

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 22-CV-1534

STUDENT TRANSPORTATION OF
VERMONT, INC.,
Plaintiff,

v.

WANDA MINOLI, ANNE YOUNG, and
DEPARTMENT OF MOTOR VEHICLES,
Defendants.

RULING ON DEFENDANTS' MOTION TO DISMISS

This case is the second filed arising out of disputes between Plaintiff Student Transportation of Vermont, Inc. (STV) and the Department of Motor Vehicles (DMV) over diesel fuel tax refunds. For qualified taxpayers, of which STV presumably is one, diesel fuel tax paid at the pump is refundable, 23 V.S.A. § 3020. In the first case, STV represents that the DMV audited and assessed it for improper refunds requested through 2018, it appealed administratively, and then it sought review here. *STV v. DMV*, No. 401-12-20 Wncv (STV1). That litigation is ongoing. The parties generally agree that the dispute in *STV1* is over methodology—how the refund is calculated.

In this case, STV represents that the DMV has refused to act on its subsequent refund requests for 2019–2021. Its principal, and palpable, claim is for relief in the nature of mandamus. It wants the DMV to act on its 2019–2021 refund requests so that it can receive its refund, challenge any denial, or otherwise respond to whatever action the DMV may take. STV also claims violations of its state and federal due process rights against DMV Commercial Operations Supervisor and Section Chief Anne Young, DMV Commissioner Wanda Minoli, and the State. At this point in the litigation, the due process claims are murky, especially insofar as the apparent damages presumably would relate to the DMV's retention of refunds that it ought to have granted while STV expressly claims no current right to the refunds in this case.¹

Defendants have filed a motion to dismiss all claims. They argue that: (a) STV has failed to exhaust administrative remedies; (b) mandamus does not apply because the DMV has discretion to determine how to calculate diesel tax refunds and to delay acting on requests for refunds; (c) STV is inappropriately using § 1983 (the federal due process claims) to get tax refunds; (d) Ms. Minoli is not alleged to have had any involvement in the issues in this case; (e) Ms. Young has qualified immunity; (f) all due process claims should

¹ In briefing, STV has made clear that it seeks no monetary damages from the State or from Ms. Minoli vis-à-vis its state constitutional claims.

be dismissed because STV failed to pursue an available administrative remedy; (g) Ms. Minoli has absolute immunity from the state constitutional claims; and (h) Ms. Young has qualified immunity from the state constitutional claims.

(a) STV has failed to exhaust administrative remedies

(f) All due process claims should be dismissed because STV had an available administrative remedy

The State argues that STV brought this action prematurely, during conversations between the parties' counsel as to why the DMV was refusing to process its current refund requests, and it never sought an administrative remedy first. The State argues that an administrative remedy is available in these circumstances at 23 V.S.A. § 3021(b)(4). STV responds that no administrative remedy was available.

Section 3021 describes the "general powers" of the DMV commissioner. Those powers include the ability to "Hold hearings, cause depositions to be taken, administer oaths, and examine under oath any person relating to his or her business or relating to any matter under this chapter." 23 V.S.A. § 3021(b)(4). The State argues that the commissioner's unbridled discretion to hold a hearing whenever she deems it proper itself is an administrative remedy that was available to STV. In other words, the State argues that, even though the DMV was expressly refusing to act, STV could have informally requested a hearing before the commissioner on whether the DMV should act, and despite the DMV's already asserted position on the matter, the commissioner might have chosen to hold a hearing.

The court fails to see how the commissioner's unilateral discretion to hold a hearing whenever she wants somehow translates into an available administrative process for exhaustion purposes. No statute gives STV any right to request such a hearing or requires the commissioner to hold such a hearing. Had STV *informally* requested such a hearing, the commissioner would have been as free to not respond at all as she would have been to say no. The exhaustion doctrine "serves the dual purposes of protecting the authority of the administrative agency and promoting judicial efficiency." *Mullinnex v. Menard*, 2020 VT 33, ¶ 14, 212 Vt. 432 (citation omitted). The State's argument turns the doctrine into a pointless obstacle to access to the courts that serves neither purpose. No administrative remedy was available to STV in the circumstances of this case.

(b) Mandamus does not apply because the DMV has discretion to determine how to calculate diesel tax refunds or to delay in the circumstances of this case

The State argues that relief in the nature of mandamus cannot be appropriate in this case because it only applies to ministerial duties, which do not contemplate exercises of discretion. The State argues that the diesel tax statutes do not mandate how refunds are properly calculated and thus leaves the matter to the DMV's discretion. This may be so, but it has no apparent bearing on STV's claim, which does not seek to challenge methodology but rather seeks to compel the DMV to simply act on its refund requests.

The State also argues that the DMV has discretion to not process STV's refund requests. It cites to no source of such discretion, but it explains its position as follows. As explicated thus far, the DMV purports to be delaying action on STV's refund requests, not

refusing them altogether. It is delaying, it says, because it believes, based on evidence it has discovered in STV1, that STV does not maintain its records in a fashion that would permit the refunds that generated the dispute in this case.² It thus takes the position it will not act on the current requests until STV1 is ultimately resolved. Assuming it is doing this in good faith, this presumably would be because something in STV1 is anticipated to clarify something that will have some impact on the ultimate disposition of the subsequent refund requests.

As far as the record goes, the State itself appears to be describing an administrative refusal to act that may well be subject to mandamus relief rather than delay (reasonable or not) that may not be. In this context, a refusal to act typically refers to a “choice of inaction.” 7 West’s Fed. Admin. Prac. § 8148. “Delay,” on the other hand, “is not the exercise of discretion or any other type of decisionmaking, but rather is the result of agency failures.” *Id.* The DMV is alleged to be choosing to do nothing, it apparently agrees with that characterization of the circumstances, and it has come forward with no source of authority for that inaction; certainly, none is apparent anywhere in the diesel fuel tax statutes, 23 V.S.A. §§ 3000–3031. Meanwhile, the prejudice to STV is obvious. The longer the DMV does nothing, the longer it does not have access to its refunds or any ability to challenge their denial. There is no basis to dismiss the claim for relief in the nature of mandamus.

(c) STV is inappropriately using § 1983 to get tax refund

The State argues that § 1983 cannot be used to compel the DMV to give STV a tax refund. This argument is foreclosed by STV’s clearly asserted position that it is not claiming any tax refund in this case.

(d) No personal involvement of Ms. Wanda Minoli for purposes of the federal due process claims

The State argues that the federal due process claims against Ms. Minoli should be dismissed because there are no allegations in the complaint to the effect that Ms. Minoli was “personally involved” in the claimed due process violations. See Handbook of Sec. 1983 Litig. § 1.01 (“A finding of liability in a § 1983 action requires, as a matter of law, that the defendant be the proximate cause of the § 1983 injury.”); see also *id.* § 8.01 (“A plaintiff must portray specific conduct by state officials which violates some constitutional right in order to state a § 1983 claim against the officials.”). In opposition to dismissal, STV points to a single allegation in the complaint to the effect that Ms. Minoli, as head of the agency, oversaw everything. That allegation is exactly the sort of wholly conclusory allegation that the court does not accept as true for dismissal purposes. See *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 10, 184 Vt. 1. Ms. Minoli is entitled to dismissal of these claims.

(e) Ms. Young has qualified immunity

(h) Ms. Young has qualified immunity from the state constitutional claims.

Ms. Young argues that the claims against her should be dismissed on qualified

² The State offers no explanation as to why the DMV would not simply deny the refund requests if it believes STV is not entitled to them.

immunity grounds because she did not violate well settled law, was acting within the scope of her employment, and merely exercised her discretion. As far as the pleadings go, Ms. Young appears to be the principal DMV actor regarding the refusal to process the refund requests, and the source of her discretion remains elusive. STV argues that this matter would be better addressed on summary judgment (i.e., after discovery). It also argues that qualified immunity typically does not protect a state actor exercising a ministerial duty only. These matters will be better addressed once the facts have been developed and when the nature of the claims against Ms. Young are clearer.

(g) *Ms. Minoli has absolute immunity from the state constitutional claims*

Ms. Minoli argues that, as commissioner of the DMV, she has absolute immunity from the state constitutional claims. STV characterizes this argument as a “red herring.” It readily accepts that she is immune from state law *damages* claims. It explains that official immunity does not extend to claims for injunctive relief, however. The State summarily says the opposite in its reply but cites no authority in support. Generally, official immunity protects against liability for damages, not injunctive relief. See, e.g., *Greenawalt v. Indiana Dept. of Corrections*, 397 F.3d 587, 589 (7th Cir. 2005) (“The judge was mistaken about the defendants’ immunity from the injunctive relief sought, because the defense of official immunity is applicable only to liability for damages.”). The court has found no authority in Vermont to the contrary.

Order

For the foregoing reasons, Defendants’ motion to dismiss is granted as to the federal due process claims against Ms. Minoli; otherwise, it is denied.

SO ORDERED this 28th day of October, 2022.



Robert A. Mello
Superior Judge