


Beverly Logan, Clerk
Athens - Clarke County, Georgia

**IN THE SUPERIOR COURT OF CLARKE COUNTY
STATE OF GEORGIA**

WARREN COOMBS,

Plaintiff,

v.

JERE MOREHEAD, et al.,

Defendants.

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Civil Action No. SU19CV0237

ORDER

Warren Coombs, a former University of Georgia (“University”) student, was suspended and ultimately expelled from the University following accusations of sexual misconduct. Compl. ¶¶ 2, 4-5, 15-18, 22-25. Coombs was originally suspended in April 2016 and was expelled in June of that year. *Id.* at 4-5, 15-18, 22-25. In September 2016, Defendant Jere Morehead, President of the University of Georgia, upheld the expulsion, although Coombs claims that he was not aware of this ruling until January 2017. *Id.* at 6, 28-33, 36-41. Much later, Coombs attempted an out-of-time appeal to Defendant Board of Regents, which was denied. *Id.* at 6-7, 10, 23-24.

On April 17, 2019, Coombs brought this action against Defendants. On May 21, 2019, Defendants filed their Answer. On May 30, 2019, Defendants filed a Notice of Removal to the United States District Court for the Middle District of Georgia, Athens Division. After the case was removed to federal court, Defendants filed a Motion for Judgment on the Pleadings in that court. By Order dated August 16, 2019, the federal district court granted Defendants’ motion, dismissing all of Plaintiff’s federal claims but declined to exercise supplemental jurisdiction over

the state law claims. On August 19, 2019, the federal district court remanded the case to state court. Defendants filed their Consolidated Motion to Dismiss on September 18, 2019, which this Court expressly finds was timely filed. Plaintiff filed an Amended Complaint on May 5, 2020, claiming, in sum, that Defendants violated his procedural due process rights by breaching a contract they had with him. Am. Compl. ¶10.

“When ruling on a motion to dismiss based upon jurisdictional grounds, the trial court must make the determination acting as the trier of fact. Its evaluation rests on where the preponderance of evidence lies, not necessarily on whether the issue may be decided as a matter of law.” *Derbyshire v. United Builders Supplies*, 194 Ga. App. 840, 842-43 (1990) (internal citations omitted). A court considering a motion to dismiss for failure to state a claim must construe the allegations of a complaint in the light most favorable to the plaintiff. *Ewing v. City of Atlanta*, 281 Ga. 652, 653 (2007). If “the movant establishes that the [plaintiff] could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought,” a court should dismiss the complaint. *Scouten v. Amerisave Mortg. Corp.*, 283 Ga. 72, 73 (2008) (quoting *Anderson v. Flake*, 267 Ga. 498, 501 (1997)); see also O.C.G.A. § 9-11-12(b)(6). Further, a “pleading should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Kaplan v. Kaplan*, 266 Ga. 612, 613 (1996).

Defendants argue that Coombs’s claim for injunctive relief against the Board of Regents and President Morehead in his official capacity, to the extent that such a claim is based on state law, is barred by the Georgia Constitution. The Court agrees. In the absence of a specific statutory waiver, the constitutional doctrine of sovereign immunity bars claims for declaratory and injunctive relief against the State, its departments and agencies, and its officers and

employees in their official capacities. See *Lathrop v. Deal*, 301 Ga. 408, 408–09, 444 (2017); *Olvera v. Univ. Sys. of Ga's Bd. of Regents*, 298 Ga. 425, 426–27 (2016); *Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc.*, 294 Ga. 593, 599–601 (2014). “The applicability of sovereign immunity to claims brought against the State is a jurisdictional issue.” *McConnell v. Dep't of Labor*, 302 Ga. 18, 18 (2017). Accordingly, “the applicability of sovereign immunity is a threshold determination, and, if it does apply, a court lacks jurisdiction over the case and, concomitantly, lacks authority to decide the merits of a claim that is barred.” *Id.*

The General Assembly and Georgia courts have consistently held that the Board of Regents is entitled to sovereign immunity. See O.C.G.A. § 20-3-36; *Olvera*, 298 Ga. at 427; *Bd. of Regents of the Univ. Sys. v. Doe*, 278 Ga. App. 878, 881 (2006). Moreover, as to President Morehead, the Board of Regents is the real party in interest because any injunctive relief Plaintiff could seek would affect the Board of Regents’ ability and authority to manage its educational process and the safety of persons on its campuses. See, *Musgrove v. Ga. R.R. & Banking Co.*, 204 Ga. 139, 157 (1948); *Lathrop*, 301 Ga. at 414. Thus, as Defendants are entitled to sovereign immunity, Plaintiff’s Amended Complaint must be dismissed for lack of subject matter jurisdiction.

Furthermore, the Court finds that any claim against President Morehead in his individual capacity, to the extent one can be made, is barred by official immunity. The state constitutional doctrine of official immunity bars suits against officials in their individual capacities that seek monetary damages and other retrospective relief. See Ga. Const. Art. I, Sec. II, Para. IX(d); *Lathrop*, 301 Ga. at 443–44. “[O]fficial immunity is not a mere defense but rather *an entitlement not to be sued.*” *Cosby v. Lewis*, 308 Ga. App. 668, 672 (2011) (emphasis in original) (citing *Cameron v. Lang*, 274 Ga. 122, 124 (2001)). Similar to the doctrine of sovereign immunity,

official immunity is a threshold issue that must be addressed before a lawsuit can proceed. *See Cosby v. Lewis*, 308 Ga. App. 668, 672 (2011).

In the present case, Plaintiff seeks injunctive relief and damages only to reverse the past actions of President Morehead and the Board of Regents. The Amended Complaint offers nothing to suggest that President Morehead will be taking some action against Plaintiff in the future. Rather, Plaintiff only alleges past acts of President Morehead and other officials that purportedly contributed to the violation of his constitutional rights. Thus, this Court finds that official immunity bars the constitutional claims against President Morehead in his individual capacity.

This Court also finds that Plaintiff's breach of contract claim must be dismissed because Plaintiff has not demonstrated the existence of a written contract sufficient to waive Defendants' entitlement to sovereign immunity. The Georgia Constitution expressly waives the State's defense of sovereign immunity for breach of a written contract. *See, State Dep't of Corr. v. Developers Sur. & Indem. Co.*, 295 Ga. 741, 744 (2014). "The party seeking to benefit from the waiver of sovereign immunity bears the burden of proof." *Sherin v. Dep't of Human Res.*, 229 Ga. App. 621, 625 (1991). *See also, State Dep't of Transp. v. Thompson*, 354 Ga. App. 200, 205 (2020).

"[A] valid written contract may be formed when there are multiple signed, contemporaneous agreements between the parties which demonstrate their intent to enter into a binding contract and the individual documents, considered together, include all of the necessary terms of a contract." *Bd. of Regents of the Univ. Sys. v. Doe*, 278 Ga. App. at 881. Georgia courts are clear that "[a]n implied contract will not support a waiver of immunity under the provisions of the Georgia Constitution." *Watts v. City of Dillard*, 294 Ga. App. 861, 863 (2008)

(internal citations omitted). Plaintiff alleges that copies of pages from a Grant-in-Aid agreement, a letter from Coach Norton regarding Plaintiff's scholarship, and copies of certain pages of a policy manual constitute a valid, written contract between the parties. However, the Court finds that these documents are insufficient to create a written contract sufficient to waive Defendants' entitlement to sovereign immunity. The Grant-in-Aid agreement and letter from Coach Norton are unauthenticated, and the pages from the policy manual are undated, unauthenticated, and unsigned. As a result, they are insufficient to create a binding written contract between the parties. *See, Bd. of Regents v. Barnes*, 32 Ga. App. 47, 49-50 (2013), *Bd. of Regents v. Tyson*, 261 Ga. 368, 369-70 (1991); *Ga. Dep't of Cmty. Health v. Data Inquiry, LLC*, 313 Ga. App. 683, 686-87 (2012). Accordingly, Plaintiff has failed to overcome his burden of showing that Defendants waived their entitlement to sovereign immunity on Plaintiff's breach of contract claim.

The Court further notes that Plaintiff has not contested Defendants' argument that Plaintiff failed to state a claim against President Morehead in his individual capacity, as Plaintiff did not allege that he and President Morehead, in his individual capacity, entered into a contract. Accordingly, Plaintiff's breach of contract claim must therefore be dismissed against President Morehead in his individual capacity.

Moreover, Defendants contend that any constitutional relief Plaintiff may have been able to seek may have been able to seek is now barred by the applicable statute of limitations and thus fails to state a claim, with which the Court agrees. As Georgia does not have an equivalent to 42 U.S.C. § 1983, the analogous and applicable statute of limitations to be considered by the court is found in the Georgia Tort Claims Act. *See, Bell v. Metro. Atlanta Rapid Transit Auth.*, 521 F. App'x 862, 864 (11th Cir. 2013) (per curiam); *Davis v. Standifer*, 275 Ga. App. 769, 772 (2005).

Accordingly, the statute of limitations for claims under the Georgia Tort Claims Act is two years “after the date the loss was or should have been discovered.” *Dep’t of Pub. Safety v. Ragsdale*, 308 Ga. 210, 213 (2020). As recognized by the federal district court when it dismissed Plaintiff’s federal constitutional claims, Plaintiff knew the alleged loss as of January 22, 2017, after Plaintiff found out he had been expelled from the University of Georgia and that President Morehead had upheld the expulsion. Plaintiff did not file this lawsuit until April 17, 2019, more than two years after becoming aware of the alleged loss. Similar to the federal district court, this Court finds that Plaintiff did not file this action within the two-year statute of limitations, as set forth by O.C.G.A. § 50-21-27(c).

Finally, the Court has considered all of Plaintiff’s remaining assertions and finds them to be without merit.

For the aforementioned reasons, Defendants’ Consolidated Motion to Dismiss is hereby **GRANTED**, and the Amended Complaint is **DISMISSED** with prejudice.

IT IS SO ORDERED.

This 22 day of December 2020.


H. Patrick Haggard, Chief Judge
Superior Court of Clarke County

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