

[Cite as *Windsor House, Inc. v. Ohio Dept. of Job & Family Servs.*, 2010-Ohio-257.]
IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Windsor House, Inc.,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 09AP-584
	:	(C.C. No. 2009-02464)
Ohio Department of Job	:	
and Family Services,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on January 28, 2010

Chester, Willcox & Saxbe L.L.P., and Geoffrey E. Webster,
for appellant.

Richard Cordray, Attorney General, Velda K. Hofacker Carr,
Susan M. Sullivan, and Randall W. Knutti, for appellee.

APPEAL from the Court of Claims of Ohio.

FRENCH, J.

{¶1} Plaintiff-appellant, Windsor House, Inc. ("Windsor House"), appeals the judgment of the Court of Claims of Ohio, which dismissed Windsor House's claims against defendant-appellee, the Ohio Department of Job and Family Services

("ODJFS"), for lack of subject-matter jurisdiction and as barred by the applicable statute of limitations. For the following reasons, we affirm.

{¶2} Windsor House, an Ohio corporation, operates a nursing home known as O'Brien Memorial Health Care Center ("O'Brien") in Trumbull County, Ohio. O'Brien participates in the Ohio Medicaid program, administered by ODJFS, and Windsor House and ODJFS are parties to a provider agreement pursuant to R.C. 5111.22.

{¶3} This case arises as a result of ODJFS's denial of Windsor House's request for reimbursement for capital costs stemming from a non-extensive renovation ("NER") to the O'Brien facilities. On June 14, 2005, Windsor House mailed ODJFS a request for prior approval of an NER in the amount of \$1,491,410.58. Windsor House's request was returned on June 28, 2005, for lack of a forwarding address. The next day, Windsor House mailed its request to a new address obtained from an ODJFS employee, and ODJFS received Windsor House's request on June 30, 2005. In a letter dated July 11, 2005, ODJFS notified Windsor House that its NER was approved in part, for a total amount of \$1,404,649.25. On August 30, 2006, however, ODJFS notified Windsor House that its request for reimbursement did not meet the requirements of Paragraph (B)(6)(a), Section 606.18.06, Am.Sub.H.B. 530, which authorized reimbursement only if ODJFS approved the renovation for which reimbursement was sought before July 1, 2005. Because ODJFS approved Windsor House's renovations on July 11, 2005, ODJFS concluded that the renovations did not qualify for reimbursement. On September 28, 2006, ODJFS rejected an appeal by Windsor House, again stating that Windsor House did not qualify for reimbursement based on the date of ODJFS's approval of the renovations.

{¶4} Windsor House, along with two other corporations that operate Ohio nursing homes, filed a complaint against ODJFS in the Franklin County Court of Common Pleas on January 4, 2007. See *Harding Pointe, Inc. v. Ohio Dept. of Job & Family Servs.*, Franklin C.P. No. 07CVH01-150. In that case, Windsor House sought a declaration that ODJFS was obligated to consider its request for reimbursement as timely and was obligated to adjust its rate to include its capital costs. The court of common pleas granted ODJFS's motions to dismiss Windsor House's claims, but no dismissal entry was filed with respect to Windsor House's claims while other claims remained pending.

{¶5} On February 20, 2009, after the court of common pleas granted ODJFS's motion to dismiss Windsor House's claims, but while the court of common pleas action remained pending, Windsor House filed its complaint in the Court of Claims. Windsor House's Court of Claims complaint asserted claims for breach of contract, unjust enrichment, negligence, promissory estoppel, declaratory judgment, and false pretenses. In its complaint, Windsor House stated that it was filing its Court of Claims action pursuant to the Ohio savings statute, R.C. 2305.19. On March 24, 2009, ODJFS moved the Court of Claims to dismiss Windsor House's complaint, pursuant to Civ.R. 12(B)(6), for failure to state a claim upon which relief could be granted, arguing that the complaint was untimely. The next day, Windsor House filed a Civ.R. 41(A) notice of voluntary dismissal of its claims in the Franklin County Court of Common Pleas.

{¶6} On June 8, 2009, the Court of Claims granted ODJFS's motion and dismissed Windsor House's complaint. The Court of Claims determined that it lacked subject-matter jurisdiction over Windsor House's claims based upon an alleged right to

reimbursement and found that the statute of limitations set forth in R.C. 2743.16(A) barred any claim for a common-law breach of contract. The Court of Claims also determined that the Ohio savings statute was inapplicable to Windsor House's complaint.

{¶7} In its timely appeal, Windsor House raises the following assignments of error:

FIRST ASSIGNMENT OF ERROR

THE COURT OF CLAIMS REVERSIBLY ERRED IN FINDING IT HAD NO SUBJECT MATTER JURISDICTION OF THE COMPLAINT FILED IN THIS MATTER.

SECOND ASSIGNMENT OF ERROR

THE COURT OF CLAIMS REVERSIBLY ERRED IN HOLDING THE SAVINGS CLAUSE, R.C. 2305.19, DOES NOT APPLY TO THIS ACTION AND "SAVE" THE COMPLAINT AS THE COMPLAINT WAS TIMELY FILED.

{¶8} We conduct a de novo review of a judgment dismissing a complaint for failure to state a claim upon which relief can be granted pursuant to Civ.R. 12(B)(6) or for lack of subject-matter jurisdiction. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶5; *Crestmont Cleveland Partnership v. Ohio Dept. of Health* (2000), 139 Ohio App.3d 928, 936.

{¶9} By its first assignment of error, Windsor House argues that the Court of Claims erred by concluding that it lacked subject-matter jurisdiction over Windsor House's claims. To dismiss a complaint for lack of subject-matter jurisdiction, a court must determine whether the plaintiff has alleged any cause of action that the court has authority to decide. *Crestmont* at 936. When a trial court determines its jurisdiction, it

may consider any pertinent evidentiary materials and is not confined to the allegations of the complaint. *Nemazee v. Mt. Sinai Med. Ctr.* (1990), 56 Ohio St.3d 109, 111, fn. 3; *Southgate Dev. Corp. v. Columbia Gas Transm. Corp.* (1976), 48 Ohio St.2d 211, paragraph one of the syllabus.

{¶10} The Court of Claims' subject-matter jurisdiction is established by R.C. 2743.02(A)(1), which states, in pertinent part, as follows:

The state hereby waives its immunity from liability * * * and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties * * *. To the extent that the state has previously consented to be sued, this chapter has no applicability.

Where the state had previously consented to be sued, the Court of Claims lacks jurisdiction. *Stauffer v. Ohio Dept. of Transp.* (1989), 63 Ohio App.3d 248, 251. The Court of Claims generally lacks jurisdiction over declaratory judgment actions because, prior to the state's waiver of immunity, parties were permitted to sue the state for declaratory relief in the courts of common pleas. *Tiemann v. Univ. of Cincinnati* (1998), 127 Ohio App.3d 312, 318, citing *Racing Guild of Ohio, Local 304 v. State Racing Comm.* (1986), 28 Ohio St.3d 317. Nevertheless, "when a party seeks a declaratory judgment in addition to monetary damages, the R.C. 2743.02 waiver of immunity permits the Court of Claims to determine the declaratory judgment action with the claim for money damages." *Interim HealthCare of Columbus, Inc. v. Ohio Dept. of Adm. Servs.*, 10th Dist. No. 07AP-747, 2008-Ohio-2286, ¶13. The issue of the Court of Claims' jurisdiction in this matter resolves to whether Windsor House asserted claims for monetary damages in addition to claims for declaratory and injunctive relief.

{¶11} In its complaint, Windsor House asserted that it was entitled to monetary damages resulting from ODJFS's failure to reimburse it for capital costs incurred in renovating its facilities. In addition to declaratory and injunctive relief, Windsor House specifically alleged that it was entitled to damages in excess of \$25,000 as a result of ODJFS's alleged breach of the parties' provider agreement or for the reasonable value of services provided and benefits conferred by Windsor House. Windsor House also requested judgment for its costs, reasonable attorney fees, and any further legal and equitable relief to which it may be entitled. Nevertheless, the Court of Claims stated that, because Windsor House's claims are premised upon ODJFS's alleged failure to grant Windsor House's request for capital cost reimbursement, the relief sought was equitable and did not constitute money damages.

{¶12} This court has recognized that not every claim for monetary relief is a claim for money damages. See *Interim HealthCare* at ¶15. Rather, a party seeks equitable relief when "[t]he relief sought is the very thing to which the claimant is entitled under the statutory provision supporting the claim." *Zelenak v. Indus. Comm.*, 148 Ohio App.3d 589, 2002-Ohio-3887, ¶18, citing *Henley Health Care v. Ohio Bur. of Workers' Comp.* (Feb. 23, 1995), 10th Dist. No. 94APE08-1216, and *Keller v. Dailey* (1997), 124 Ohio App.3d 298. "A specific remedy, seeking reimbursement of the compensation allegedly denied, is not transformed into a claim for damages simply because it involves the payment of money." *Zelenak* at ¶18, citing *Ohio Edison Co. v. Ohio Dept. of Transp.* (1993), 86 Ohio App.3d 189, 194; *Interim HealthCare* at ¶16.

{¶13} Even were we to agree with Windsor House that its complaint was sufficient to place ODJFS on notice that it was seeking legal relief in the form of

monetary damages, separate from its request for equitable relief, thus cloaking the Court of Claims with subject-matter jurisdiction, we would nevertheless affirm that court's dismissal of Windsor House's claims. As addressed more fully below, Windsor House's claims against ODJFS are barred by the two-year statute of limitations set forth in R.C. 2743.16(A).

{¶14} Pursuant to R.C. 2743.16(A), civil actions against the state in the Court of Claims "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." It is undisputed that Windsor House's claims against ODJFS accrued, at the latest, on September 28, 2006, when ODJFS denied Windsor House's request for reimbursement. Accordingly, at the latest, Windsor House had two years from that date to initiate its claims against ODJFS in the Court of Claims. Windsor House's February 20, 2009 complaint was filed after the expiration of the two-year limitations period.

{¶15} Windsor House alleged that it was filing its Court of Claims complaint pursuant to R.C. 2305.19(A), Ohio's savings statute, which provides, in part, as follows:

In any action that is commenced * * * if the plaintiff fails otherwise than upon the merits, the plaintiff * * * may commence a new action within one year after the date of * * * the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later. * * *

Thus, where a timely commenced action fails otherwise than upon the merits after the applicable statute of limitations has run, the savings statute permits the plaintiff to refile the action within one year after that failure. The Court of Claims rejected Windsor

House's reliance on the savings statute, and, by its second assignment of error, Windsor House maintains that the Court of Claims erred by concluding that the savings statute did not apply to its claims.

{¶16} Windsor House's purported use of the savings statute is based on its filing of the earlier declaratory judgment action in the Franklin County Court of Common Pleas. There is no dispute that Windsor House timely commenced its declaratory judgment action against ODJFS in the court of common pleas. The court of common pleas issued a decision granting ODJFS's motion to dismiss Windsor House's claims, but it did not file an entry of dismissal. On March 25, 2009, Windsor House filed a notice, pursuant to Civ.R. 41(A), voluntarily dismissing its claims in the court of common pleas.

{¶17} The right to voluntarily dismiss a claim under Civ.R. 41(A) has been upheld even where the notice of voluntary dismissal is filed after the court announces its intention to rule in favor of the opposing party, but before the judgment entry journalizing that decision is filed. See *Howard v. SunStar Acceptance Corp.* (May 8, 2001), 10th Dist. No. 00AP-70. Indeed, this court has held that "[a] court speaks only through its journal entry, and until journalized, a court's decision can have no effect on a party's right to voluntarily dismiss an action pursuant to Civ.R. 41(A)." *Bank One v. O'Brien* (Dec. 31, 1991), 10th Dist. No. 91AP-165. Because the court of common pleas had not journalized its dismissal of Windsor House's claims, Windsor House was entitled to voluntarily dismiss its claims despite the court's decision granting ODJFS's motion to dismiss.

{¶18} A voluntary dismissal, pursuant to Civ.R. 41(A)(1), constitutes a failure otherwise than upon the merits within the meaning of the savings statute. *Frysinger v. Leech* (1987), 32 Ohio St.3d 38, paragraph two of the syllabus. Accordingly, there is no dispute that Windsor House failed otherwise than upon the merits in the court of common pleas action on March 25, 2009.

{¶19} Fatal to Windsor House's claim of timeliness pursuant to the savings statute, however, is the fact that it filed its Court of Claims complaint prior to its failure otherwise than upon the merits in the court of common pleas. While Windsor House encourages us to overlook that fact, this court has previously held that such timing is not inconsequential but, rather, is determinative of the savings statute's applicability. In *Boozer v. Univ. of Cincinnati School of Law*, 10th Dist. No. 05AP-1099, 2006-Ohio-2610, we concluded that the savings statute does not apply where a plaintiff files a second complaint before failing otherwise than upon the merits in a previous complaint.¹ Specifically, we stated that, because the plaintiff's earlier complaint remained pending when she filed her later complaint, she did not file the later complaint within one year after a failure otherwise than upon the merits, as required for application of R.C. 2305.19. See also *Partin v. Ohio Dept. of Transp.*, 158 Ohio App.3d 200, 2004-Ohio-4038 (holding that there was no failure otherwise than upon the merits, as required by R.C. 2305.19, where the plaintiffs did not dismiss their common pleas complaint before filing in the Court of Claims). "Although courts liberally construe the savings statute, a plaintiff must satisfy the criteria of the statute in order to prevent circumvention of the

statute of limitations and unfairness to defendants." *Boozer* at ¶32, citing *Motorists Mut.*

¹ While *Boozer* applied the former version of R.C. 2305.19, the statutory change does not affect our reliance on *Boozer* here, where Windsor House failed otherwise than upon the merits in the common pleas court.

Ins. Co. v. Huron Rd. Hosp. (1995), 73 Ohio St.3d 391, 397. Based on *Boozer*, we conclude that the savings statute does not apply to Windsor House's Court of Claims complaint because Windsor House had not yet failed otherwise than upon the merits in the court of common pleas when it filed in the Court of Claims.

{¶20} Windsor House alternatively argues that it was entitled to file in the Court of Claims because the statutes of limitations applicable to its claims had not yet expired. Windsor House specifically relies on the language in R.C. 2305.19 that a plaintiff may refile within one year after a failure otherwise than upon the merits *or* within the applicable statute of limitations, whichever is later. Windsor House argues that it was not bound by the two-year statute of limitations for actions against the state in the Court of Claims, as set forth in R.C. 2743.16, but was entitled to rely on the longer, general statutes of limitations for contract, tort, and statutory liability claims, as set forth in R.C. 2305.06, 2305.09, and 2305.07. We disagree. Windsor House identifies no case law suggesting that the general statutes of limitations apply to its refiled complaint instead of the R.C. 2743.16(A) statute of limitations generally applicable to actions against the state in the Court of Claims. This court has specifically held that R.C. 2743.16(A) applies to all actions against the state in the Court of Claims. *Fellman v. Ohio Dept. of Commerce, Div. of Sec.* (Sept. 29, 1992), 10th Dist. No. 92AP-457. R.C. 2743.16(A) "was clearly intended to take precedence over all other statute of limitations provisions of the Ohio Revised Code in situations where the state was being sued in the Ohio Court of Claims." *Id.* Accordingly, we reject Windsor House's argument that its Court of Claims complaint was filed within the applicable statute of limitations. Because Windsor House filed its complaint in the Court of Claims neither within the applicable statute of

limitations nor within one year after its failure otherwise than upon the merits in the court of common pleas, Windsor House's complaint was time-barred. Accordingly, we overrule Windsor House's second assignment of error.

{¶21} In conclusion, because the Court of Claims did not err in dismissing Windsor House's complaint, we overrule Windsor House's second assignment of error and conclude that Windsor House's first assignment of error is moot. We therefore affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

BROWN and SADLER, JJ., concur.
