

SUPREME COURT OF ARKANSAS

Ark. Cmty. Corr. v. Barnes

542 S.W.3d 841 (Ark. 2018) · Decided April 12, 2018

SUMMARY

The Arkansas Supreme Court held that Arkansas Community Correction was entitled to judgment on the pleadings because sovereign immunity barred a claim under the Arkansas Whistle-Blower Act. The court concluded that the General Assembly could not constitutionally waive the State's sovereign immunity under article 5, section 20 of the Arkansas Constitution, reversed the circuit court, and dismissed the case.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Womack, Associate Justice; Wynne, Justice; Baker, Justice; Hart, Justice
JURISDICTION	Arkansas
DECIDED	April 12, 2018
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal under Arkansas Rule of Appellate Procedure-Civil 2(a)(10) from an order denying Arkansas Community Correction's motion for judgment on the pleadings based on sovereign immunity.
STANDARD OF REVIEW	Whether a party is immune from suit is a question of law reviewed de novo.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; binding precedent in Arkansas.
PARTIES	Arkansas Community Correction v. Annette Barnes

TOPICS

- sovereign immunity
- motion for judgment on the pleadings
- interlocutory appeal
- appellate procedure
- constitutional law

PRACTICE AREAS

civil procedure

appellate procedure

constitutional law

sovereign immunity

employment law

whistleblower law

QUESTIONS PRESENTED

1. Whether the Arkansas Community Correction was entitled to judgment on the pleadings because sovereign immunity barred Barnes's Arkansas Whistle-Blower Act claim.
2. Whether the General Assembly could constitutionally waive the State's sovereign immunity through the Arkansas Whistle-Blower Act.

HOLDINGS

1. Article 5, section 20 of the Arkansas Constitution prohibits the General Assembly from waiving the State's sovereign immunity; therefore, the Arkansas Whistle-Blower Act's attempt to subject the State to liability is unconstitutional to that extent.
2. Arkansas Community Correction was entitled to judgment as a matter of law on the sovereign-immunity defense, and the circuit court erred by denying its motion for judgment on the pleadings.

KEY QUOTATIONS

“the General Assembly cannot waive the State's immunity” (842)

“To the extent that other cases conflict with this holding, we overrule those opinions.” (842)

“We hold that it is. We therefore reverse and dismiss the case” (843)

FACTUAL BACKGROUND

Annette Barnes alleged that Arkansas Community Correction terminated her employment after she protested discriminatory actions and participated in an investigation into further discrimination. She brought a claim under the Arkansas Whistle-Blower Act and sought damages, reinstatement, attorney fees, costs, and other statutory relief. Arkansas Community Correction asserted that sovereign immunity barred the action.

PROCEDURAL HISTORY

Barnes sued Arkansas Community Correction under the Arkansas Whistle-Blower Act, alleging that she was terminated for protesting discriminatory conduct and participating in a related investigation. Arkansas Community Correction answered and asserted sovereign immunity, then moved for judgment on the pleadings under Arkansas Rule of Civil Procedure 12(c). The Pulaski County Circuit Court denied the motion, and the Supreme Court of Arkansas reversed and dismissed the case.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

None. The court reversed and dismissed the case rather than remanding it.

CASES CITED

- Bd. of Trs. v. Andrews, 2018 Ark. 12, 535 S.W.3d 616
- Smith v. Daniel, 2014 Ark. 519, 452 S.W.3d 575

OPINION

WOMACK, J.

SHAWN A. WOMACK, Associate Justice The appellant, Arkansas Community Correction ("ACC"), filed an interlocutory appeal under Rule 2(a)(10) of the Arkansas Rules of Appellate Procedure-Civil from an order of the Pulaski County Circuit Court denying its motion for judgment on *842the pleadings.

The appellant asserts that Annette Barnes's complaint is barred by the doctrine of sovereign immunity. We reverse and dismiss. Barnes alleged in her complaint that she was terminated from her position with the ACC for protesting discriminatory actions on behalf of her employer and participating in an investigation designed to discover further discrimination.

She alleged that her termination was a violation of the Arkansas Whistle-Blower Act ("AWBA") and asked for damages, reinstatement, attorneys' fees, costs, and all other relief available under the Act and the law. ACC filed its answer and affirmatively pled that her claim was barred by sovereign immunity. Thereafter, ACC filed a motion for judgment on the pleadings pursuant to Ark.

R. Civ. P. 12(c) arguing that it is an agency of the State and the General Assembly could not validly waive the state's sovereign immunity under the AWBA. Ark. Code Ann. §§ 21-1-601 et seq. (Repl. 2016). The circuit court denied the motion and ACC appealed.

I. Standard of Review Rule 2(a)(10) of the Arkansas Rules of Appellate Procedure-Civil permits an appeal from an interlocutory "order denying a motion to dismiss or for summary judgment based on the defense of sovereign immunity or the immunity of a government official." Bd. of Trs. v. Andrews, 2018 Ark. 12, at 4, 535 S.W.3d 616, 618.

The issue of whether a party is immune from suit is purely a question of law and is reviewed de novo. Id. II. Sovereign Immunity Article 5 of the Arkansas Constitution is the Legislative Article, which, among other things, outlines the powers, duties, responsibilities, and limitations of the General Assembly. Article 5 section 20 provides that "[t]he State of Arkansas shall never be made defendant in any of her courts."

In Andrews, the Board of Trustees of the University of Arkansas argued that it was immune from suit for claims under the Arkansas Minimum Wage Act based on sovereign immunity. Andrews,

2018 Ark. 12, at 2-3, 535 S.W.3d at 618. This court concluded that "the General Assembly cannot waive the State's immunity," and therefore, the statute that provided for the State to be made a defendant in the Act was beyond the scope of legislative powers as defined by the Arkansas Constitution.

Id. at 10-12, 535 S.W.3d at 622-23. In reaching that conclusion, we interpreted the constitution "precisely as it reads" and determined that "[t]he drafters of our current constitution removed language from the 1868 constitution that provided the General Assembly with statutory authority to waive sovereign immunity and instead used the word 'never.' " Id. at 10-11, 535 S.W.3d at 622.

Regarding our previous decisions, this court specifically stated, "To the extent that other cases conflict with this holding, we overrule those opinions." Id. at 11, 535 S.W.3d at 623. As in the Minimum Wage Act, under the AWBA if there is unlawful adverse action on behalf of a public employer then the employee may claim injunctive relief, reinstatement, compensation, and attorneys' fees.

Ark. Code Ann. § 21-1-605 (Repl. 2016). The General Assembly clearly intended to subject the State to liability under the AWBA. Ark. Code Ann. § 21-1-602(5) (Repl. 2016); *Smith v. Daniel*, 2014 Ark. 519, at 6, 452 S.W.3d 575, 578-79 (when the General Assembly authorized a suit against a "public employer" it expressly waived sovereign immunity). Per our holding in *Andrews*, to the extent the legislature subjected the State to liability in the AWBA, it is prohibited by article 5, section 20 of the Arkansas Constitution. *843ACC was entitled to judgment as a matter of law, and the circuit court erred when it denied ACC's motion for judgment on the pleadings based on sovereign immunity.

We emphasize here, as in *Andrews*, that the only issue before this court is whether the General Assembly's choice to abrogate sovereign immunity in the AWBA is prohibited by the constitution. We hold that it is. We therefore reverse and dismiss the case Reversed and dismissed. Wynne, J., concurs. Baker and Hart, JJ., dissent.