

[Cite as *Cole v. Ohio Dept. of Job & Family Servs.*, 2011-Ohio-3164.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Lori Cole,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 10AP-1163
	:	(C.C. No. 2010-09507)
Ohio Department of Job and	:	
Family Services,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on June 28, 2011

Lori Cole, pro se.

Michael DeWine, Attorney General, and *Stephanie Pestello-Sharf*, for appellee.

APPEAL from the Court of Claims of Ohio.

SADLER, J.

{¶1} Plaintiff-appellant, Lori Cole, appeals from the judgment of the Court of Claims of Ohio, granting the motion to dismiss of defendant-appellee, Ohio Department of Job and Family Services ("ODJFS"). For the reasons that follow, we affirm.

{¶2} According to appellant's complaint, permanent custody of two of her minor children was granted to Cuyahoga County Department of Children and Family Services

("CCDCFS") by a branch of the Cuyahoga County Court of Common Pleas, Juvenile Division, in September 2009. Appellant's original complaint was filed in the court of claims on July 28, 2010 and named CCDCFS as defendant. In a prescreening order, the court of claims dismissed CCDCFS as a party finding it not to be a state agency or instrumentality over which it had jurisdiction pursuant to R.C. 2743.02(E). Appellant was ordered to file an amended complaint naming a state department, board, office, commission, agency, institution or other state instrumentality as defendant no later than August 5, 2010. On August 5, 2010, appellant filed an amended complaint naming Ohio Juvenile Court, Ohio Department of Job and Family Services as defendants, and seeking the return of her children or, in the alternative, \$50,000 in damages. In another prescreening order, the court of claims dismissed "Ohio Juvenile Court" as a party as an entity over which it did not have jurisdiction.

{¶3} ODJFS filed a motion to dismiss pursuant to Civ.R. 12(B)(1) and (6). It argued in its motion that appellant had failed to state a cognizable claim against the state, its political subdivision or agency. Appellant did not respond to appellee's motion.

{¶4} The court of claims found that appellant's complaint was essentially an attempt to appeal the 2009 Cuyahoga County Court of Common Pleas' decision granting permanent custody of appellant's children to CCDCFS. In granting the motion to dismiss, the court determined that the action of CCDCFS could not be imputed to the state, and, as such, concluded that it appeared beyond doubt that appellant could not prove a set of facts entitling her to recovery.

{¶5} Appellant filed a timely appeal and brought the following assignments of error:

1. THE COURT OF CLAIMS AND THE OHIO DEPARTMENT OF JOB & FAMILY SERVICES FAILED TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT MY CLAIM FOR \$50,000 OR THE RETURN OF MY CHILDREN IS IN THE BEST INTEREST OF ALL INVOLVED.

2. THE COURT OF CLAIMS AND THE OHIO DEPARTMENT OF JOB & FAMILY SERVICES FAILED TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT APPEALANT [SIC] HAD NOT REMEDIED THE CONDITIONS WHICH CAUSED THE REMOVAL OF THE CHILDREN.

{¶6} Although the assignments of error appear to go directly to the merits of the 2009 Cuyahoga County Court of Common Pleas decision, we will address them as challenging the dismissal of the complaint by the trial court when it granted appellee's motion to dismiss.

{¶7} A motion seeking dismissal of a complaint pursuant to Civ.R. 12 requires a court to examine the pleadings to determine whether a cause of action has been sufficiently pleaded to proceed to trial. In reviewing a motion to dismiss brought pursuant to Civ.R. 12(B)(6), the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190. Before the court may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts entitling her to recovery. *O'Brien v. Univ. Community Tenants Union* (1975), 42 Ohio St.2d 242. We review de novo the dismissal of a complaint pursuant to Civ.R. 12(B)(6). *Shockey v. Wilkinson* (1994), 96 Ohio App.3d 91, 94.

{¶8} A review of appellant's amended complaint reveals that although appellant seeks, alternatively, monetary damages against the named defendant, ODJFS, all

allegations in the complaint challenge actions taken by the Cuyahoga County Court of Common Pleas and a party identified by appellant as "DCFS" during the permanent custody proceedings. There are no allegations whatsoever in the complaint directed against ODJFS. Indeed, there is no reference to ODJFS in the complaint, nor are there any theories of liability asserted against ODJFS.

{¶9} Because there are no claims brought against ODJFS in the complaint, we find that appellant has failed to state a claim upon which relief can be granted and that appellant can prove no set of facts entitling her to recovery in the court of claims. *Hughley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-544, 2009-Ohio-6126 (dismissal for failure to state a claim proper where complaint was an attempt to get review of common pleas court proceedings); *Wynn v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 04AP-163, 2005-Ohio-460 (actions taken by county child support agency not imputed to the state). Accordingly, we find the trial court did not err in dismissing appellant's complaint, and we overrule appellant's first and second assignments of error.

{¶10} Having overruled appellant's first and second assignments of error, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.
