

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10285
Non-Argument Calendar

D.C. Docket No. 1:17-cv-02980-LMM

DELORES NEELY,

Plaintiff - Appellant,

versus

GEORGIA DEPARTMENT OF HUMAN RESOURCES,
Robyn A. Crittenden, CEO,

Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(December 21, 2018)

Before WILLIAM PRYOR, JORDAN, and ANDERSON, Circuit Judges.

PER CURIAM:

**App. A7
Petition For A 'Rehearing'
Judgment
Dec. 21, 2018**

Delores Neely filed this pro se 42 U.S.C. § 1983 action against the Georgia Department of Human Resources. She alleges several violations of federal law by the Department against herself and her son, Jerel Jay Neely, and seeks monetary damages. But because the Department is a state agency, and the state has not consented to the suit or waived its sovereign immunity, the district court dismissed her claim as barred by the Eleventh Amendment to the U.S. Constitution. After review, we affirm the district court's dismissal.

I

In 1995, Ms. Neely lived in a two-bedroom apartment with her son. The apartment was subsidized by the Atlanta Housing Authority, and Ms. Neely relied on child support payments to make her rent. She alleges that she did not receive those payments for three months, and her apartment's leasing office refused to accept a payment directly from her son's father. Ms. Neely alleges that she told the apartment representatives and the Atlanta Housing Authority that she would commence with a "grievance process," and soon after the apartment evicted her and threw her food and possessions on the front and back lawns.

After the eviction, Ms. Neely and her son lived in a house with several boarders. After an altercation with another boarder who Ms. Neely suspected of engaging in suspicious activity with her son in a bathroom, Ms. Neely was detained

by the police. Her son was soon after placed in foster care by the Dekalb County Juvenile Court and Division of Family and Children Services.

Ms. Neely alleges that the officials with the Dekalb Juvenile Court then prolonged the custody processes in bad faith. This delay, she alleges, exacerbated her son's preexisting physical and mental difficulties. She also alleges two other incidents of improper behavior: (1) an incident where a Georgia state officer removed her son by transporting him in a police car instead of an ambulance, even though he was sick and injured; and (2) an incident with her son's new foster parents where Jerel was instructed not to call Ms. Neely his mother.

Ms. Neely filed suit against the Georgia Department of Human Resources. Her complaint included allegations against the Fulton and Dekalb County Departments of Family & Children Services, and the Fulton and Dekalb County Departments of Child Support Enforcement & Recovery. She alleged several claims of unconstitutional deprivations of due process relating to her son and their eviction, as well as invasion of privacy and false arrest. She requested injunctive relief "to be measured in dollar amounts" of \$3,944,000 plus attorneys' fees.

The Department moved to dismiss the suit for failing to raise a claim under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). It argued, among other things, that the district court did not have subject matter jurisdiction over the case because the Department is a state agency and thus entitled to sovereign immunity

under the Eleventh Amendment. The district court agreed and granted the defendant's motion to dismiss. Ms. Neely appealed.

II

We review whether an entity is entitled to sovereign immunity under the Eleventh Amendment *de novo*. *See Nichols v. Alabama State Bar*, 815 F.3d 726, 732 n.4 (11th Cir. 2016). The Eleventh Amendment prevents private individuals from suing states—and those agencies and departments that are considered “arms of the state”—for monetary damages, unless the state consents to be sued, has waived its immunity, or Congress has abrogated the state’s immunity. *Id.* at 731.

Ms. Neely does not contest that the Department is an arm of the state. Instead, she argues that the Department “voluntar[ily] and involuntar[ily]” waived its sovereign immunity by engaging in “unconstitutional acts and practices.” Appellant’s Initial Br. at 1; Appellant’s Reply Br. at 1.

But “waiver” in this context does not mean that the government has sacrificed its right to sovereign immunity by engaging in unconstitutional acts. Sovereign immunity is a privilege that the state may choose to give up—it cannot be done involuntarily. *See Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 675 (1999). And there is no evidence here that Georgia or the Department have chosen to waive their sovereign immunity. Nor has Congress

abrogated Eleventh Amendment immunity for § 1983 claims. *See Nichols*, 815 F.3d at 731. Therefore, the Department is entitled to sovereign immunity.

V

The District Court properly dismissed this action for lack of subject matter jurisdiction because the claims are barred by the Eleventh Amendment. Accordingly, we affirm.

AFFIRMED.

App. A7
'Rehearing'
Judgment
Dec. 21, 2018

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10285-GG

DELORES NEELY,

Plaintiff - Appellant,

versus

GEORGIA DEPARTMENT OF HUMAN RESOURCES,
Robyn A. Crittenden, CEO,

Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

BEFORE: WILLIAM PRYOR, JORDAN, and ANDERSON, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by the Appellant is DENIED.

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE

ORD-41

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App. A5
'Rehearing'
Letter - Order
March 8, 2019

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DELORES NEELY,

Plaintiff,

vs.

GEORGIA DEPARTMENT OF HUMAN
RESOURCES,

Defendant.

CIVIL ACTION FILE

NO. 1:17-cv-2980-LMM

JUDGMENT

This action having come before the court, Honorable Leigh Martin May, United States District Judge, for consideration of Defendant's Motion to Dismiss, and the court having granted said motion, it is

Ordered and Adjudged that the plaintiff take nothing; that the defendant recover its costs of this action, and the action be, and the same hereby, is **dismissed**.

Dated at Atlanta, Georgia, this 19th day of December, 2017.

JAMES N. HATTEN
CLERK OF COURT

By: s/ Harry F. Martin
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
December 19, 2017
James N. Hatten
Clerk of Court

By: s/ Harry F. Martin
Deputy Clerk