

[Cite as *Henneke v. Ohio Dept. of Ins.*, 2011-Ohio-5366.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

|                               |   |                       |
|-------------------------------|---|-----------------------|
| Debra Henneke,                | : |                       |
|                               | : |                       |
| Plaintiff-Appellant,          | : |                       |
|                               | : | No. 11AP-254          |
| v.                            | : | (C.C. No. 2010-12346) |
|                               | : |                       |
| Ohio Department of Insurance, | : | (REGULAR CALENDAR)    |
|                               | : |                       |
| Defendant-Appellee.           | : |                       |

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D E C I S I O N

Rendered on October 18, 2011

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*Newman & Meeks, and Robert B. Newman, for appellant.*

*Michael DeWine, Attorney General, and Jennifer Anne Adair, for appellee.*

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APPEAL from the Court of Claims of Ohio.

FRENCH, J.

{¶1} Plaintiff-appellant, Debra Henneke ("appellant"), appeals the judgment of the Court of Claims of Ohio, which dismissed her complaint against defendant-appellee, Ohio Department of Insurance ("ODI"). For the following reasons, we affirm.

{¶2} In December 2010, appellant filed a complaint against ODI. In it, appellant alleged that she had held a surety bail bond license until ODI revoked her license

following an administrative action in which ODI charged that appellant solicited business unlawfully. As her causes of action, appellant alleged that ODI's action against appellant, and its non-action against other surety bail bond license-holders, constituted selective enforcement that violated her rights of equal protection and due process under the Ohio and United States Constitutions.

{¶3} ODI moved to dismiss appellant's complaint under Civ.R. 12(B)(1) for lack of subject-matter jurisdiction, and the trial court granted that motion. In its decision, the court held, first, that it had no jurisdiction to address appellant's claims as a substitute for an administrative appeal she could have filed under R.C. 119.12. Second, the court held that the Court of Claims lacked jurisdiction over appellant's constitutional claims. Accordingly, the court dismissed the complaint.

{¶4} Appellant filed a timely appeal, and she raises the following assignment of error:

THE COURT OF CLAIMS ERRED IN GRANTING [ODI'S]  
MOTION TO DISMISS.

{¶5} In her sole assignment of error, appellant contends that the trial court erred by granting ODI's motion to dismiss. In ruling on a Civ.R. 12(B)(1) motion to dismiss for lack of subject-matter jurisdiction, a trial court "must determine whether the claim raises any action cognizable in that court." *Milhoan v. E. Local School Dist. Bd. of Edn.*, 157 Ohio App.3d 716, 2004-Ohio-3243, ¶10. The issue of subject-matter jurisdiction involves "a court's power to hear and decide a case on the merits and does not relate to the rights of the parties." *Vedder v. Warrensville Hts.*, 8th Dist. No. 81005, 2002-Ohio-5567, ¶14. We review de novo a trial court's grant or denial of a Civ.R.

12(B)(1) motion to dismiss. *Moore v. Franklin Cty. Children Servs.*, 10th Dist. No. 06AP-951, 2007-Ohio-4128, ¶15.

{¶6} Appellant contends, first, that the trial court misconstrued her complaint as an attempt to appeal ODI's revocation of her license. In making this argument, appellant appears to agree with the trial court that, if her complaint were an attempt to appeal the revocation, it would be improper. In discussing its jurisdiction, the trial court articulated the legal principles that apply to administrative appeals under R.C. 119.12. Then the court stated: "To the extent that [appellant's] claims amount to an appeal from a license revocation ordered by ODI, R.C. 119.12 provides a right of appeal to a court of common pleas." The trial court did not misstate the law in this respect, and it was not improper for the court to state—in an abundance of caution—that the court would lack jurisdiction over such an appeal.

{¶7} Appellant also contends that her constitutional claims are cognizable in the Court of Claims. As appellant notes, pursuant to R.C. 2743.02(A)(1), the state has agreed to be sued and to "have its liability determined \* \* \* in accordance with the same rules of law applicable to suits between private parties." This basic principle, appellant contends, requires the court to assume jurisdiction over a claim for selective enforcement of licensing laws by state agencies. We disagree.

{¶8} By its terms, R.C. 2743.02 limits a plaintiff in the Court of Claims to causes of action that she could pursue if the defendant were a private party. Here, appellant's complaint alleged that ODI's administrative actions (or non-action) violated her constitutional rights to equal protection and due process of law, claims she could not

bring against a private party. Therefore, the Court of Claims lacks jurisdiction to hear her claims. See *Barnett v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-1186, 2010-Ohio-4737, ¶14 (holding that the Court of Claims had no jurisdiction over inmate's constitutional claims against state department); *Bleicher v. Univ. of Cincinnati College of Medicine* (1992), 78 Ohio App.3d 302, 306-07 (holding that the Court of Claims had no jurisdiction over student's constitutional claims against state university); *Thompson v. S. State Community College* (June 15, 1989), 10th Dist. No. 89AP-114 (holding that the Court of Claims had no jurisdiction over a plaintiff's claim that his termination by a state community college violated his constitutional rights).

{¶9} The Supreme Court of Ohio's decision in *Wallace v. Ohio Dept. of Commerce*, 96 Ohio St.3d 266, 2002-Ohio-4210, does not require a different result, as appellant contends. In *Wallace*, the court considered whether the state could raise as a defense to an action for negligence the public-duty doctrine, which precludes a private party from sustaining a cause of action against a public officer for breach of a public duty. The court held that the state's use of the public-duty doctrine was incompatible with R.C. 2743.02, which requires the state's liability to be determined in accordance with the same rules applicable to suits between private parties. *Id.*, at paragraph one of the syllabus.

{¶10} In reaching this result, however, the court did not change the application of R.C. 2743.02 to preclude causes of action based on constitutional claims. The court stated:

This court has previously stated that "R.C. 2743.02(A) does not create a new right of action against the state, but places the state upon the same level as any private party." *McCord v. Ohio Div. of Parks & Recreation* (1978), 54 Ohio St.2d 72, 74 \* \* \*. Thus, suits against the state are inherently limited by the type of action asserted against it; if the cause of action is not cognizable as between private parties, then there can likewise be no state liability.

{¶11} Applying that principle here, we conclude that appellant's causes of action for violation of her rights to equal protection and due process under the Ohio and United States Constitutions are not cognizable against a private party. Therefore, R.C. 2743.02 precludes them, and the trial court correctly held that it lacked jurisdiction over appellant's complaint. Accordingly, we overrule appellant's assignment of error.

{¶12} Having overruled appellant's assignment of error, we affirm the judgment of the Court of Claims of Ohio.

*Judgment affirmed.*

BROWN and DORRIAN, JJ., concur.

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