

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2015 CW 1151 R

TODD HUVAL AND CHAD BOYER

VERSUS

STATE OF LOUISIANA THROUGH THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, OFFICE OF STATE POLICE, MASTER TROOPER HAL HUTCHINSON, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE, LIEUTENANT RHETT TRAHAN, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE, INVESTIGATOR BUZZY TRAHAN, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE, LIEUTENANT KEVIN DEVAL, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE, INVESTIGATOR BART MORRIS, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE, INVESTIGATOR HAMPTON GUILLORY, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE, AND LT. COLONEL STANLEY GRIFFIN, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE

Judgment Rendered: SEP 21 2016

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. C572272

The Honorable Janice Clark, Judge Presiding

McClendon J. Dissents in reasons assigned.

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*** * * * ***

BEFORE: MCDONALD, MCCLENDON, AND THERIOT, JJ.

THERIOT, J.

Relator/defendant, the Department of Safety and Corrections, Public Safety Service, Office of Louisiana State Police (the State Police)¹ has applied for supervisory writs on the 19th JDC's denial of its declinatory exception of lack of subject matter jurisdiction over the instant lawsuit filed by the plaintiffs, Todd Huval and Chad Boyer. We have granted writs to hear this case on remand. For the following reasons, we grant the supervisory writ and affirm the ruling of the lower court.

FACTS AND PROCEDURAL BACKGROUND

The plaintiffs, Todd Huval and Chad Boyer, were terminated from their employment with the State Police as a result of an investigation that concluded the plaintiffs provided confidential information to an informant in violation of numerous policies and regulations.

As a result of the plaintiffs' actions, the State Police forwarded their file to the Lafayette Parish District Attorney's Office for possible institution of criminal charges. Included with the file was a case report detailing the investigation into the plaintiffs' actions, which led to their subsequent terminations. After receiving the file, the District Attorney's Office presented the case to a grand jury, which returned a verdict of No True Bill.

The plaintiffs appealed their terminations to the State Police Commission. The Commission overturned the terminations and suspended both of the plaintiffs for differing amounts of time. Thereafter, the State Police timely appealed the decisions to this Court; Huval's termination was reversed² and Boyer's suspension was upheld.³

¹ All other parties named as relators under this writ are to be included under "the State Police."

² *Huval v. Department of Public Safety and Corrections*, 2009-0699 (La. App. 1 Cir. 10/23/09), 29 So.3d 522.

³ *Boyer v. Department of Public Safety and Corrections, Office of State Police*, 2009-0700 (La. App. 1 Cir. 10/23/09) 24 So.3d 1033 (Table).

On April 30, 2015, the plaintiffs filed an original petition in the 19th JDC, seeking damages for defamation, malicious prosecution, mental anguish, intentional infliction of emotional distress, as well as all general and equitable relief. In response, the State Police filed a declinatory exception raising the objection of lack of subject matter jurisdiction. The State Police argued that pursuant to Article X, § 50 of the Louisiana Constitution, the State Police Commission (the Commission) has “the exclusive power and authority to hear and decide all removal and disciplinary cases” regarding employees of the State Police. As such, it urged that the 19th JDC lacked the subject matter jurisdiction to award any damages arising from the termination of the plaintiffs’ employment with the State Police.

The trial court orally denied the State Police’s exception. The State Police applied for supervisory review of that ruling. This Court initially denied the writ, which the Louisiana Supreme Court remanded for briefing, argument, and full opinion.⁴ We now grant the writ application, pursuant to the Supreme Court’s instructions, and issue a full opinion.

ASSIGNMENT OF ERROR

The State Police argue that the trial court erred by holding that the 19th JDC, rather than the Commission, has authority to hear and decide removal and disciplinary cases regarding State Troopers, and to award back pay and all the emoluments of the office that derive from such a claim, because such a ruling is contradictory to Article X, § 50 of the Louisiana Constitution.

STANDARD OF REVIEW

Subject matter jurisdiction is the “legal power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute or the value of the right asserted.”

⁴ See *Todd Huval and Chad Boyer v. State of Louisiana through the Department of Public Safety and Corrections, Office of State Police, et al.*, 2015-2099 (La. 2/5/16), ___ So.3d ___.

La.C.C.P. art. 2. The jurisdiction of a court over the subject matter of an action or proceeding cannot be conferred by consent of the parties or waived; a judgment rendered by a court which has no jurisdiction over the subject matter of the action or proceeding is void. La.C.C.P. art. 3; *In re D.C.M.*, 2013-0085 (La. App. 1 Cir. 6/11/13), 170 So.3d 165, 169, writ denied, 2013-1669 (La. 7/17/13), 118 So.3d 1102.

Jurisdiction itself is a question of law subject to *de novo* review. *Winston v. Millaud*, 2005-0338 (La. App. 4 Cir. 4/12/06), 930 So.2d 144, 149 (citing *Sunrise Shipping Agency, Inc. v. Universal Maritime Servs., Ltd.*, 96-2703 (La. App. 4 Cir. 10/3/97), 700 So.2d 1135, 1137). On questions of law, the appellate court gives no special weight to the findings of the district court, but exercises its constitutional duty to review questions of law and renders judgment on the record. Thus, in such cases, appellate review of questions of law is simply whether the trial court was legally correct or legally incorrect. *Cannizzaro ex rel. State v. American Bankers Ins. Co.*, 2012-1455 (La. App. 4 Cir. 7/10/13), 120 So.3d 853, 856, writ denied, 2013-1929 (La. 2/21/14), 133 So.2d 680.

DISCUSSION

Article X, § 43 of the Louisiana Constitution was enacted on January 1, 1991 and was most recently amended on November 6, 2012.⁵ The article established the Commission, which is domiciled in Baton Rouge, Louisiana. Article X, § 50 of the Louisiana Constitution was also enacted on January 1, 1991, and has never been amended.⁶ It governs the exclusive power and authority of the Commission, stating as follows:

The State Police Commission shall have the exclusive power and authority to hear and decide **all removal and disciplinary cases**, with subpoena power and power to administer oaths. It may appoint a referee to take testimony, with subpoena power and power to

⁵ Acts 1990, No. 1106, § 1, approved Oct. 6, 1990, eff. January 1, 1001; Acts 2008, No. 935, § 1, approved Nov. 4, 2008. Amended by Acts 2012, No. 870, § 2, approved November 6, 2012.

⁶ Acts 1990, No. 1106, § 1, approved Oct. 6, 1990, eff. January 1, 1991.

administer oaths to witnesses. The decision of the commission shall be subject to review on any question of law or fact upon appeal to the court of appeal wherein the commission is located, upon application filed with the commission within thirty calendar days after its decision becomes final. (Emphasis added)

An employee who has gained permanent status in the classified state police service cannot be subjected to disciplinary action except for cause expressed in writing. La. Const. art. X, § 46(A). Such an employee may appeal to the Commission, where the burden of proof as to the facts is on the appointing authority. *Id.* The Commission's authority to "hear and decide" disciplinary cases includes a duty to decide independently from the facts presented whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the cause. *Department of Public Safety and Corrections, Office of State Police v. Mensman*, 95-1950 (La. 4/8/96), 671 So.2d 319, 321 (per curiam).

However, while employment/termination by the State Police are subject to review by the Commission and thereafter to this Court, the question before us is whether the 19th JDC has jurisdiction over the plaintiffs' various claims for damages, that include the Commission's alleged defamation, malicious prosecution, mental anguish, intentional infliction of emotional distress. Article X of the Louisiana Constitution limits the Commission's jurisdictional power to removal or disciplinary claims, pursuant to § 46(A) and 50, and to discrimination claims, pursuant to § 46(B). *Berry v. Department of Public Safety and Corrections*, 2001-2186 (La. App. 1 Cir. 9/27/02), 835 So.2d 606, 617. Upon review of the plaintiffs' petition for damages, we can find no claim relating to the Commission's disciplinary review of its cases.

The plaintiffs specifically allege defamation in the petition by stating, "[d]efendants defamed [plaintiffs] by making false and/or defamatory statements concerning Plaintiffs...." The plaintiffs specifically allege malicious prosecution

by stating, “[d]efendants maliciously prosecuted [plaintiffs] by the commencement and/or continuance of an original criminal law judicial proceeding, i.e., the Grand Jury Hearing....” The plaintiffs specifically allege intentional infliction of emotional distress by stating, “[t]he actions of Defendants during the investigation were extreme and outrageous by the manufacturing of evidence, prosecuting, and/or terminating the employment of [plaintiffs]; and, were the source of intentional infliction of emotional distress whereby [plaintiffs] suffered emotional distress that was severe and debilitating....”

The plaintiffs pray for damages, which include, among others, loss of earnings and earning capacity, benefits, and loss of employment. While such damages may seem related to the employment from which they were terminated by the Commission, these are damages that sound in tort. The plaintiffs pray for these damages in their petition “as a result” of the claims of defamation, malicious prosecution, and intentional infliction of emotional distress stemming from the criminal proceeding, not the disciplinary action of the Commission. We do not have a situation where we are tasked with upholding or reversing the Commission’s decision to terminate the plaintiffs’ employment. The instant case is past that point, and neither of the plaintiffs seek to have their employment status with the State Police reinstated.

The trial court has much discretion in awarding damages in tort cases. La. C.C. art. 2324.1; *Hays v. State*, 37,229 (La. App. 2 Cir. 9/24/03), 856 So.2d 64, 73, writ denied, 2003-3187 (La. 2/6/04), 865 So.2d 726. That vast discretion makes the trial court the gatekeeper as to what evidence is allowable in the course of hearings before it. See *Wingfield v. State ex rel Dept. of Transp. And Development*, 2001-2668 (La. App. 1 Cir. 11/8/02) 835 So.2d 785, writ denied, 2003-0313 (La. 5/30/03), 845 So.2d 1059. In the course of the hearings that will come before the 19th JDC in the instant case, the trial court will certainly use its

own discretion in—and is in the best position for—determining whether the damages sought by the plaintiffs are directly related to the tort claims in their petition, or if the damages prayed for are exclusive to the jurisdiction of the Commission.

CONCLUSION

The plaintiffs' claims for damages arising from the Commission's alleged defamation, malicious prosecution, and intentional infliction of emotional distress are tort claims over which the trial court has original jurisdiction pursuant to La. Const. art. V, § 16. The trial court was correct to deny the Commission's declinatory exception raising the objection of lack of subject matter jurisdiction.

DECREE

The supervisory writ applied for by the Department of Public Safety and Corrections is hereby granted. The denial of the State Police's declinatory exception of lack of subject matter jurisdiction by the 19th Judicial District Court is affirmed. All costs of this matter are assessed to the State Police in the amount of \$705.00.

SUPERVISORY WRIT GRANTED; JUDGMENT AFFIRMED.

STATE OF LOUISIANA

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VERSUS



STATE OF LOUISIANA THROUGH THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, OFFICE OF STATE POLICE, MASTER TROOPER HAL HUTCHINSON, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE, LIEUTENANT RHETT TRAHAN, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE, INVESTIGATOR BUZZY TRAHAN, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE, LIEUTENANT KEVIN DEVAL, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE, INVESTIGATOR BART MORRIS, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE, INVESTIGATOR HAMPTON GUILLORY, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE, AND LT. COLONEL STANLEY GRIFFIN, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE OFFICE OF STATE POLICE

McClendon, J., dissenting.

I respectfully dissent with the majority's conclusion that the Nineteenth Judicial District Court has subject matter jurisdiction to consider the merits of plaintiffs' petition.

Article X, Section 50 of the Louisiana Constitution plainly states that "[t]he State Police Commission shall have the exclusive power and authority to hear and decide all removal and disciplinary cases, with subpoena power and power to administer oaths" and that "[t]he decision of the commission shall be subject to review on any question of law or fact upon appeal to the court of appeal wherein the commission is located." If the action being challenged is a removal or disciplinary action, the Commission's exclusive jurisdiction is not defeated or circumvented by styling a suit as one in tort. See Bass v. Dep't of Pub. Safety and Corrections, Louisiana State Penitentiary, 94-1974 (La.App. 1 Cir. 5/5/95), 655 So.2d 455, 456¹; see also Myers v. Ivey, 93-1166 (La.App. 3 Cir. 4/6/94), 635 So.2d 632, 633. The mere fact that a

¹ Although **Bass** concerned the State Civil Service Commission, the Louisiana Supreme Court has recognized that "[t]he State Police Commission's power to 'hear and decide' cases is identical to that granted to the State Civil Service Commission." **Dep't of Pub. Safety and Corrections, Office of State Police v. Mensman**, 95-1950 (La. 4/8/96), 671 So.2d 319, 320 n.1.

petition references tort claims does not change the nature of the claim. See Reimer v. Medical Center of Louisiana at New Orleans, 95-2799 (La.App. 4 Cir. 1/29/97), 688 So.2d 165, 168.

In their petition, plaintiffs allege:

12.

Defendants defamed Petitioners by making false and/or defamatory statements concerning Plaintiffs; and published the same to third parties; Defendants knew or should have known the statement was false and/or defamatory, as they manufactured it; and as a result, Petitioners suffered damages by the loss of employment, loss of earnings, and loss of status and station in their respective communities.

13.

Defendants maliciously prosecuted Petitioners by the commencement and/or continuance of an original criminal law judicial proceeding, i.e., the Grand Jury Hearing; Defendants caused the Grand Jury Hearing; the Hearing resulted in a no true bill, that is, the Plaintiffs were not [indicted]; Defendants manufactured evidence, i.e, the fabricated phone conversation, in furtherance of the malicious prosecution, and provided the same to the State and the Grand Jury; Defendants' had no probable cause for instituting the prosecution; the prosecution ended in favor of the Petitioners, i.e., a "no true bill"; and Petitioners suffered damages by the loss of employment, loss of earnings, and loss of status and station in their respective communities.

14.

The actions of the Defendants during the investigation were extreme and outrageous by the manufacturing of evidence, prosecuting, and/or terminating the employment of Petitioners; and, were the source of intentional infliction of emotional distress whereby Petitioners suffered emotional distress that was severe and debilitating; and, Defendants either desired to inflict severe emotional distress and/or knew or should have known that severe emotional distress would be certain or substantially certain to result from their conduct and/or actions.

16.

As a result of the aforescribed incidents, injuries and damages, Defendants herein are liable to Todd Huval and Chad Boyer jointly, severally, and *in solido* for past, present, and future loss of earnings and earning capacity, benefits, loss of employment, loss of enjoyment of life, mental anguish, mental distress, disability, mental and physical pain and suffering, property damages, loss of consortium, service and society, and any and all injuries which may be proven at trial on the merits, in an amount as is reasonable in the premises.

Plaintiffs' allegations clearly establish that this matter is essentially an employment related dispute involving the circumstances of the investigation and

terminations/disciplinary actions taken against them. All of the damages sought, including loss of earnings and earning capacity, loss of benefits, loss of enjoyment of life, mental anguish, and mental distress arise from the disciplinary action. Although the Commission would not necessarily have exclusive jurisdiction of defamation and malicious prosecution claims in all cases, in this case said claims are inextricably interwoven with an essentially employment related dispute. Therefore, the district court lacks subject matter jurisdiction to consider the merits of plaintiffs' petition.