IN THE CLAIMS COMMISSION FOR THE STATE OF TENNESSEE
EN BANC

FILED
CLAIMS COMMISSION
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JAMES EDWARD BASSHAM,

Claimant,

Vs.

Claim No. T20140740
Eastern Division

STATE OF TENNESSEE,

Defendant.

ORDER DENYING CLAIMANT'S MOTION FOR *EN BANC* CONSIDERATION

THIS MATTER CAME FOR CONSIDERATION on the 8th day of December 2015, before the Tennessee Claims Commission sitting *en banc* with James A. Hamilton, III, Commissioner of the Western Division, Robert N. Hibbett, Commissioner of the Middle Division, and William O. Shults, Commissioner of the Eastern Division.

The Claimant filed a motion for an *en banc* hearing in the Eastern Division of the Claims Commission.

TENNESSEE CODE ANNOTATED § 9-8-304(d) (1999) provides as follows: "For the purpose of uniformity, the commission, upon request of two members thereof, may sit *en banc* to hear and decide any matter for which there is a disagreement among two (2) or more of the commissioners."

The Commissioners reviewed the Claimant's motion, Commissioner William O. Shults' Order, the applicable law, and the record as a whole. No motion was made that this matter be considered *en banc*. Since the Claimant's

motion does not meet the statutory criterion for *en banc* review, it is **ORDERED, ADJUDGED** and **DECREED** that the Claimant's motion for an *en banc* hearing is respectfully **DENIED**.

FOR THE COMMISSION

JAMES A. HAMILTON III
Commissioner, Western Division

ROBERT N. HIBBETT
Commissioner, Middle Division

WILLIAM O. SHULTS, Chair
Commissioner, Eastern Division

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Order was forwarded via first-class mail, postage prepaid, or via hand delivery, this 29th day of December 2015, to the following:

James Edward Bassham
Northeast Correctional Complex
P. O. Box 5000
Mountain City, Tennessee 37683-5000

Eric Fuller, Esq.
Office of the Attorney General
Civil Rights and Claims Division
P. O. Box 20207
Nashville, Tennessee 37202-0207

Paula Merrifield

PAULA MERRIFIELD, CLERK
Tennessee Claims Commission

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
EASTERN GRAND DIVISION

JAMES E. BASSHAM	)	
	)	
Claimant,	)	
	)	
v.	)	**Claims Commission No. T2014-0740**
	)	**Small Claims Docket**
STATE OF TENNESSEE, ET AL,	)	
	)	
Defendants.	)	

ORDER DENYING MOTION TO ALTER OR AMEND

THIS MATTER IS BEFORE the undersigned, Commissioner of the Tennessee Claims Commission, Eastern Grand Division, upon the Claimant's "Motion To Alter Or Amend Judgment" pursuant to Tenn. R. Civ. P. 59.04. The Commission signed an "Order Finding Liability But Denying Damages" on December 15, 2014.

The Claimant's Motion begins by asserting that the Commission's previous finding that he had not actually suffered any monetary loss is not accurate. Mr. Bassham argues that he is still required to pay the filing fee of $185.45 from the divorce he filed for in Davidson County. Claimant goes on to state that "[i]n the event that [he] is somehow fortunate enough to have funds deposited into his Trust Fund Account, a percentage of said funds will be deducted until the financial obligation is paid in full …". Claimant avers that even if the loss has not yet occurred it is "absolutely" inevitable.

The Commission appreciates Claimant's position, but recognizes some clear problems with these arguments. It is correct that our previous Order found the State liable for the mishandling of Claimant's legal mail. In fact, the following statement is found therin:

> "Therefore, Commission believes that an award in the amount of the filing fee which Mr. Bassham paid – if in fact he paid it - in order to institute a divorce action is warranted. However, the office of the Circuit Court Clerk in Nashville advises that Claimant never paid the $184.50 filing fee in this case. Therefore, Claimant has lost no money as a result of his case being dismissed."

Given the Claimant's arguments set out in his Motion to Alter or Amend, the Commission will clarify with greater detail the reasons why an award for the filing fee is improper in this case.

The Claimant admits and the Commission previously found that the filing fee for Mr. Bassham's divorce has yet to be paid. The Commission notes that every negligence claim requires proof of the following elements: (1) a duty of care owed by the defendant to the plaintiff; (2) conduct by the defendant falling below the standard of care amounting to a breach of that duty; (3) **an injury or loss**; (4) cause in fact; and (5) proximate or legal cause. *Coln v. City of Savannah*, 966 S.W.2d 34, 39 (Tenn. 1998) overruled on other grounds by *Cross v. City of Memphis*, 20 S.W.3d 642 (Tenn. 2000); see also *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995) ; *McClenahan v. Cooley*, 806 S.W.2d 767, 774 (Tenn. 1991).

Tennessee law is well developed in cases involving the existence of damages as compared to the amount of damages. The Tennessee Court of Appeals in *Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694, 703 (Tenn. Ct. App. 1999) (Internal Citations Omitted), said the following:

> "Damages may never be based on mere conjecture or speculation. … However, uncertain or speculative **damages are prohibited only when the existence, not the amount of damages is uncertain**. … Evidence required to support a claim for damages

> need only prove the amount of damages with reasonable certainty."
> Id. (Emphasis supplied).

Based on the proof presented, Mr. Bassham was obligated to pay the $184.50 filing fee when he filed his complaint for divorce in Davidson County regardless of any subsequent negligence by personnel involved with mail delivery activities at the TDOC facility where Claimant is housed. Thus, the Commission was left to determine the existence of any damages but not the amount of those damages.

The issues now before us essentially arose when the Davidson County Clerk's Office attempted to send Mr. Bassham documents related to his divorce which he never received. Apparently this failure resulted in the case being dismissed. As noted above, the Commission previously held that the State was negligent in its handling of Mr. Bassham's legal mail. However, it appears to us that the actual damage or loss suffered by Claimant because of the State's negligence is that his divorce case was dismissed rather than the loss of the filing fee. This is an important distinction because the State's negligence is not causally related to why Mr. Bassham owed the filing fee. Rather, Mr. Bassham would have been responsible for that expense even if the State had not acted negligently in handling his legal mail. The mishandling of Claimant's legal mail might have inhibited the completion of the divorce, but it would not have taken away his obligation to pay for the filing of his divorce complaint. That expense would have existed even if the divorce had proceeded with no problems whatsoever. Mr. Bassham's argument is that he should be awarded the $184.50 filing fee because if he attempts to re-file in the future, it is inevitable that he will be required to pay a second filing fee.

The State has not filed a response to Claimant's Motion.

Although the Commission understands Mr. Bassham's position, the pleadings and evidence presented in this case reveal significant flaws with this argument.

The Commission has been advised by the Davidson County Circuit Court Clerk that although the underlying divorce action was dismissed, the file contains post-judgment pleadings which are still pending. Documents to that effect are attached hereto as Exhibit 1. According to the Circuit Court Clerk's Office, there has not been a date set for hearing of the post-judgment motion, but that the case is still active. The fact that the current divorce action in Davidson County remains viable is important here because it makes any award sought by Claimant for damages relating to the filing fee moot or at the very least premature. Given the uncertainty of the final disposition of the current divorce action, the Commission has no proof before it that Claimant has either lost the filing fee for the divorce (which remains unpaid) or that a second filing for divorce in the future is necessary. In fact, it is entirely possible that the current divorce action could be revived and move forward thereby making any award to Claimant a windfall since he would have suffered no actual damages. Of course, this Commission will not speculate as to what outcome may eventually be reached in the divorce action. Our analysis is confined solely to the issues involved with Claimant's alleged damages sought in this claim.

Additionally, there is nothing that would require Claimant to file a second divorce action even if we were to make such an award. If that scenario were to occur, then the Commission would in actuality have paid for Claimant's initial filing fee which he himself has never paid. None of these scenarios allow us to make an award given the current active status of the current divorce action as well as the fact that Claimant has not shown that he has suffered any actual damage or loss to this point. Ultimately, any award of damages based on Claimant's arguments would be based on speculation and conjecture.

Therefore, the Commission finds that Mr. Bassham has yet to pay the initial filing fee for his divorce case filed in Davidson County. Further, while Claimant is correct that the divorce case has been dismissed, there are currently post judgment pleadings pending and the case is still classified as active. Finally, any award made to Claimant for the filing fee of his divorce action would be premature and speculative given the case's current active status in the Davidson County Circuit Court.

For all of the reasons just discussed, the Commission finds that the Motion To Alter Or Amend Judgment in this case is DENIED.

ENTERED this the 10 day of June, 2015.

William O. Shults, Commissioner
P.O. Box 960
Newport, TN 37822-0960

Exhibit 1

FILED - 11.16.12 DAVIDSON COUNTY CIRCUIT COURT HAS 18
(1) 1 BASSHAM, JAMES E #322334 IN
DOCKET # 12D3463 vs. PO ID DIVORCE CMPLT- NO CHILD 192174*1
(1) 1 HUNTER, CHRSITINA D
BAL: C: 185.45 J: A: I: TOT: 185.45

LINE	DATE	CODE	DESCRIPTION	REFERENCE	BY	CHARGE	
14	03.13.13	CRS	LETTER SENT		P	0.00	TO PLTF
15	12.17.13	FO	FINAL ORDER		P	0.00	DISMISS/
16	12.17.13	CLOSE	CLOSE CASE - P1 PAY		P	0.00	DISMISS
17	01.17.14	PJP	POST JUDGMENT PLEAD		P	25.00	OF P - M
18	01.17.14	MSA	MOTION		P	0.00	- OF P

Enter (F)orward, (B)ack, (L)ast or (E)nd :

8.31 Caps Num @(043,22) Printer Capture 13:25 Help: F1

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LINE	DATE	CODE	DESCRIPTION	REFERENCE	BY	CHARGE	
1	11.16.12	POIDN	PO ID DIVORCE CMPLT		P	184.50	
2	11.16.12	MDA	MARITAL DISSOLUTION		P	0.00	SIGNED B
3	11.16.12	AF	AFFIDAVIT		D	0.00	OF D1 (C
4	11.16.12	W	WAIVER OF		D	0.00	OF D1 SE
5	11.16.12	M	MOTION		P	0.00	- OF P
6	11.16.12	N	NOTICE		P	0.00	OF P1 FO
7	11.16.12	CRD	CORRESPONDENCE RECE		P	0.00	FROM P1
8	11.16.12	CRS	LETTER SENT		P	0.00	TO P1 (1
9	11.21.12	O	ORDER		P	0.00	P1 NON-C
10	01.08.13	RQ	REQUEST		P	0.00	OF P FOR
11	01.08.13	CS	CERTIFICATE OF SERV		P	0.45	
12	01.08.13	COP	COPIES		P	0.50	
13	03.12.13	CRD	CORRESPONDENCE RECE		P	0.00	FROM P I

Enter (F)orward, (B)ack, (L)ast or (E)nd :

8.31 Caps Num @(043,22) Printer Capture 13:25 Help: F1

CERTIFICATE

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

James Bassham (#322334)
DSNF
7575 Cockrill Bend Blvd.
Nashville, TN 37209

Eric A. Fuller, Esq.
Assistant Attorney General
Office of the Attorney General
Civil Rights and Claims Division
P.O. Box 20207
Nashville, TN 37202-0207

On this the 15th day of June, 2015.

Paula Merrifield

Paula Merrifield, Clerk of the Commission