

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

BENNIE L. MILLER,)	
)	
Plaintiff,)	
)	
vs.)	No. 06-2808 V
)	
STATE OF TENNESSEE and)	
DEPARTMENT OF CHILDREN'S)	
SERVICES,)	
)	
Defendants.)	

ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL DISMISSAL

Before the court is the May 23, 2007 motion of the defendants, the State of Tennessee and the Department of Children's Services¹ (collectively "the State"), pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure, for partial dismissal of the complaint of the plaintiff, Bennie L. Miller. Specifically, the State seeks to dismiss Miller's claim for compensatory and punitive damages under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12111-12117, for lack of subject matter jurisdiction, and Miller's claim under the Tennessee Human Rights Act ("THRA"), TENN. CODE ANN. § 4-21-101 *et seq.*, for lack of subject matter jurisdiction and for failure to state a claim upon which relief can

¹ The Department of Children's Services was created by the state. TENN. CODE ANN. § 37-5-102. It is undisputed that the Department of Children's Services is a state agency and is an arm of the state for Eleventh Amendment purposes.

be granted. For the reasons that follow, the motion is granted.

PROCEDURAL AND FACTUAL BACKGROUND

Miller filed this federal action on November 27, 2006, alleging in his complaint that the defendants violated his rights under Titles I and II of the ADA (Count I) and under the THRA (Count II). He seeks compensatory and punitive damages and injunctive relief in both counts. At the time the State filed the present motion to dismiss, the parties consented to having the United States Magistrate Judge conduct all proceedings in this case, including trial and entry of judgment. For whatever reason, the order referring the case to the United States Magistrate Judge was not immediately docketed. Thereafter, on September 7, 2007, U.S. District Judge Jon P. McCalla held a hearing on the motion to dismiss. At the hearing, Miller conceded that the State has immunity from monetary damages under Title I of the ADA. On December 21, 2007, Judge McCalla referred the case to the United States Magistrate Judge to conduct all proceedings, including entry of judgment.

The court has received and reviewed the transcript of the hearing before Judge McCalla and has determined that a new hearing is unnecessary. The court will therefore rule on the pending motion on the briefs of the parties.

ANALYSIS

The State seeks dismissal of Miller's claim for monetary

damages under Title I of the ADA for lack of subject matter jurisdiction and Miller's entire claim under the THRA for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. When a defendant challenges the court's subject matter jurisdiction by a motion to dismiss, the plaintiff has the burden to establish that the court has proper jurisdiction. *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990); *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 915 (6th Cir. 1986).

A. Monetary Damages Claims Under Title I of the ADA - Count I

Miller has conceded that his claims for monetary damages against the State are barred by the Eleventh Amendment's sovereign immunity. See *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001) (holding that states are immune to suits for money damages under Title I of the ADA). Accordingly, Miller's claims for compensatory and punitive damages against the State under Title I of the ADA as set forth in Count I of his complaint are dismissed. Miller's claim for injunctive relief under the ADA as set forth in Count I remains.

B. Claims Under the THRA - Count II

The State also argues that Miller's claims against it under the THRA are barred by Eleventh Amendment sovereign immunity. (Defs.' Mem. 5-8.) In his response in opposition to the State's motion, Miller insists that the State waived its sovereign immunity

and consented to suit in federal court when it adopted the THRA.

The Eleventh Amendment to the United States Constitution, viewed as the embodiment of the sovereign immunity doctrine, states that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI; *Pennhurst State Sch. and Hosp. v. Halderman*, 465 U.S. 89, 98–99 (1984) (quoting *Ex parte State of New York No. 1*, 256 U.S. 490, 497 (1921)). The Supreme Court has construed the Eleventh Amendment to also grant states immunity from suits in federal court filed by its own citizens if the state has not consented to such suits. *Pennhurst*, 465 U.S. at 98; see also *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996) (citing *Hans v. Louisiana*, 134 U.S. 1 (1890)). The Eleventh Amendment applies to states as well as arms of the state, and it bars suits against the states for all types of relief. See *Pennhurst*, 465 U.S. at 100. The fundamental principle of sovereign immunity is a Constitutional limitation on federal judicial power under Article III of the Constitution: federal courts do not have authority to entertain suits brought against a state by a private citizen. *Pennhurst*, 465 U.S. at 98; *Seminole Tribe*, 517 U.S. at 54.

There are, however, some exceptions to this immunity, namely where a state consents to suit in federal court and where Congress

has abrogated the Eleventh Amendment immunity. *Pennhurst*, 465 U.S. at 99. A state's consent to suit must be "unequivocally expressed." *Id.* The state must make a "clear declaration" of its intent to submit to the jurisdiction of federal court. *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47, 54 (1944). The fact that the state has waived immunity from suit in its own courts is not a waiver of Eleventh Amendment immunity in the federal courts. *Pennhurst*, 465 U.S. at 99 n. 9; *Ohio v. Madeline Marie Nursing Homes*, 694 F.2d 449, 460 (6th Cir. 1982).

There is no express consent by the State within the THRA to suit in federal court for claims under the THRA. The THRA provides three ways to pursue a claim under the THRA: (1) the filing of an administrative complaint with the Tennessee Human Rights Commission, TENN. CODE ANN. § 4-21-302; (2) the filing of an appeal petition of the Commission's decision to circuit or chancery court, TENN. CODE ANN. § 4-21-307(a); or (3) the filing of a civil cause of action in circuit or chancery court, TENN. CODE ANN. § 4-21-311. *Rogers*, 798 F.2d at 915. Suit in federal court is not one of the approved ways under the statute of bringing a THRA claim.

Miller relies on the combination of two separate provisions of the THRA in support of his position that the State waived immunity from suits in federal courts when it adopted the THRA. The THRA defines an employer to include "the state, or any political or civil subdivision thereof." TENN. CODE ANN. § 4-21-102(4). The

THRA states its purpose is "to provide for execution within Tennessee of the policies embodied in federal Civil Rights Acts of 1964, 1968, and 1972." TENN. CODE ANN. § 4-21-101(a)(1). Because the THRA is patterned after Title VII of the Civil Rights Act and Congress has abrogated state sovereign immunity for Title VII claims, Miller concludes, therefore, that in light of these two provisions of the THRA, "the courts and legislatures intended to waive immunity for the State of Tennessee in cases involving discrimination." (Pl.'s Mem. in Dispute of Motion 4.)

Miller's argument is too attenuated to amount to a clear declaration or unequivocal expression of the State's intent to be sued in federal court. Other courts have found that the State of Tennessee is immune from suit in federal court for claims under the THRA. See *Malone v. Tennessee*, No. 03-2869B, 2005 WL 2671343, at *3 (W.D. Tenn., Oct. 19, 2005); *Boyd v. Tenn. State Univ.*, 848 F. Supp. 111, 114-15 (M.D. Tenn. 1994) (dismissing plaintiff's pendent state claim under the THRA for lack of jurisdiction). Furthermore, the court's supplemental jurisdiction under 28 U.S.C. § 1367 does not extend to claims against non-consenting state defendants. *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533, 542 (2002). The court finds, therefore, that Miller has not met his burden of establishing jurisdiction in federal court, and Miller's claim under the THRA set forth in Count II of his complaint must be dismissed.

CONCLUSION

The State's motion for partial dismissal is granted. Miller's claims for compensatory and punitive damages against the State under Title I of the ADA as set forth in Count I of his complaint and his claims under the THRA set forth in Count II of his complaint are dismissed.

IT IS SO ORDERED this 16th day of January, 2008.

s/ Diane K. Vescovo _____
DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE