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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

Civil Action No.: 2021-CP-40-04935

Greg German,

Plaintiff,

v.

Daniel Ellzey, in his individual capacity as
Executive Director of the South Carolina
Department of Employment and Workforce,

Defendant.

**Order Denying Plaintiff's Motion to Transfer
Venue and Granting Defendant's Motion for
Summary Judgment**

This matter came before me on two motions. Plaintiff Greg German filed a motion to transfer venue to Horry County, and Defendant Daniel Ellzey, in his individual capacity as Executive Director of the South Carolina Department of Employment and Workforce (the Department), filed a motion for summary judgment. Both parties submitted memoranda and appeared for a hearing on March 8, 2022. Having carefully considered the positions advanced by both parties, for the reasons discussed below I find venue proper in Richland County and deny Plaintiff's motion to transfer venue. Additionally, I find that the record contains no genuine or material issue of disputed fact and no contested issue of law that could support the relief sought by Plaintiff. Accordingly, I grant summary judgment in Defendant's favor on all causes of action.

Background

Plaintiff filed a claim for unemployment insurance (UI) benefits with the Department.

Finding that Plaintiff failed to file his weekly certifications in a timely manner, the Department denied the claim. Plaintiff's appeal of the Department's decision through the internal appeal process was unsuccessful. Plaintiff then appealed the Department's final decision to the Administrative Law Court (ALC), which affirmed the Department's decision. Plaintiff appealed the ALC decision to the Court of Appeals. That appeal is pending.

On June 17, 2020, Plaintiff submitted two Freedom of Information Act (FOIA) requests to the Department. Plaintiff's first FOIA submission requested documents "that pertain to [Plaintiff] and [his] unemployment claim with" the Department and then listed specific documents related to his UI benefits. Plaintiff's second FOIA submission requested documents covering a broad range of subjects.

In response, the Department sent Plaintiff two emails on July 2, 2020. The first email informed Plaintiff the Department would provide the documents related to his UI claim at no charge. It then informed Plaintiff there would be costs associated with searching for and providing the additional documents that were unrelated to his UI claim. The Department asked Plaintiff to agree to pay these costs, and provide a deposit, before it would search for and produce any responsive documents. Later that day, the Department sent Plaintiff a second email with an attachment producing the documents responsive to Plaintiff's first FOIA request that related to Plaintiff's UI claim.

On July 24, 2020, Plaintiff sent another email to the Department clarifying that his first FOIA request included any "notes" or attachments to his UI claim file resulting from his calls to the Department's customer service representatives. Plaintiff's July 24, 2020 email also noted that the Department's FOIA procedure differed in some ways from procedures utilized by other state

agencies regarding payment of costs. Plaintiff did not agree to pay costs associated with his second FOIA request.

On September 15, 2020, Plaintiff sent an email to the Department requesting any additional documents responsive to his first FOIA request for documents relating to his UI claim. On September 21, 2020, the Department emailed Plaintiff and attached a screenshot of the electronic notes attached to his UI claim. In this email, the Department explained that it had, at that point, provided Plaintiff with all responsive documents the Department would provide at no charge and, prior to receiving any additional documents he requested under FOIA, Plaintiff must first agree to pay the costs associated with searching for the requests and provide a deposit toward those costs.

On October 8, 2020, Plaintiff filed this action in Horry County seeking multiple forms of relief, including a declaratory judgment finding the Department violated FOIA, a permanent injunction, a "request for additional equitable relief," and a cause of action for retaliatory denial of UI benefits. In response, the Department filed an Answer and a motion to transfer venue to Richland County. Following a hearing, the Honorable William P. Keesley issued an order on October 1, 2021, transferring the case to Richland County.

Upon transfer to this Court, Defendant filed a motion for summary judgment, and Plaintiff filed a motion to transfer the case back to Horry County.¹

Summary Judgment Standard

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter

¹ Plaintiff also filed a motion to compel additional discovery responses. Because controlling facts are undisputed, Plaintiff's request to withhold judgment pending a ruling on this motion is denied.

of law.” Rule 56(b), SCRCPP; *Green v. Cottrell*, 346 S.C. 53, 550 S.E.2d 324 (Ct. App. 2001); *Bruce v. Durney*, 341 S.C. 563, 534 S.E.2d 720 (Ct. App. 2000). The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

Under Rule 56(b), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Carolina All. for Fair Emp't v. S.C. Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999). In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003).

I. Venue is proper in Richland County

During the hearing on March 8, 2022, Plaintiff argued that proper venue was in Horry County because he lives in Horry, suffered an injury in Horry County, and would be burdened by having to prosecute this action in Richland County. Plaintiff also argued Defendant's improper conduct led to this action and equity demanded venue in Horry County. In reply, Defendant noted that the Court in Horry County had already considered and ruled on the arguments presented by Plaintiff. The Department further argued that the legislation and case law presented in support of transferring venue to Richland County remains controlling.

Having independently considered Plaintiff's arguments, I find venue is proper in Richland County. Although I am sympathetic to any burdens incurred by Plaintiff, the nature of Plaintiff's FOIA claim seeking records located in Richland County, the status of Defendant residing officially in Richland County, and the location of the conduct alleged as the basis for seeking relief in Richland County individually and collectively make venue proper in Richland County. *See*

Stalheim v. Doskocil, 275 S.C. 252, 269 S.E.2d 346 (1980). For each of these reasons, I deny Plaintiff's motion to transfer venue.

II. The Department is entitled to summary judgment as to Plaintiff's FOIA claims.

I find there is no genuine issue of material fact as to whether the Department complied with FOIA. Indeed, the record before me establishes beyond dispute that the Department provided documents related to Plaintiff's UI claim at no charge, and the Department acted within its lawful authority granted by section 30-4-30(B) of the South Carolina Code by requiring Plaintiff to agree to pay costs and provide a deposit prior to receiving additional documents. Section 30-4-30(B) of the South Carolina Code addresses fees and costs a public body may collect from a person seeking records under FOIA as follows:

The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records. . . . Documents **may** be furnished when appropriate without charge or at a reduced charge **where the agency determines** that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public. . . . A deposit not to exceed twenty-five percent of the total reasonably anticipated cost for reproduction of the records may be required prior to the public body searching for or making copies of records.

§ 30-4-30(B) (*emphasis added*); see also *Seago v. Horry Cty.*, 378 S.C. 414, 427–29, 663 S.E.2d 38, 45–46 (2008) (recognizing a public body may collect fees for producing records under FOIA as allowed by statute).

Here, there is no genuine issue of material fact as to whether the Department complied with FOIA in responding to Plaintiff's two FOIA requests. The Department provided Plaintiff with the documents relating to his UI claim at no charge in attachments to emails dated July 2, 2020, and September 21, 2020. Importantly, the declaratory judgment section of Plaintiff's complaint alleges

a violation of FOIA based on the Department's belief that its July 2, 2020 response produced the records Plaintiff was seeking. The Department produced documents in its July 2, 2020 response. After further communication with Plaintiff, on September 21, 2020, the Department provided Plaintiff the requested notes from his calls to customer service.

A public body does not violate FOIA by misunderstanding the scope of documents a person is requesting if the public body subsequently produces the additional documents.² In producing records relating to Plaintiff's UI claim in its responses on July 2, 2020 and September 21, 2020, the Department fully complied with FOIA.

Regarding additional documents requested, the Department informed Plaintiff more than once that he must agree to pay the costs for the documents and provide a deposit. As stated above, FOIA expressly allows public bodies to collect costs for producing records and to require a deposit. The Department therefore acted in compliance with FOIA when it required Plaintiff to agree to pay the costs and provide a deposit prior to producing the additional records requested. In failing to agree to pay the associated costs or to provide a deposit, Plaintiff relieved the Department from providing further records.

There being no genuine issue of material fact as to whether the Department complied with FOIA, I find summary judgment is proper for Plaintiff's claims arising out of his allegation of a FOIA violation.

² Our Supreme Court has held an alleged FOIA violation can be cured at any time, even after litigation begins, if the public body produces the documents or otherwise takes action bringing itself into compliance. Such a situation results in the FOIA violation or complaint being moot. *See Sloan v. S.C. Dep't of Revenue*, 409 S.C. 551, 555, 762 S.E.2d 687, 689 (2014) ("Despite [the defendant]'s failure to comply with the requirements of FOIA, we hold the trial court properly found [the plaintiff]'s request for a declaratory judgment was mooted when [the defendant] produced the requested information.").

III. The Department is entitled to summary judgment on all remaining claims.

A. Subject Matter Jurisdiction

I find this Court lacks subject matter jurisdiction to hear Plaintiff's claims arising out of a denial of UI benefits because our Legislature vested exclusive jurisdiction for such a claim with the Administrative Law Court (ALC). "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Rule 12(h)(3), SCRCP. "The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court." *McCain v. Brightharp*, 399 S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App. 2012) (quoting *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 223, 634 S.E.2d 59, 60–61 (Ct. App. 2006)).

"The question of subject matter jurisdiction is a question of law . . ." *Brown v. S.C. Dep't of Health & Human Servs.*, 393 S.C. 11, 16, 709 S.E.2d 701, 704 (Ct. App. 2011). "Subject matter jurisdiction is defined as 'the power to hear and determine cases of the general class to which the proceedings in question belong.'" *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 100, 674 S.E.2d 524, 528 (Ct. App. 2009) (quoting *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93–94, 668 S.E.2d 795, 796 (2008)). "A court's subject matter jurisdiction is determined by whether it has the authority to hear the type of case in question." *Forman v. S.C. Dep't of Labor, Licensing & Regulation*, 419 S.C. 64, 74, 796 S.E.2d 138, 143 (Ct. App. 2016) (quoting *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011)). If a court lacks subject matter jurisdiction, it "has no authority to act regardless of the geographical location or consent of the litigants." *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994).

"In determining whether the Legislature has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute." *Rainey v. Hodges*, 404 S.C. 320, 323, 745

S.E.2d 81, 83 (2013). In multiple cases, our Supreme Court has found the Legislature granted exclusive jurisdiction to an entity other than the Court of Common Pleas. *See Hunt v. Avondale Mills*, 385 S.C. 616, 618, 686 S.E.2d 190, 191 (2009) (finding that statutes "clearly provide a mechanism by which respondents could have and should have raised the issue of improper notice of the rate change before the [Public Service Commission]; therefore, the circuit court did not have subject matter jurisdiction"); *Berry v. S.C. Dep't of Health & Envtl. Control*, 402 S.C. 358, 360, 742 S.E.2d 2, 3 (2013) (holding the circuit court lacked subject matter jurisdiction over a claim because the Legislature demonstrated an intent for the ALC to have exclusive jurisdiction over such claims); *Rainey*, 404 S.C. at 325, 745 S.E.2d at 83 (holding the circuit court lacked subject matter jurisdiction over a claim that the Governor violated the State Ethics Act based on the "extensive and unambiguous statutory scheme" governing ethics complaints).

Our Legislature created a system for collecting and distributing UI benefits that did not exist at common law. *See* S.C. Code Ann. § 41-27-10 thru sec 41-41-50. This extensive and comprehensive statutory scheme specifically declares that the UI system "shall be administered by [the Department]." *See* S.C. Code Ann. § 41-29-10 (2021). If a claimant disagrees with the Department's initial determination regarding UI benefits, the claimant has a statutory right to request a redetermination or file an appeal to the Department's Appeal Tribunal. S.C. Code Ann. § 41-35-640 (2021); S.C. Code Ann. § 41-35-660 (2021). A claimant dissatisfied with the Appeal Tribunal's decision may appeal to the Department's Appellate Panel. S.C. Code Ann. § 41-35-710 (2021). Next, a claimant dissatisfied with the Appellate Panel's decision may appeal to the ALC for judicial review. S.C. Code Ann. § 41-35-750 (2021). Following the ALC's decision, the claimant may appeal to the Court of Appeals and Supreme Court. *Id.*

Our Legislature determined that the appeal procedure described above shall be "the *sole*

and exclusive appeal procedure" for challenging the Department's determination on a claimant's rights to UI benefits. S.C. Code Ann. § 41-35-690 (2021) (emphasis added). The Legislature also declared a decision by the Department, "in the absence of an appeal from [the decision] as provided [by the statute], becomes *final*, ten days after the date of the notification or mailing of it." S.C. Code Ann. § 41-35-740 (2021) (emphasis added).

Because legislation provides a mechanism by which Plaintiff could have and should have raised his claims before the Department, the ALC, the Court of Appeals, and the Supreme Court, and because the Legislature expressly provided this appeal structure is the sole and exclusive appeal procedure, I find this Court lacks subject matter jurisdiction over Plaintiff's claims. This conclusion alone requires me to grant the Department's motion for summary judgment on each of Plaintiff's causes of action seeking relief based upon alleged erroneous, wrongful or retaliatory denial of UI benefits.

B. Exhaustion of Administrative Remedies

Even if this Court had subject matter jurisdiction to hear Plaintiff's claims based on denial of UI benefits, I find summary judgment is appropriate for failure to exhaust his administrative remedies. "The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule. Where an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts." *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994).

As discussed above, our Legislature enacted a comprehensive administrative appeal procedure that allowed Plaintiff to contest the denial of his UI benefits. The Legislature declared this appeal procedure is "the sole and exclusive appeal procedure" for challenging the Department's

denial of UI benefits in § 41-35-690. Prior to seeking relief in other venues, assertions that the Department wrongly denied UI benefits must be finally and favorably determined through processes designated by the Legislature

Plaintiff has sought relief through available administrative and judicial proceedings. After the Department issued a final agency decision finding Plaintiff ineligible for UI benefits, Plaintiff appealed to the ALC. Plaintiff then appealed the ALC's order to the Court of Appeals where the appeal is still pending. Our Supreme Court case law requires Plaintiff to exhaust those remedies prior to bringing an action (if available) in this Court.

C. Sovereign Immunity

Finally, I agree with the Department that the claims presented by Plaintiff, apart from FOIA, each invade the sovereign immunity preserved in the South Carolina Tort Claims Act. Specifically, the requests for damages based upon "Additional Equitable Relief" and "Complaint for Retaliatory Denial of Benefits" contained in Plaintiff's Complaint are barred by immunity provisions of S.C. Code §§ 15-78-60 (1), (2), and (22). As evident in the Complaint, subsequent filings and oral argument submitted by Plaintiff, each of these claims presents a collateral attack on the decision to deny unemployment benefits. The quasi-judicial, judicial, and delegated administrative decisions inherent in Plaintiff's claims may be addressed only through the processes established by our General Assembly and do not offer grounds for the relief requested by Plaintiff here.

Conclusion and Order

Based on the foregoing, I find that venue is proper in Richland County and grant summary judgment to the Department on all causes of action contained in Plaintiff's Complaint.

As to Plaintiff's claims arising out of any alleged violation of FOIA, the Department provided documents related to Plaintiff's UI claim at no charge and required Plaintiff to agree to pay costs and provide a deposit prior to receiving additional documents, which FOIA expressly permits. Thus, I find there is no genuine issue of material fact as to whether the Department fully complied with FOIA and summary judgment is appropriate.

As to Plaintiff's claims arising out of the denial of UI benefits, this Court lacks subject matter jurisdiction. Our Legislature designated the administrative appeal procedure as "the sole and exclusive" method for challenging a denial of UI benefits. Moreover, even if this Court had jurisdiction, I find summary judgment is appropriate because Plaintiff failed to exhaust his administrative remedies prior to filing his action and the relief requested by Plaintiff is barred by the doctrine of sovereign immunity.

For all of the reasons stated herein, I grant summary judgment as to all of Plaintiff's causes of action, and each request for relief is denied.

AND IT IS SO ORDERED.

[Electronic signature of the Honorable Jocelyn Newman to follow.]



Richland Common Pleas

Case Caption: Greg German vs Daniel G Ellzey , defendant, et al .
Case Number: 2021CP4004935
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So Ordered

Jocelyn Newman

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