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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-689

No. COA22-47

Filed 18 October 2022

Gaston County, No. 20 CVS 3021

SYLVIA CORRY, Plaintiff,

v.

THE NORTH CAROLINA DIVISION OF HEALTH AND HUMAN SERVICES,  
DIVISION OF CHILD DEVELOPMENT AND EARLY EDUCATION, Defendant.

Appeal by plaintiff from order entered 27 July 2021 by Judge Gregory R. Hayes  
in Gaston County Superior Court. Heard in the Court of Appeals 7 September 2022.

*Sylvia Corry, pro se, for plaintiff-appellant.*

*Attorney General Joshua H. Stein, by Assistant Attorney General Amber I.  
Davis, for defendant-appellee.*

DIETZ, Judge.

¶ 1

Plaintiff Sylvia Corry appeals the dismissal of her complaint against the North Carolina Department of Health and Human Services, Division of Child Development and Early Education. As explained below, the trial court properly dismissed the complaint because Corry's administrative claims are barred for failure to exhaust administrative remedies and her defamation claim is barred by the doctrine of sovereign immunity. We therefore affirm the trial court's order.

### **Facts and Procedural History**

¶ 2 In 2019, an employee of the North Carolina Department of Health and Human Services, Division of Child Development and Early Education conducted an unannounced visit at Kids R Home Child Development in Mount Holly, which is owned and operated by Plaintiff Sylvia Corry. During the visit, the employee identified an air freshener product that was not safely stored away from children. The employee noted this “violation” in a “Visit Summary” that is displayed on a State website.

¶ 3 Corry petitioned for a contested case hearing at the Office of Administrative Hearings, challenging the agency action. An administrative law judge dismissed the petition, and a trial court later affirmed that ruling on the ground that Corry had not established any formal administrative action that could be adjudicated through the petition. Corry did not appeal the trial court’s ruling.

¶ 4 Corry later filed a request for declaratory ruling with the North Carolina Child Care Commission pursuant to N.C. Gen. Stat. § 150B-4 and 10A NCAC 09.2003. The Commission determined that it lacked jurisdiction to grant an administrative hearing but that, even if it possessed jurisdiction, the challenged administrative rule was valid, applicable, and properly applied. Corry did not pursue any judicial review of the Child Care Commission’s ruling.

¶ 5 Several months later, Corry filed the complaint that is the subject of this

appeal, alleging a claim for defamation and claims for declaratory and injunctive relief establishing that the agency engaged in administrative action. After a hearing, the trial court entered an order dismissing the complaint. Corry appealed.

### **Analysis**

#### **I. Administrative claims**

¶ 6 We begin by addressing Corry’s claims for declaratory and injunctive relief seeking to establish that the agency engaged in administrative action.

¶ 7 Ordinarily, “where the legislature has provided by statute an effective administrative remedy, that remedy is exclusive and its relief must be exhausted before recourse may be had to the courts.” *Presnell v. Pell*, 298 N.C. 715, 721, 260 S.E.2d 611, 615 (1979). Judicial review “is generally available only to aggrieved persons who have exhausted all administrative remedies made available by statute or agency rule.” *Abrons Fam. Prac. & Urgent Care, PA v. N.C. Dep’t of Health & Hum. Servs.*, 370 N.C. 443, 444, 810 S.E.2d 224, 226 (2018). “A plaintiff’s failure to exhaust administrative remedies may result in the dismissal of the complaint for lack of subject-matter jurisdiction.” *Id.* at 447, 810 S.E.2d at 228.

¶ 8 Here, the Administrative Procedure Act provided a vehicle for Corry to seek relief, either through a claim in the Office of Administrative Hearings or through a declaratory action brought before the Child Care Commission under N.C. Gen. Stat. § 150B-4 and 10A NCAC 09.2003. Corry pursued these options, but chose not to

appeal the trial court's ruling on her claim before the Office of Administrative Hearings and chose not to seek any judicial review of the Child Care Commission's ruling. Corry cannot end-run around her obligation to exhaust her remedies through further judicial review by bringing an independent declaratory judgment action in the court system. Accordingly, the trial court properly dismissed Corry's administrative claims for failure to exhaust administrative remedies. *Abrons*, 370 N.C. at 447, 810 S.E.2d at 228.

## II. Defamation claim

¶ 9 We next turn to Corry's claim for defamation and accompanying request for punitive damages and other relief.

¶ 10 "It is well settled that pursuant to the doctrine of sovereign immunity, the State is immune from suit absent waiver of immunity." *White v. Trew*, 366 N.C. 360, 363, 736 S.E.2d 166, 168 (2013). Sovereign immunity "extends to state agencies" as well. *Ray v. N.C. Dep't of Transp.*, 366 N.C. 1, 4, 727 S.E.2d 675, 678 (2012). Through the State Tort Claims Act, the State and its agencies have waived sovereign immunity for certain tort claims brought in the North Carolina Industrial Commission. *White*, 366 N.C. at 363, 736 S.E.2d at 168. But, importantly, that waiver does not extend to intentional torts such as defamation. *Id.*

¶ 11 Corry has not identified any other legal basis to find a waiver of the State's sovereign immunity for the defamation claim she asserted in the trial court.

Accordingly, the trial court properly dismissed that claim as barred by sovereign immunity. Because the court dismissed that affirmative claim, it properly dismissed the corresponding claims for related damages as well.

**Conclusion**

¶ 12

We affirm the trial court's order.

AFFIRMED.

Judges COLLINS and CARPENTER concur.

Report per Rule 30(e).