision that the “statute requires trial courts to award pretrial jail credits” and that failure to award credits is error); *Stubbs v. State*, 393 S.W.2d 150, 154 (1965) (stating with regard to a prior version of the statute that “[t]he language leaves no room for discretion, and when the word ‘shall’ is used in constitutions or statutes it is ordinarily construed as being mandatory and not discretionary. . . . This being true, we hold that the time spent in jail or the penitentiary prior to the conviction herein must be credited on the sentence received in this trial.”). Correspondingly, the award of community corrections credits is mandatory not discretionary. *McNack*, 356 S.W.3d at 910 (stating that “[o]ur courts have held that the language of the statute as to sentence credits is mandatory, not discretionary.”); *Jones v. Cook*, 2016 WL 2605985, at *2 (Tenn. Crim. App. May 4, 2016) (observing that “[t]he award of credit for time served on community corrections is mandatory, and the trial court has no authority to deny credit.”). Accordingly, as a matter of law, there could be no enforceable contract for statutorily mandated pretrial jail and community corrections credit.

Consideration is necessary for formation of a contract. *Estate of Brown*, 402 S.W.3d 193, 200 (Tenn. 2013). “Consideration exists whenever a party does something that he or she has no legal obligation to do or refrains from doing something that he or she has a legal right to do.” *Id.* at 200; *see also Brown Oil Co. v. Johnson*, 689 S.W.2d 149, 151 (Tenn. 1985) (“It is well-settled that consideration exists when the promisee does something that it is under no legal obligation to do or refrains from doing something which it has a legal right to do.”). Thus, similar to the negligence claim in *Mosley*, the claim being advanced is ultimately predicated upon a statutory violation, not a breach of contract.

³ *See* Tenn. Code Ann. § 40-23-101(c); Tenn. Code Ann. § 40-36-106(e)(3) & (e)(4).

⁴ *See* Tenn. Code Ann. § 40-23-101(c); Tenn. Code Ann. § 40-36-106(e)(3) & (e)(4); *see also State v. McNack*, 356 S.W.3d 906, 912 (Tenn. 2011).

Therefore, as noted with regard to Plaintiff's negligence claims, Plaintiff has the burden to prove that "the general assembly 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 [.]” Tenn. Code Ann. § 9-8-307(a)(1)(N). He has failed to do so.

For the foregoing reasons, we affirm the Commissioner's determination that the amended complaint should be dismissed for lack of subject matter jurisdiction. *See id.* (affirming the Claims Commission's decision to dismiss for lack of subject matter jurisdiction an inmate's complaint alleging the State negligently held him in custody longer than the term of his sentence and improperly applied certain sentence-reducing credits).

For completeness, we acknowledge Plaintiff's argument that the State consented to and accepted the Claims Commission's jurisdiction when the Division of Claims and Risk Management, where the claim was initially filed, transferred his case to the Claims Commission. For this reason, Plaintiff contends that the State is estopped from challenging jurisdiction. We find no merit to this contention for several reasons, including the fact that courts cannot exercise jurisdictional powers that have not been conferred directly on them expressly or by necessary implication in the Constitution or in a statute. *See Dishmon v. Shelby State Cmty. College*, 15 S.W.3d 477, 489 (Tenn. Ct. App. 1999).

As both parties correctly state in their appellate briefs, we have also determined that once the Claims Commission determined that it lacked jurisdiction over the claims asserted, the Commission was required to transfer the case to the Board of Claims instead of dismissing Plaintiff's claims. *See* Tenn. Code Ann. § 9-8-402(a)(5) ("Claims not within the jurisdiction of the claims commission shall be sent to the board of claims."). Accordingly, we reverse the decision of the Claims Commission to dismiss the complaint and remand with instructions for the Claims Commission to transfer the case to the Board of Claims.

IN CONCLUSION

The judgment of the Claims Commission is affirmed in part, reversed in part, and this case is remanded with instructions for the Claims Commission to transfer this case to the Board of Claims. Costs of appeal are assessed equally between the appellant, Christopher Turner, and the appellee, the State of Tennessee.

FRANK G. CLEMENT JR., P.J., M.S.