



Court Considers Claim Filed Under the Political Subdivisions Tort Claims Act (PSTCA)

In *Hedglin v. Esch*, 25 Neb. App. 306, ---- N.W.2d (2017), the plaintiff had filed a claim under the Political Subdivisions Tort Claims Act (PSTCA). The claim against the City was for “personal injury, mental anguish, and humiliation” she suffered due to the actions of a police officer, who was acting in the scope of his employment for the City.

The district court dismissed her complaint for failing to state a claim upon which relief could be granted. She filed her complaint prior to the City Council making a final disposition. The complaint alleged a cause of action for “Defamation: False Light/Invasion of Privacy” and contained allegations that were essentially the same as those raised in her tort claim. The Court of Appeals affirmed the district court’s decision.

Subsequently, the claimant appealed the district court’s decision. In response to the complaint, the City and the employee (collectively the defendants) filed a motion to dismiss the complaint pursuant to Neb. Ct. R. Pldg. § 6-1112(b)(6). The motion asserted that the complaint failed to state a claim upon which relief could be granted, because the complainant failed to comply with the provisions of the PSTCA, specifically § 13-906, and therefore, the lawsuit was premature and not permitted by the PSTCA. After holding a hearing on the motion, the district court agreed and dismissed the complaint.

The PSTCA specifies various nonjudicial procedures which have been characterized as conditions precedent to the filing of a lawsuit, and a claimant’s failure to follow these procedures may be asserted as an affirmative defense in an action brought under the PSTCA. Under § 13-906 of the PSTCA, a claimant must file a tort claim with the governing body of the political subdivision before filing suit. If the governing body has not made final disposition of the claim within 6 months after it is filed, the claimant may withdraw the claim and file suit. If, however, the claim is withdrawn before expiration of the 6-month time period specified in § 13-906, the result is the failure of a condition precedent to the filing of a lawsuit under the PSTCA. Because compliance with the statutory time limits set forth in § 13-906 can be determined with precision, the doctrine of substantial compliance has no application. The language of § 13-906 explicitly provides that no suit can be brought in district court unless 6 months have passed without a resolution of a properly filed claim by the political subdivision. (*Citations omitted.*)

The Court of Appeals concluded that the motion to dismiss should be treated as a motion for summary judgment, because evidence was received in support of the motion. The Court further

found that the PSTCA governed the action and that because the claimant prematurely withdrew her tort claim, she failed to meet a condition precedent to filing the present lawsuit. Accordingly, the district court did not err in granting the motion for summary judgment and the district court's decision was affirmed.

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