

[Cite as *Peachock v. Momen*, 2006-Ohio-6439.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 87749

ANGELA PEACHOCK

PLAINTIFF-APPELLANT

VS.

MUHAMMAD MOMEN

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-576387

BEFORE: Gallagher, P.J., McMonagle, J., and Corrigan, J.

RELEASED: December 7, 2006

JOURNALIZED:

[Cite as *Peachock v. Momen*, 2006-Ohio-6439.]

ATTORNEY FOR APPELLANT

Heidi Hanni
219 West Boardman Street
Youngstown, Ohio 44503

ATTORNEY FOR APPELLEE

Jim Petro
Attorney General

By: Pooja Alag Bird and
Drew C. Piersall
Assistant Attorneys General
Employment Law Division
150 E. Gay Street, 22nd Floor
Columbus, Ohio 43215-31267

SEAN C. GALLAGHER, P.J.:

{¶ 1} Plaintiff-appellant, Angela Peachock, appeals the decision of the Cuyahoga County Court of Common Pleas that denied her Civil Rule 60(B) motion for relief from default judgment. Finding no error in the proceedings below, we affirm.

{¶ 2} Peachock is employed as a licensed practical nurse in the Northcoast Behavioral Health Center psychiatric unit. Defendant-appellee, Dr. Muhammad Momen, is a licensed physician employed by the Northcoast Behavioral Health Center. Peachock alleges that Dr. Momen committed sexual assault and battery, sexual imposition, and intentional infliction of emotional distress.

{¶ 3} On July 28, 2005, Peachock filed an action against Dr. Momen in the Cuyahoga County Court of Common Pleas. Peachock filed a Civ.R. 41(A) voluntary

notice of dismissal on September 26, 2005.

{¶ 4} On October 24, 2005, Peachock filed a complaint against Dr. Momen in his individual capacity in the Court of Claims. Peachock was informed by the Court of Claims that only state agencies and instrumentalities can be defendants in original actions filed in the Court of Claims pursuant to R.C. 2743.02(E).

{¶ 5} On November 17, 2005, Peachock filed an amended complaint with the Court of Claims, again naming individuals as defendants. On November 21, 2005, the Court of Claims, *sua sponte*, named Northcoast Behavioral Health Center as the proper defendant in the case caption and dismissed Dr. Momen and Belinda Ducan as parties to the action.

{¶ 6} On November 3, 2005, Peachock filed another complaint with the Cuyahoga County Court of Common Pleas against Dr. Momen, asserting the same allegations asserted in the first case.¹ Dr. Momen filed a motion to dismiss for lack of subject matter jurisdiction because of Peachock's pending claim in the Court of Claims, and asserting personal immunity against Peachock's claims until the Court of Claims determines otherwise. Peachock did not file a response. Dr. Momen's motion to dismiss was granted on January 12, 2006.

¹ Peachock was under the mistaken belief that she needed to re-file the case in common pleas court to preserve her claim while awaiting a decision from the Court of Claims. R.C. 2743.02(F), however, states: "The filing of a claim against an officer or employee under this division tolls the running of the applicable statute of limitations until the court of claims determines whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code."

{¶ 7} On February 8, 2006, Peachock filed a Civ.R. 60(B) motion for relief from judgment in the Cuyahoga County Court of Common Pleas, asserting excusable neglect. Two days later, Peachock filed a notice of appeal. This court remanded the case for a ruling on Peachock's Civ.R. 60(B) motion. On remand, her motion was denied and this appeal followed.

{¶ 8} Peachock asserts one assignment of error for our review, which states the following:

{¶ 9} “Whether the trial court committed a reversible error in failing to grant plaintiff-appellant's Civ.R. 60(B) motion for relief from default judgment, in that the parties were not permitted to present evidence relative to the motion, or present arguments as to the merits of their respective positions.”

{¶ 10} Peachock asserts that her Civ.R. 60(B) motion for relief from judgment should have been granted because her failure to file a response to Dr. Momen's motion to dismiss was excusable neglect. See Civ.R. 60(B)(1).

{¶ 11} An appellate court reviews a trial court's denial of a Civ.R. 60(B) motion for relief of judgment under an abuse of discretion standard. *Strack v. Pelton* (1994), 70 Ohio St.3d 172, 174, 1994-Ohio-107. In order to prevail on a Civ.R. 60(B) motion for relief from judgment, the moving party must demonstrate that (1) it has a meritorious defense or claim to present if relief is granted; (2) it is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time. *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*

(1976), 47 Ohio St.2d 146, at paragraph two of the syllabus.

{¶ 12} Peachock argues that she did not think she needed to respond to Dr. Momen's motion to dismiss for lack of jurisdiction because the Court of Claims had already ruled that the court of common pleas had jurisdiction. She claims that when the Court of Claims dismissed Dr. Momen and Belinda Ducan as parties to the action, it determined that the court of common pleas had jurisdiction. Peachock asserts that she was unaware that she had to file her copy of the Court of Claims ruling separately in the court of common pleas, because she thought the court of common pleas would automatically recognize the Court of Claims ruling "relinquishing jurisdiction."

{¶ 13} Peachock is mistaken. The Court of Claims dismissed Dr. Momen and Belinda Ducan because they were not proper parties. The Court of Claims ruled that "[u]nder R.C. 2743.02(E) only state agencies and instrumentalities can be defendants in original actions in the Court of Claims. Accordingly, Muhammad Momen, M.D. and Belinda Ducan are dismissed as parties in this action." The Court of Claims did not relinquish jurisdiction.

{¶ 14} Individual state officials and employees have immunity from Ohio law money damage claims under R.C. 9.86, which states as follows:

"Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, no officer or employee shall be liable in any civil action that arises under the laws of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's

actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith or in a wanton or reckless manner.”

{¶ 15} R.C. 2743.02(F) requires that an action which “alleges that the officer’s or employee’s conduct was manifestly outside the scope of his employment or official responsibilities or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims, which has exclusive, original jurisdiction to determine, initially whether the officer or employee is entitled to personal immunity under § 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the action.”

{¶ 16} According to R.C. 2743.02(E) and (F), Peachock was required to file her action against Dr. Momen in the Court of Claims, naming the state agency Northcoast Behavioral Health Center as defendant. If the Court of Claims determined that Dr. Momen was not entitled to personal immunity under R.C. 9.86, then the court of common pleas would have jurisdiction.

{¶ 17} Peachock did not name the proper party defendant in the Court of Claims; as a result, the Court of Claims, *sua sponte*, corrected her mistake. The Court of Claims did not, however, make a ruling on whether Dr. Momen was entitled to personal immunity under R.C. 9.86. A hearing on that matter is scheduled for a later date.

{¶ 18} At the time Peachock filed her Civ.R. 60(B) motion, she did not have a meritorious claim because the court of common pleas lacked jurisdiction.² As a result, it was not an abuse of discretion for the trial court to deny Peachock's Civ.R. 60(B) motion for relief from judgment.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, PRESIDING JUDGE

CHRISTINE T. MCMONAGLE, J., and
MICHAEL J. CORRIGAN, J.,* CONCUR

*Sitting by assignment: Judge Michael J. Corrigan, Retired, of the Eighth District Court of Appeals.

² Peachock *may* have a meritorious claim, after the Court of Claims determines whether Dr. Momen is entitled to immunity.