

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
WESTERN DIVISION

FILED

AUG 24 2009

Tennessee Claims Commission
CLERK'S OFFICE

LESLIE SUTTON,

Claimant,

v.

CLAIM NO. 20-090-838

STATE OF TENNESSEE,

Defendant

ORDER OF DISMISSAL

This cause came on to be heard on the Defendant/State of Tennessee's *Motion to Dismiss* and memorandum in support thereof, the Claimant's response in opposition thereto and, indeed, the record as a whole.

On August 7, 2006, Claimant apparently was injured when she fell on the sidewalk in front of the University of Tennessee Medical Center. Claimant filed a complaint in the Circuit Court of Tennessee for Shelby County against the UT Medical Group, Inc. and John Doe, an unknown construction company. After learning that the University of Tennessee might be responsible for the sidewalk, Claimant amended her Circuit Court complaint to add UT as a party.

Claimant filed a claim with the Division of Claims Administration on January 27, 2009.

Defendant filed its motion to dismiss in May, 2009, alleging that Claimant's claim against the State is barred by the statute of limitations.

Claimant argues that her attorney made a "clerical error" when he filed the amended complaint in circuit court rather than filing a claim in the Claims Commission and insists that the State has been on notice of this claim since it was filed in circuit court in November, 2007.

In *Turner v. State*, 184 S.W.3d 701 (Tenn. App. 2005), *perm. app. denied* (Tenn. October 24, 2005), a state prisoner filed a medical malpractice claim in chancery court in March, 2002; it was dismissed the following January. The claims commission found that the filing of the cause of action in chancery court did not toll the statute of limitations and that the case did not fall within the class of cases eligible for transfer from chancery court to the commission.

In *Turner*, the Court of Appeal noted that the 1998 amendments to § 9-8-307, Tenn. Code Ann., severely limit the class of cases eligible for transfer from the chancery or circuit court to the Tennessee Claims Commission. *Id.* at 706.

The statutory language reads as follows:

Claims that were filed against a state employee with a court of competent jurisdiction **and that fall within the jurisdiction of the claims commission found in subsection (a)(1)(A) shall be dismissed as to the state employee and transferred** to the division of claims administration to proceed as a claim against the state... § 9-8-307 (i)(1) (**Emphasis added**)

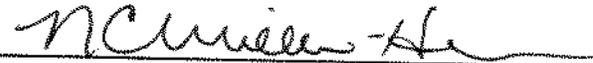
Subsection (a)(1)(A) includes only cases alleging “negligent operation or maintenance of a motor vehicle or any other land, air or sea conveyance” by a state employee.

The gravaman of Ms. Sutton’s claim is that she suffered personal injuries after tripping on an uneven sidewalk in front of the University of Tennessee Medical Center. There is no allegation involving the negligent operation or maintenance of a motor vehicle or other conveyance. Thus, there is no provision for transferring Claimant’s claim from the Circuit Court of Tennessee for Shelby County to the Claims Commission and the filing in circuit court did not toll the statute of limitations.

The date of Mr. Sutton’s injury is August 7, 2006. She filed her claim with the Division of Claims Administration in January, 2009. It is clear, therefore, that the statute of limitations had expired prior to the filing of the claim with the Division of Claims Administration.¹

¹ It should be noted that under *Austin v. State*, 222 S.W.3d 354 (Tenn. 2007), if Claimant’s former counsel had filed her claim in the Tennessee Claims Commission within 90 days of receiving notice that the State of Tennessee and not the UT Medical Group, Inc., was responsible for the sidewalk, her claim might not have been barred.

IT IS THEREFORE ORDERED that this claim be **DISMISSED**
with prejudice.


NANCY C. MILLER-HERRON
COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing Order has been mailed
to:

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This the 24th day of August, 2009.


MARSHA RICHESON, Clerk
Tennessee Claims Commission