

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Latefah Shampine,	:	
	:	
Plaintiff-Appellant,	:	No. 11AP-123
	:	(C.C. No. 2010-11781)
v.	:	No. 11AP-384
	:	(C.C. No. 2010-12079)
Ohio Department of Job and Family Services,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on November 22, 2011

Latefah Shampine, pro se.

*Michael DeWine, Attorney General, and Amy S. Brown, for
appellee.*

APPEALS from the Court of Claims of Ohio.

PER CURIAM.

{¶1} Plaintiff-appellant, Latefah Shampine, appeals from judgments of the Ohio Court of Claims dismissing her complaint for defamation and her complaint for unemployment compensation benefits, both against defendant-appellee, Ohio Department of Job and Family Services ("ODJFS"). Because the Court of Claims properly concluded (1) the statute of limitations bars plaintiff's claim for defamation, and (2) the

court lacks jurisdiction over plaintiff's claim for unemployment compensation benefits, we affirm.

I. Facts and Procedural History

A. Case No. 11AP-123

{¶2} Plaintiff filed a complaint on November 12, 2010, alleging ODJFS falsely accused her of owing money from August 1, 1977 to April 30, 1986. Claiming ODJFS' allegations caused her to lose her job, defamed her character, and brought extreme financial distress, she sought \$200,000 in damages. ODJFS responded with a motion to dismiss, asserting the statute of limitations barred plaintiff's claim.

{¶3} On January 5, 2011, the Court of Claims issued an entry of dismissal, noting the complaint stated ODJFS' defamatory accusations occurred in the course of criminal proceedings in the mid-1980s. Given those allegations, the court found the one-year statute of limitations for defamation actions barred plaintiff's complaint. The court also pointed out that, to the extent plaintiff sought review of her criminal conviction, the Court of Claims lacked jurisdiction.

B. Case No. 11AP-384

{¶4} On November 22, 2010, plaintiff filed a complaint against ODJFS contending it wrongfully denied her unemployment benefits. Alleging that since July 9, 2001 she has filed appeal after appeal, plaintiff contended ODJFS "has never given her payments that she was due to receive." (Complaint, 2.) Plaintiff asserted ODJFS' wrongful actions caused her to lose her home and to suffer mental and physical harm as well as financial loss. The complaint sought damages in the amount of \$200,000. ODJFS responded with a motion to dismiss filed on December 8, 2010.

{¶5} On March 23, 2011, the Court of Claims filed an entry of dismissal, concluding it lacked jurisdiction over plaintiff's claim. The court explained the administrative procedural remedy for those denied unemployment compensation benefits and stated "[a] party cannot circumvent the requirements of the statutes that relate to timely appeals from administrative agencies by filing tort actions or any other form of action in the courts of common pleas or the Court of Claims as a means of avoiding the jurisdictional requirements of the statutes governing administrative appeals." (Entry, 1-2.) Because plaintiff's claims amounted to an appeal from a decision denying her unemployment compensation, the court determined R.C. 4141.282 provided plaintiff's avenue of relief through an appeal to the court of common pleas. Plaintiff appeals from both judgments.

II. Assignments of Error

{¶6} In case No. 11AP-123, plaintiff assigns a single error:

Ohio Department of Job and Family Services knowingly made a statement that misrepresents a fact.

{¶7} In case No. 11AP-384, plaintiff assigns a single error:

The lower courts erred, dismissing. [sic] Dismissing Plaintiff-Appellant's case.

III. Case No. 11AP-123 – Statute of Limitations

{¶8} Plaintiff's assignment of error asserts the Court of Claims erred in granting ODJFS' Civ.R. 12(B)(6) motion to dismiss and in concluding the statute of limitations bars plaintiff's complaint for defamation arising out of criminal proceedings in 1985 and 1986.

{¶9} In deciding whether to dismiss a complaint pursuant to Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted, the trial court must presume all

factual allegations in the complaint are true and construe the complaint in the light most favorable to the plaintiff, drawing all reasonable inferences in favor of plaintiff. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. Before the court may dismiss the complaint, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling the plaintiff to recovery. *O'Brien v. Univ. of Community Tenants Union* (1975), 42 Ohio St.2d 242, syllabus.

{¶10} A complaint may be dismissed pursuant to Civ.R. 12(B)(6) under the applicable statute of limitations if the face of the complaint makes clear that the action is time-barred. *Steiner v. Steiner* (1993), 85 Ohio App.3d 513, 518-19; *Swanson v. Boy Scouts of Am.*, 4th Dist. No. 07CA663, 2008-Ohio-1692, ¶6, quoting *Doe v. Robinson*, 6th Dist. No. L-07-1051, 2007-Ohio-5746, ¶17, citing *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, ¶11.

{¶11} Plaintiff's complaint plainly presents allegations of defamation and likewise plainly sets forth the date when plaintiff contends the wrongful action took place. Accordingly, the applicable statute of limitations may be applied to the dates presented in plaintiff's complaint to determine whether the appropriate statute of limitations time-bars plaintiff's complaint. R.C. 2743.16(A) provides the applicable statute of limitations for civil actions against the state, stating such actions "shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties."

{¶12} R.C. 2305.11(A) requires an action for defamation to be commenced within one year of the time the cause of action accrued, governs such actions between private parties, and is shorter than the two-year statute of limitations in R.C. 2743.16(A).

Accordingly, R.C. 2305.11 applies to plaintiff's defamation action against ODJFS. *Pankey v. Ohio Adult Parole Auth.*, 10th Dist. No. 11AP-36, 2011-Ohio-4209, ¶9 (stating "defamation claims between private parties are subject to a one-year limitation period, as set forth in R.C. 2305.11(A)," meaning "appellant's defamation claim in the Court of Claims is likewise subject to the shorter limitations period"). "A cause of action for defamation accrues on the date of publication of the alleged defamatory matter." *Id.* at ¶9, citing *Fleming v. Ohio Attorney Gen.*, 10th Dist. No. 02AP-240, 2002-Ohio-7352, ¶13.

{¶13} According to plaintiff's complaint, her defamation claim arises out of statements ODJFS allegedly made during the course of criminal proceedings in the mid-1980s. Because her complaint was not filed until 2010, it is untimely under R.C. 2305.11(A) and is time-barred under R.C. 2743.16. Even if we could apply the two-year provision of R.C. 2743.16(A), that statute nonetheless would bar plaintiff's claim, as plaintiff filed her complaint well outside the two-year statute of limitations.

{¶14} Because the statute of limitations bars plaintiff's claim, the trial court properly dismissed her complaint. Plaintiff's assignment of error is overruled.

IV. Case No. 11AP-384 – Appeal from Administrative Decision

{¶15} Plaintiff's assignment of error asserts the Court of Claims erred in concluding it lacked subject matter jurisdiction over her claim for unemployment compensation. A "court has subject matter jurisdiction over a case if the court has the statutory or constitutional power to adjudicate that case." *Garrett v. Columbus*, 10th Dist. No. 10AP-77, 2010-Ohio-3895, ¶13, citing *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶11. A dismissal for lack of subject matter jurisdiction under Civ.R. 12(B)(1) "raises a question of law, and thus, this court reviews a trial court's ruling on such a

motion under the de novo standard." *Id.*, citing *Crosby-Edwards v. Ohio Bd. of Embalmers & Funeral Directors*, 175 Ohio App.3d 213, 2008-Ohio-762, ¶21, appeal not allowed, 119 Ohio St.3d 1409, 2008-Ohio-3880.

{¶16} An applicant seeking unemployment compensation applies for benefits and submits information to ODJFS to support his or her claim. *McGee v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 09AP-680, 2010-Ohio-673, ¶9. Initially, the director of ODJFS makes findings of fact and conclusions of law as to whether a discharged employee is entitled to unemployment benefits. *Id.*, citing R.C. 4141.28(B). The director's decision is subject to an appeal to the commission for a de novo hearing. *Id.*, citing R.C. 4141.281(C)(1) and (3). If a party is unsatisfied with the commission's final determination, the party may appeal that decision to the appropriate court of common pleas. *Id.* at ¶10, citing R.C. 4141.282(H). Because the statutory provisions do not include the Court of Claims in the appellate process, the Court of Claims lacks subject matter jurisdiction to review ODJFS' administrative determination.

{¶17} In *George v. Ohio Dept. of Human Servs.*, 10th Dist. No. 04AP-351, 2005-Ohio-2292, this court addressed a similar issue where a class of plaintiffs brought suit against the Ohio Department of Human Services, alleging "ODHS improperly denied them Medicaid benefits" stemming from "ODHS' disregard for the Ohio Administrative Code provisions enacted to implement the Medicare Catastrophic Coverage Act of 1988." *Id.* at ¶2. *George* concluded that although the plaintiffs crafted their complaint as an action for monetary damages, "plaintiffs' action is in reality an appeal of the ODHS' Medicaid eligibility determinations." *Id.* at ¶31.

{¶18} As *George* noted, "the right to dispute the validity of an administrative decision is only conferred by statute and, if such a statutory right exists, the party aggrieved by the administrative decision can only seek an appeal via the method articulated in the statute." *Id.* at ¶32. Accordingly, *George* determined Ohio statute and administrative rules embody the remedy to challenge ODHS' eligibility determinations. *Id.* Stating that "[a]n action in the Court of Claims cannot become a substitute for a statutorily created right of appeal [of an administrative decision] in a different court," *George* decided the Court of Claims lacked subject matter jurisdiction to hear the plaintiffs' action. *Id.* at ¶35, quoting *Swaney v. Bur. of Workers' Comp.* (Nov. 10, 1998), 10th Dist. No. 98AP-299.

{¶19} Here, although plaintiff asserts her claim is one for damages, she actually seeks review and reversal of the administrative decision to deny her certain unemployment benefits. Under R.C. 4141.282, plaintiff was required to perfect her appeal through the administrative process and then with a notice of appeal in the common pleas court, not the Court of Claims. Creative pleading cannot overcome the general rule that "[w]hen a statute confers the right to appeal, the statutory provisions solely govern perfecting such an appeal." *Calo v. Ohio Real Estate Comm.*, 10th Dist. No. 10AP-595, 2011-Ohio-2413, ¶35, citing *Hansford v. Steinbacher* (1987), 33 Ohio St.3d 72. See also *Bailey v. Ohio Dept. of Admin. Servs.*, 10th Dist. No. 01AP-1062, 2002-Ohio-877 (concluding that "regardless of how plaintiff characterizes his claim against [the administrative agency], plaintiff is seeking a determination that [the administrative agency] wrongly denied him disability benefits," so plaintiff could and should have raised any

errors in an administrative appeal to the common pleas court as "the Court of Claims lacks appellate jurisdiction to review [administrative] decisions").

{¶20} The Court of Claims did not err in determining it lacked subject matter jurisdiction to hear plaintiff's complaint. Plaintiff's assignment of error is overruled.

V. Disposition

{¶21} Because the Court of Claims properly determined the statute of limitations bars plaintiff's claim in case No. 11AP-123, and the court lacks subject matter jurisdiction of plaintiff's complaint in case No. 11AP-384, we overrule plaintiff's single assignment of error in each case and affirm the judgments of the Ohio Court of Claims.

{¶22} Plaintiff also filed a motion to supplement the record on appeal. Implicit in the motion are issues about whether the record properly may be supplemented at this stage of the proceedings. Even apart from those issues, we deny the motion because the documents plaintiff seeks to add to the record do not address the dispositive issues in these appeals.

*Motion denied;
judgments affirmed.*

BRYANT, P.J., SADLER & FRENCH, JJ., concur.
