

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Natalie F. Grubb,	:	
	:	
Plaintiff-Appellant,	:	No. 15AP-576
	:	(Ct. of Cl. No. 2015-00064)
v.	:	
	:	(REGULAR CALENDAR)
Stephen Buehrer, Administrator of the	:	
Ohio Bureau of Workers' Compensation,	:	
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on June 28, 2016

On brief: *Grubb and Associates, LPA, Natalie F. Grubb, and Mark E. Owens*, for appellant. **Argued:** *Mark E. Owens*.

On brief: *Michael DeWine*, Attorney General, and *Christopher P. Conomy*, for appellee. **Argued:** *Christopher P. Conomy*.

APPEAL from the Court of Claims of Ohio

BROWN, J.

{¶ 1} This is an appeal by plaintiff-appellant, Natalie F. Grubb, from a judgment of the Court of Claims of Ohio granting a motion to dismiss filed by defendant-appellee, Ohio Bureau of Workers' Compensation ("BWC").

{¶ 2} On January 27, 2015, appellant filed a petition for declaratory judgment and complaint for breach of contract and unjust enrichment against BWC in the Court of Claims. According to the complaint, appellant is an attorney who represented Tracy Lytle (hereafter "Lytle"), and the estate of Tracy Lytle following an automobile accident in which Lytle was injured.

{¶ 3} Appellant's complaint set forth the following factual allegations. On March 26, 2004, Lytle was injured in an automobile accident while traveling in a vehicle owned by her employer, Tremont, Inc. ("Tremont"). Jewel Wilson (hereafter "Wilson"), was the driver-tortfeasor of the other vehicle involved in the accident. Lytle subsequently filed a claim with BWC, which BWC allowed for several medical conditions.

{¶ 4} On March 24, 2006, Lytle filed a personal injury lawsuit in the Cuyahoga County Court of Common Pleas in case No. CV-06-587572 ("lawsuit No. 1") against Tremont, Travelers Insurance Company ("Travelers"), and Wilson. On February 26, 2007, Lytle dismissed her complaint without prejudice. On January 30, 2008, Lytle re-filed her complaint against Tremont, Travelers, and Wilson in Cuyahoga County Court of Common Pleas case No. CV-08-649320 ("lawsuit No. 2"). On February 17, 2010, Lytle passed away. On February 24, 2010, the Medina County Probate Court appointed Lytle's mother, Carol A. Lytle, as administratrix of the estate of Tracy Lytle ("the estate").

{¶ 5} In May 2011, the parties reached a tentative settlement agreement in lawsuit No. 2. BWC subsequently filed a motion to intervene in lawsuit No. 2. On August 5, 2011, BWC filed a separate action in Cuyahoga County Court of Common Pleas case No. CV-11-761366 ("lawsuit No. 3"), asserting a right to subrogation/lien against the proceeds of the settlement in lawsuit No. 2. On September 9, 2011, the trial court consolidated the cases.

{¶ 6} On April 6, 2012, the estate and BWC reached and executed a settlement agreement which provided for the estate to instruct Travelers to pay BWC the sum of \$88,500 out of the settlement in lawsuit No. 2. The settlement agreement stated in part:

The BWC releases the Estate, its agents, heirs, beneficiaries, attorneys and representatives from all claims, causes of action, and liabilities of any kind, known or unknown, regardless of their kind, arising from the dawn of time to the date that the representatives of the BWC sign [the settlement agreement], including, but not limited to, all claims set forth or that could be asserted against the Estate in Lawsuit 2, Lawsuit 3, Probate Claim, or in any way related to the automobile accident involving [Tracy] Lytle and [Jewel] Wilson, which resulted in a workers' compensation claim filed by Tracy Lytle.

(Compl. at ¶ 16.)

{¶ 7} BWC subsequently accepted and deposited the sum of \$88,500. By entry filed July 13, 2012, the probate court approved the settlement agreement.

{¶ 8} BWC also began, in February 2006, an investigation of Lytle and appellant for alleged workers' compensation fraud. BWC sent correspondence to Lytle, dated April 16, 2007, notifying her of BWC's right to recoup the overpayment of temporary total disability ("TTD") compensation from future payments with respect to the time period of January 1 to March 15, 2007.

{¶ 9} BWC continued their investigation during the pendency of, as well as following the conclusion of, the actions in lawsuit Nos. 2 and 3. On January 28, 2013, a criminal indictment was filed in the Franklin County Municipal Court, charging appellant with complicity in alleged workers' compensation fraud. On that date, appellant entered a guilty plea to the lesser charge of misdemeanor complicity, and the municipal court ordered her to pay \$14,441 in restitution and for reimbursement of investigative costs to BWC.

{¶ 10} In January 2015, appellant filed her complaint in the Court of Claims asserting causes of action for breach of contract and unjust enrichment based on allegations that the monies she paid with respect to restitution ordered by the trial court in the criminal proceeding were in violation of the terms of the earlier civil settlement agreement. According to appellant, the amount of the criminal restitution order represented the total amount of TTD compensation paid to Lytle from February to July 2007. Appellant attached a copy of the settlement agreement to the complaint.

{¶ 11} On February 18, 2015, BWC filed a motion to dismiss pursuant to Civ.R. 12(B)(1) and (6). In the supporting memorandum, BWC argued that the Court of Claims lacked jurisdiction to entertain a collateral attack on a criminal conviction, and that appellant's claims were barred by the doctrine of res judicata. On March 4, 2015, appellant filed a brief in opposition to the motion to dismiss. By entry filed May 11, 2015, the Court of Claims granted BWC's motion to dismiss.

{¶ 12} On appeal, appellant sets forth the following single assignment of error for this court's review:

The Trial Court Erred as a Matter of Law by Dismissing the
Complaint When it Sufficiently Stated a Claim for Breach of

the Clear and Unambiguous Release Terms in the Settlement Agreement.

{¶ 13} Under her single assignment of error, appellant challenges the Court of Claim's dismissal of her complaint for failure to state a claim for relief asserting that the complaint sufficiently stated a claim for breach of the release terms of the 2012 civil settlement agreement. According to appellant, the settlement agreement clearly and unambiguously released all claims between the parties, including any potential restitution claim by BWC. Appellant contends that BWC seeks to benefit from the release it previously agreed on in order to obtain an additional \$14,441 for restitution and investigative costs in connection with the trial court's order in the criminal proceeding.

{¶ 14} In the complaint, appellant's request for declaratory judgment sought a "declaration that the BWC waived and was, therefore, estopped from pursuing or participating in the Criminal Matter, and accepting and retaining the Restitution paid by Plaintiff to the BWC in the Criminal Matter." (Compl. at ¶ 42.) In asserting a claim for breach of contract, appellant's complaint alleged that "[t]he BWC breached the Settlement Agreement by pursuing and/or participating in the Criminal Matter after executing the Settlement Agreement and by accepting and failing to refund the Restitution." (Compl. at ¶ 45.) Appellant's claim for unjust enrichment alleged that BWC "accepted and failed to refund the Restitution" paid by appellant as part of the criminal proceedings. (Compl. at ¶ 50.)

{¶ 15} In considering appellant's claims, the Court of Claims noted that appellant "is essentially arguing that [BWC] was barred from filing any criminal charges and/or seeking restitution for the workers' compensation fraud because of the settlement release." (Entry of Dismissal at 2.) The Court of Claims found, however, that "the criminal act of workers' compensation fraud involves a separate animus than what was contemplated in the settlement agreement." (Entry of Dismissal at 2.) Further, in granting the motion to dismiss, the Court of Claims held: "Although the workers' compensation claim arose from the automobile accident, the scope of the settlement agreement releases claims related to the automobile accident and does not release [appellant] from any criminal liability for the fraud that took place subsequently." (Entry of Dismissal at 2-3.)

{¶ 16} As noted, BWC filed its motion to dismiss pursuant to Civ.R. 12(B)(1) and (6). Under either Civ.R. 12(B)(1), which "permits dismissal when the trial court lacks subject matter jurisdiction," or (B)(6), which "provides for dismissal when the complaint fails to state a claim upon which relief can be granted," this court "must independently review the issue as a matter of law." *Johnson v. Wilkinson*, 84 Ohio App.3d 509, 514 (4th Dist.1992). See also *Cardi v. State*, 10th Dist. No. 12AP-15, 2012-Ohio-6157, ¶ 9 (noting that an appellate court reviews rulings on both Civ.R. 12(B)(1) and (B)(6) motions "under a de novo standard of review").

{¶ 17} Under Ohio law, "[i]n order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted * * *, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus. Further, "[i]t is well settled that 'when a party files a motion to dismiss for failure to state a claim, all factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the nonmoving party.' " *Garfield Heights ex rel. Kozelka v. Garfield Heights*, 8th Dist. No. 92511, 2009-Ohio-5009, ¶ 13, quoting *Byrd v. Faber*, 57 Ohio St.3d 56, 60 (1991). With respect to a Civ.R. 12(B)(1) motion, "the court must dismiss if the complaint fails to allege any cause of action cognizable in the forum." *Cardi* at ¶ 9.

{¶ 18} Based on this court's de novo review, we conclude that appellant's complaint fails to state a claim for relief. In the complaint, appellant alleged she was entitled to a judicial declaration that "the Restitution and all related claims of the BWC as against [appellant] were fully and finally settled" as of the date of the earlier civil settlement agreement and that BWC was "estopped from pursuing or participating in" the criminal matter and from accepting or retaining the restitution ordered by the court. (Compl. at ¶ 41-42.) Thus, according to the allegations of the complaint, BWC violated the terms of the 2012 civil settlement agreement by "pursuing or participating in" the subsequent criminal proceedings in which appellant entered a guilty plea to a complicity charge.

{¶ 19} We note that paragraph 27 of the complaint identifies the parties to the criminal proceeding as "*State of Ohio v. Natalie Grubb*, Franklin County M.C. No. 2103

CR B 002319," and we do not construe the complaint as alleging that BWC, as a victim receiving restitution under the court's restitution order, was a party to the criminal proceeding, nor would such an allegation reflect the reality of such a proceeding.

{¶ 20} Under Ohio law, "the appropriate parties in a criminal proceeding are the State and the defendant. Victims are not parties." *State v. Godfrey*, 3d Dist. No. 16-12-06, 2013-Ohio-3396, ¶ 16. Accordingly, " '[i]t is not the victim's interests that are being represented in a criminal case, but rather those of the people of the State of Ohio.' " *Id.*, quoting *State v. Williams*, 7th Dist. No. 09 MA 11, 2010-Ohio-3279, ¶ 32.

{¶ 21} Further, the municipal court's grant of restitution in the criminal proceeding, following appellant's entry of a guilty plea, involves the exercise of judicial discretion over which the victim (i.e., the BWC) had no control. Under Ohio law, "R.C. 2929.28 specifies the types of financial sanctions a trial court may impose in misdemeanor cases, including restitution." *State v. Carroll*, 2d Dist. No. 2015-CA-26, 2015-Ohio-4109, ¶ 10. R.C. 2929.28(A)(1) authorizes a trial court to order restitution from an offender to a victim "whenever a victim suffers an economic loss." *State v. Belbachir*, 7th Dist. No. 08 BE 24, 2009-Ohio-1511, ¶ 13.

{¶ 22} As noted under the facts, the civil settlement agreement was executed prior to the criminal proceeding. Appellant, in essence, contends that the restitution order in the criminal action should have been reduced by any amount received by the victim in the civil settlement. Such a credit/offset is contemplated by the criminal restitution statutes. See R.C. 2929.28(A)(1) (providing that restitution payments be "credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender"). However, appellant should have raised any challenge to the restitution order in her criminal proceeding at the time of the plea and sentencing. We note that appellant acknowledges in her appellate brief that she did not challenge her complicity conviction (nor does the complaint allege an appeal of the conviction).

{¶ 23} While BWC has investigative powers and the ability to refer investigative findings to the office of the attorney general, BWC is not, as it notes in its appellate brief, a prosecuting authority, nor does it have the authority to enter into an agreement not to prosecute (or to prevent a court from ordering restitution in a criminal proceeding). Here, allegations by appellant that BWC "caused the Franklin County Municipal Court to

institute indictment proceedings" against appellant or that BWC breached the civil settlement agreement by pursuing a criminal action against appellant, fail to state a claim for relief. (Compl. at ¶ 27.) Similarly, appellant's cause of action for unjust enrichment, based on the alleged failure of BWC to refund a court ordered restitution obligation entered pursuant to a valid judgment in a criminal proceeding, fails to state a claim for relief.

{¶ 24} Because appellant's complaint fails to state a claim for relief, the Court of Claims did not err in granting BWC's motion to dismiss. Accordingly, appellant's single assignment of error is without merit and is overruled, and the judgment of the Court of Claims of Ohio is hereby affirmed.

Judgment affirmed.

SADLER and BRUNNER, JJ., concur.
