

FILED

03/14/2023

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
February 7, 2023 Session

**MICHAEL ROSE v. TENNESSEE CLAIMS COMMISSION**

**Appeal from the Chancery Court for Davidson County**  
**No. 21-1093-III Ellen Hobbs Lyle, Chancellor**

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**No. M2022-00453-COA-R3-CV**

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Appellant seeks to appeal a decision regarding a Criminal Injuries Compensation Act claim on the small claims docket of the Tennessee Claims Commission. Because appeals of decisions from the small claims docket are prohibited by Tenn. Code Ann. § 9-8-403(a)(2), the chancellor granted the Claims Commission’s motion to dismiss. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

ANDY D. BENNETT, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and JEFFREY USMAN, J., joined.

Paul Andrew Justice, III, Murfreesboro, Tennessee, for the appellant, Michael Rose.

Jonathan Skrmetti, Attorney General and Reporter, Andrée Blumstein, Solicitor General, Joseph P. Ahillen, Senior Assistant Attorney General, and Lauren D. Rota, Assistant Attorney General, for the appellee, Tennessee Claims Commission.

**OPINION**

**FACTUAL AND PROCEDURAL BACKGROUND**

On June 15, 2019, Michael Rose was staying at a friend’s apartment when two persons attempted to enter. In the ensuing fight, Mr. Rose was stabbed.

Mr. Rose filed a claim under the Criminal Injuries Compensation Act (“CICA”), Tenn. Code Ann. § 29-13-101 to -411, with the Division of Claims and Risk Management (“the Division”). Tenn. Code Ann. § 29-13-102(6), 29-13-108(b). On March 31, 2021, the Division denied his claim, finding that Mr. Rose had “contributed directly or indirectly to the crime.” Mr. Rose appealed to the Tennessee Claims Commission (“the Commission”). CICA claims are placed on the Commission’s small claims docket, unless removed to the

regular docket by either party. Tenn. Code Ann. § 9-8-403(c), (i). Mr. Rose’s claim was placed on the small claims docket and no one requested that it be removed to the regular docket. The Commission denied his claim on September 21, 2021, also citing contribution to the crime as the reason for denial. The Coffee County District Attorney filed a report<sup>1</sup> that stated Mr. Rose contributed to the crime and was banned from the property at the time of the stabbing.

Cases heard on the small claims docket are not appealable. Tenn. Code Ann. § 9-8-403(a)(2). Therefore, Mr. Rose instead filed a Petition for Writ of Certiorari in Davidson County Chancery Court. He maintained that the statutory writ of certiorari is available “[w]here no appeal is given,” Tenn. Code Ann. § 27-8-102(a)(2), and no appeal is given for small claims docket cases. The Commission filed a motion to dismiss and the Chancery Court granted the motion, finding that Mr. Rose did not show that no appeal was given. Rather, he did not adequately preserve the option to appeal by not having his case moved from the small claims docket to the regular docket, from which an appeal is allowed. Mr. Rose appealed.

#### STANDARD OF REVIEW

A motion to dismiss examines “only the legal sufficiency of the complaint, not the strength of the plaintiff’s proof or evidence.” *Woodruff by and through Cockrell v. Walker*, 542 S.W.3d 486, 493 (Tenn. Ct. App. 2017) (citing *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011)). “We review a trial court’s resolution of a motion to dismiss de novo with no presumption of correctness.” *Id.*

#### ANALYSIS

An examination of the overall system and its history shows the structure of the Tennessee claims process has a purpose. The claims system, in place since 1986, was recommended by a study commission established by the General Assembly. The study commission recommended waiving immunity in specific areas and having a pre-hearing settlement process. REPORT OF THE STUDY COMMITTEE CREATED BY SENATE JOINT RESOLUTION 216 OF THE 92ND GENERAL ASSEMBLY, at 18 (Tenn. Feb. 29, 1984). In light of this recommendation, the General Assembly created the Division, which is analogous to a claims adjuster. First, the claimant files a notice of the claim with the Division; the Division then “shall investigate every claim and shall make every effort to honor or deny each claim within ninety (90) days of receipt of the notice. Tenn. Code Ann. § 9-8-402(a)(1), (c). This is the pre-hearing settlement process envisioned by the study committee.

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<sup>1</sup> The CICA requires the District Attorney to file a report or affidavit providing information supporting or opposing the claim. Tenn. Code Ann. § 29-13-108(d), (e)(1).

If the claim is denied or cannot be determined in ninety days, the claimant can file the claim with the Tennessee Claims Commission. Tenn. Code Ann. § 9-8-402(c). The Commission is an administrative body charged with resolving claims against the State and its agencies that fall within statutorily specified categories. *See* Tenn. Code Ann. § 9-8-307(a)(1). The study committee recommended two dockets, “one, a formal hearing process, on the record, the results of which are appealable; and two, an informal hearing process, off the record, the results of which are not appealable.” Report of the Study Committee, at 18. As enacted by the legislature, there are generally two avenues the claimant can pursue – filing on the regular docket or the small claims docket. Tenn. Code Ann. § 9-8-403(a). The monetary limit of claims on the small claims docket is \$25,000. *See* Tenn. Code Ann. §§ 9-8-403(a)(2), 16-15-501(d)(1). It was intended to be a much more informal process, without a court reporter, without making a record and even without a hearing if the claimant consents to using affidavits. *Id.* There is no appeal from the small claims docket. *Id.* Any party may remove a small claims docket claim to the regular docket, where the claim will be treated like any other claim on the regular docket. Tenn. Code Ann. § 9-8-403(c). Regular docket claims are appealable. Tenn. Code Ann. § 9-8-403(a)(1).

The claim at issue in this matter is a claim against the Criminal Injuries Compensation Fund. The Commission received jurisdiction over CICA claims in 1986. 1986 PUB. ACTS, ch. 911, § 1. The General Assembly has also provided that all CICA claims “shall be heard on the small claims docket only, unless removed to the regular docket pursuant to subsection (c)” Tenn. Code Ann. § 9-8-403(i). CICA claims are statutorily capped at a total of \$30,000.<sup>2</sup> Tenn. Code Ann. § 29-13-106(e). It is reasonable to direct the CICA claims to the small claims docket because (1) the maximum claim is close to the small claims docket limit, and (2) most claims under the CICA are simple to prove with receipts or other documents – medical expenses, hospital services, funeral and burial expenses, expenses to travel to and from the trial of the defendant, reasonable expenses for cleaning certain crime scenes, pecuniary loss to dependents of a deceased victim, lost wages, moving and storage fees, and replacement of personal property under certain circumstances. Tenn. Code Ann. § 29-13-106(a). An attorney is not necessarily needed. So, most CICA claims can be adjudicated simply and inexpensively. The small claims docket is perfect for such claims.

Mr. Rose raises two reasons why an appeal from the small claims docket should be allowed. First, he claims there were misleading communications from the Commission. Specifically, he claims that he was misinformed “about what docket he was on until after the judgment was entered.” In paragraph 19 of the petition for certiorari, Mr. Rose states:

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<sup>2</sup> This amount can be raised. “If the treasurer determines that the maximum award is less than one hundred five percent (105%) of the national average, the treasurer shall adjust the maximum award to an amount equal to one hundred five percent (105%) of the national average.” Tenn. Code Ann. § 29-13-106(h). The Treasurer makes this adjustment “by rule promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.” *Id.* We have located no rule adjusting the amount.

The court papers in Rose’s case had actually identified the case as being on the “Criminal Injuries Compensation Docket.” But unbeknownst to Rose (and his counsel), this classification was misleading. In actuality, the Claims Commission has a habit of listing every victim's compensation claim as being on its “Small Claims Docket.” Importantly, every case on the small claims docket loses any right to appeal the judgment to the Court of Appeals. Tenn. Code Ann. § 9-8-403(a)(2). Counsel did not learn about this placement on the small claims docket until September 30, 2021, when the Claims Commission clerk informed him of that practice.

As we have already seen, placing CICA claims on the small claims docket is more than a “habit.” It is a statutory requirement laid out plainly and expressly in Tenn. Code Ann. § 9-8-403(i), available to see by all who make the effort to read the statute. When an inmate filed for post-conviction relief under the old three-year statute of limitations rather than the more recent one-year enactment, the Court of Criminal Appeals observed, “Simply put, ignorance of the law is no excuse, even for pro se litigants.” *Orduna v. State*, No. M2011-01015-CCA-R3-PC, 2012 WL 2359486, at \*2 (Tenn. Crim. App. June 21, 2012)(quoting *Leroy D. Jones v. State*, No. M1999-00930-CCA-R3-PC, 2000 WL 718218, at \*1 (Tenn. Crim. App. May 19, 2000)). The same holds true for Mr. Rose and his attorney. They should have read the law.

Mr. Rose’s second argument is that, given that there is no right to appeal a case on the small claims docket, the matter fits the statutory certiorari statute that says, “Certiorari lies: (2) Where no appeal is given.” Tenn. Code Ann. § 27-8-102(a).<sup>3</sup> The question then becomes, what does “no appeal given” mean? Case law indicates that it means where the law “made no provision for an appeal from the action of such boards.” *Fentress Cty. Beer Bd. v. Cravens*, 356 S.W.2d 260, 263 (Tenn. 1962). So, where provision for appeal has been made, the statutory writ of certiorari in Tenn. Code Ann. § 27-8-102(a)(2) is not appropriate. *Windsor v. DeKalb Cty. Bd. of Educ.*, No. M2002-00954-COA-R3-CV, 2004 WL 875263, at \*6 (Tenn. Ct. App. Ap. 22, 2004).

Several cases applying Tenn. Code Ann. § 9-8-403(a)(2) have implied that the statute made a provision for an appeal. For instance, in 1991, the Court of Appeals dismissed a claim filed in the Claims Commission by an inmate over his loss of a prison job. *Simpson v. State*, No. 01-A-019011BC00431, 1991 WL 135010 (Tenn. Ct. App. July 24, 1991). The court observed that his claim was on the small claims docket and that he had never made a motion to transfer the claim to the regular docket. *Id.*, at 1. The court then determined that it did not have jurisdiction to consider the appeal from the small claims docket. *Id.* A few

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<sup>3</sup> Tennessee Code Annotated section § 27-8-102 is known as the statutory writ of certiorari. Ben H. Cantrell, *Review of Administrative Decisions by Writ of Certiorari in Tennessee*, 4 MEM. ST. U. L. REV. 19, 19 (1973). The codification of the common-law writ of certiorari is found in Tenn. Code Ann. § 27-8-101. Mark Guthrie, *Note: Methods of Judicial Review Over Administrative Actions in Tennessee*, 13 MEM. ST. U. L. REV. 657, 664 (1983).

years later, in 1996, this Court considered a claim for the value of property allegedly lost due to the negligence of state employees. *Wiley v. State*, No. 01A-01-9605-CH-00241, 1996 WL 526712, at \*1 (Tenn. Ct. App. Sept. 18, 1996). The court briefly discussed sovereign immunity and stated that “the State may be held liable for damages caused by the tortious acts of its agents, but only under conditions established by the legislature.” *Id.* The Court of Appeals determined that, “our jurisdiction over appeals from the Claims Commission only extends to those claims which can be heard on the regular docket, not those properly on the small claims docket.” *Id.* at \*2. Last, in 2008, the Court of Appeals again dismissed an appeal from the small claims docket, noting that no motion to transfer the claim to the regular docket was filed. *Steelman v. State*, No. M2006-00706-COA-R3-CV, 2007 WL 2379927, at \*1 (Tenn. Ct. App. Aug. 21, 2007) perm. appeal denied (Apr. 14, 2008). Implicitly, the *Simpson* and *Steelman* courts viewed an appeal as “given” where, with a simple motion, the case could have been transferred to the regular docket.

We now make explicit what the prior opinions made implicit. The simple mechanism for transferring a claim from the small claims docket to the regular docket and the availability of an appeal from the regular docket make an appeal “given” within the meaning of Tenn. Code Ann. § 27-8-102(a)(2). Everybody who even remotely thinks that they may want to appeal knows what to do just by reading the statutes. If they do not request a transfer to the regular docket, there is no possibility of appeal. This process is analogous to seeking a trial by jury. “The failure of a party to make demand as required by this rule constitutes a waiver by the party of trial by jury.” TENN. R. CIV. P. 38.05. The failure of a party to move that the small claim be placed on the regular docket waives possibility of appeal.

A few final comments are in order. The Tennessee Constitution states that “Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct.” TENN. CONST., art. I, § 17. The Tennessee General Assembly chose to allow claims against the state to be resolved in an administrative body called the Claims Commission with appeal to the Court of Appeals permitted for claims on the regular docket. Tenn. Code Ann. § 9-8-403(a)(1). A record is made in the regular docket cases and the Tennessee Rules of Civil Procedure are used where applicable. *Id.* Thus, the record on appeal from the regular docket looks like a record from a trial court. In contrast, no record is made for a claim on the small claims docket. Tenn. Code Ann. § 9-8-403(a)(2). Claims can even be heard on affidavit without a hearing. *Id.* It is an informal hearing process. Thus, no record was filed with the chancery court in this case. If Mr. Rose was granted an appeal based on the statutory writ of certiorari,<sup>4</sup> he would receive a de novo trial in chancery court. Consequently, he would receive an appeal/new trial that the legislature did not grant in a

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<sup>4</sup> Mr. Rose’s petition requested review pursuant to the statutory writ of certiorari. He did not raise common law writ of certiorari in his petition to the chancery court nor has he meaningfully addressed the common law writ on appeal before this Court.

