

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 700

September Term, 2022

KERRICK THOMAS

v.

MARYLAND DEPARTMENT OF HEALTH
AND MENTAL HYGIENE POLICE

Friedman,
Albright,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 7, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Kerrick Thomas, appellant, was hired by the Maryland Department of Health and Mental Hygiene Police, appellee, as a Police Officer II at the Secure Evaluation & Therapeutic Treatment Unit in Sykesville. In January 2017, appellee terminated appellant from his employment, alleging that he had not obtained a certification from the Maryland Police Training Commission (the Commission) or a special police commission, both of which were requirements for the job. Appellant filed three separate lawsuits against appellee, all of which were dismissed after the parties entered into a written settlement agreement in 2018. That settlement agreement required appellee to pay appellant 20 weeks of back pay and assist appellant “with finding and gaining admission to the first available qualifying academy with a vacancy, which will be the academy that [appellant] must gain admission to and graduate from to maintain his employment[.]” The agreement further provided that if appellant did not gain admission into an academy and graduate within one year he would resign within 10 days, otherwise he would be subject to termination as a civilian employee.

Thereafter, appellee filed an Application for Certification with the Commission, requesting that appellant be certified as a police officer. The Commission denied the request based on “findings during the background investigation.” It also denied appellee’s subsequent request for a waiver of certification standards.¹ After the Commission refused to certify appellant as a police officer, appellee asked appellant to resign under the terms

¹ Appellant filed a petition for judicial review of the Commission’s decision, which was ultimately dismissed by the circuit court. We affirmed that dismissal on direct appeal. *In the Matter of Kerrick Thomas*, No. 632, Sept. Term 2021 (filed Apr. 6, 2022).

of the settlement agreement. Appellant refused, and appellee terminated him effective March 1, 2019.

On March 1, 2022, appellant filed a complaint for breach of contract against appellee, claiming that it had breached the settlement agreement by not assisting him with obtaining admission to a qualified academy and by terminating him in March 2019. Appellee filed a motion to dismiss, asserting that it was immune from suit because appellant had not filed his complaint within one year from the date of the alleged breach of contract. Appellant did not file a response. Thereafter, the court granted appellee’s motion to dismiss. On appeal, appellant contends that the court erred in dismissing his complaint, and in doing so without holding a hearing. For the reasons that follow, we shall affirm.

The common law doctrine of sovereign immunity precludes litigants from suing the State and its employees, absent the State’s consent. *Magnetti v. Univ. of Md.*, 402 Md. 548, 557 (2007); *Condon v. Univ. of Md.*, 332 Md. 481, 492 (1993). As an agency of the State, appellee is entitled to the same sovereign immunity. *See Magnetti*, 402 Md. at 557; *Condon*, 332 Md. at 492. The General Assembly has enacted a limited waiver of the State’s sovereign immunity in contract, if and only if, a plaintiff satisfies various conditions precedent. State Gov’t §§ 12-201 to 204. Relevant to this appeal, “the claimant [must file] suit within 1 year after the later of (1) the date on which the claim arose; or (2) the completion of the contract that gives rise to the claim.” *Id.* § 12-202. Compliance with this requirement is not a mere statute of limitations but a condition precedent to filing an action for breach of contract against the State. *State v. Sharafeldin*, 382 Md. 129, 148 (2004).

Here, appellant’s breach of contract claim arose on March 1, 2019, when appellee allegedly fired him in violation of the settlement agreement. Appellant, however, did not file suit until March 1, 2022, three years later. Consequently, appellant’s civil action was barred by the doctrine of sovereign immunity.

In claiming otherwise, appellant asserts that Section 5-101 of the Courts and Judicial Proceedings Article establishes a three-year statute of limitations for breach of contract claims. However, Section 5-101 states that the three-year statute of limitations only applies “unless another provision of the Code provides a different period of time within which an action shall be commenced.” And Section 12-202 of the State Government Article provides a different time period within which a breach of contract action against the State must be filed – one year. Therefore, the three-year statute of limitations is inapplicable.

Alternatively, appellant asserts that the time to file his complaint was tolled because of Administrative Orders issued at the outset of the COVID-19 pandemic, which tolled the statutes of limitations for certain actions from March 16, 2020, through July 20, 2020. However, even if we assume that those Administrative Orders would have tolled the one-year deadline to file a breach of contract action against the State, which is a condition precedent and not a statute of limitations, that would not assist appellant, because his breach of contract action was required to be filed by March 1, 2020, and the first Administrative Order was not issued until March 16, 2020, fifteen days later.

Finally, appellant asserts that the court erred in granting the motion to dismiss without holding a hearing. However, no hearing was required because appellant did not file a response requesting a hearing. *See* Maryland Rule 2-311(f) (stating that a “party

desiring a hearing on a motion” must “request the hearing” in his response). Consequently, we hold that the court did not err in granting appellee’s motion to dismiss the complaint.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**