

**FOURTH DIVISION
MCFADDEN, P. J.,
WATKINS and PADGETT, JJ.**

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September 2, 2026

In the Court of Appeals of Georgia

A26A1095. GEORGIA DEPARTMENT OF CORRECTIONS v.
HAGINS.

MCFADDEN, Presiding Judge.

The Georgia Department of Corrections appeals from the order denying its motion to dismiss plaintiff Deshonda Hagins's complaint for lack of subject-matter jurisdiction because of sovereign immunity and for failure to state a claim. We hold that although Hagins has met her burden of showing a waiver of sovereign immunity, she has not stated a claim upon which relief may be granted. So we reverse.

1. Background

After her daughter was killed while working in the kitchen of Smith State Prison, Hagins filed this complaint against the department, alleging breach of contract. Hagins alleged that her daughter, Aureon Grace, an employee of Aramark

Correctional Services, LLC, was shot and killed by an inmate while she was working in the prison kitchen. She alleged that Aramark had entered a contract with the department under which Aramark agreed to provide institutional food services within Smith State Prison and that Grace was a third-party beneficiary of this contract. She alleged that the department breached the contract in multiple ways, including by failing to provide correctional-officer supervision in the kitchen, which enabled the shooter to enter and kill Grace; by allowing unrestricted inmate access to the kitchen; by failing to respond to warnings about the presence of a firearm in the prison; and by permitting correctional officers to traffic contraband in the prison.

The department moved to dismiss the complaint, the trial court denied the motion, and this appeal followed.

2. The direct appeal is proper

As an initial matter, we hold that, contrary to Hagins's argument otherwise, the department was entitled to file this direct appeal under OCGA § 5-6-34(a)(15). That paragraph provides that appeals may be taken from "[a]ll judgments, orders, or rulings in civil actions granting or denying or refusing to grant or deny immunity to one or more parties based upon sovereign ... immunity[.]" The department moved to dismiss

Hagins’s complaint on the ground that it had not waived sovereign immunity, among other reasons. The trial court denied the motion in an order that effectively refused to grant immunity, and the department filed this appeal. The appeal is properly before us.

3. Sovereign immunity

The department argues that Hagins has not met her burden of showing a waiver of sovereign immunity. See *McBrayer v. Scarbrough*, 317 Ga. 387, 392(2)(a) (893 SE2d 660) (2023) (“[T]he burden of demonstrating a waiver of sovereign immunity rests upon the party asserting it.” (quotation marks omitted)). We disagree.

Ga. Const. Art. I, § II, Para. IX(c) waives “[t]he state’s defense of sovereign immunity ... as to any action ex contractu for the breach of any written contract ... entered into by the state or its departments and agencies.” See also OCGA § 50-21-1(a) (“The defense of sovereign immunity is waived as to any action ex contractu for the breach of any written contract ... entered into by the state, departments and agencies of the state, and state authorities.”).

The department argues that Hagins cannot avail herself of this waiver because neither she nor Grace was an intended third-party beneficiary of the contract. Hagins

counters that “because this case alleges breach of written contractual obligations owed by” the department, sovereign immunity is waived, and whether Grace was a third-party beneficiary of the contract is a separate issue governed by contract law. We agree.

“[T]he plain language of the constitutional waiver of the [s]tate’s sovereign immunity in the case of a suit for breach of a written contract entered into by the [s]tate expressly addresses the ‘action’ itself, not the party bringing the action.” *State Dep’t of Corr. v. Developers Sur. & Indemn. Co.*, 295 Ga. 741, 745 (763 SE2d 868) (2014). See also *Chattanooga-Hamilton County Hosp. Auth. v. Walker County*, 702 Fed. Appx. 854, 856(II)(B) (11th Cir. 2017) (“By entering into [a contract], Walker County waived the defense of sovereign immunity for any breach of the [contract] for which it could be held liable, including for breaches alleged by third parties.”) (citation modified).

The text of the constitutional waiver of sovereign immunity and its implementing statute plainly waives sovereign immunity as to a particular cause of action: breach of a written contract. Ga. Const. Art. I, § II, Para. IX(c); OCGA § 50-21-1. Indeed, the only thing Georgia law requires a party to show in order to

establish that sovereign immunity has been waived is “that the contract sought to be enforced is in writing and contains all the terms necessary to constitute a valid contract.” *State of Ga. v. Federal Def. Program*, 315 Ga. 319, 327(3) (882 SE2d 257) (2022). Hagins has met her burden of showing a waiver of sovereign immunity.

4. Third-party beneficiary

The department argues that, assuming sovereign immunity is waived, the trial court erred by denying its motion to dismiss for failure to state a claim because Grace was not a third party beneficiary of the contract, so Hagins lacked standing to enforce it. We agree. Nothing in the contract shows that Aramark and the department intended Grace to be a third-party beneficiary.

A motion to dismiss for failure to state a claim upon which relief may be granted should not be sustained unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought.

Williams v. DeKalb County, 308 Ga. 265, 270(2) (840 SE2d 423) (2020). We review a ruling on such a motion de novo, “accepting as true all well-pled material allegations

in the complaint and resolving any doubts in favor of the plaintiff.” *Id.* (citation modified). “In assessing whether a claim should be dismissed, a court may consider exhibits attached to and incorporated into the complaint and answer. ... To the extent there are inconsistencies between the allegations in the complaint and exhibits attached to the complaint, the exhibits control.” *Love v. Fulton County Bd. of Tax Assessors*, 311 Ga. 682, 683-84 (859 SE2d 33) (2021) (citation modified), disapproved in part on other grounds by *Bray v. Watkins*, 317 Ga. 703, 705 (895 SE2d 282) (2023).

It is undisputed that the department and Aramark entered a written contract, and that Grace was not a party to that contract. However, “[t]he beneficiary of a contract made between other parties for his benefit may maintain an action against the promisor on the contract.” OCGA § 9-2-20(b). “In order for a third party to have standing to enforce a contract under OCGA § 9-2-20(b) it must clearly appear from the contract that it was *intended* for his benefit. The mere fact that he would benefit from performance of the agreement is not alone sufficient.” *Walls, Inc. v. Atl. Realty Co.*, 186 Ga. App. 389, 391(1) (367 SE2d 278) (1988).

Here, Hagins alleged in her complaint that Grace was an intended beneficiary of the contract because without the department’s agreement to provide safe working

conditions for Aramark employees, Aramark could not have carried out its obligations. Similarly, she argues on appeal that Grace was an intended third-party beneficiary because her presence at the prison was required to perform the services that were the subject of the contract between the department and Aramark.

But the contract clearly states the parties' intent. It provides that "[t]here are no third-party beneficiaries to the [c]ontract", and that "[t]he [c]ontract is intended only to benefit the [s]tate [e]ntity, the [s]tate, and the [c]ontractor." Hagins dismisses this provision as "boilerplate." On the contrary, we hold that the provision is a clear expression of the parties' intent. "The intent of the parties to this particular []contract was to the effect that *no* others benefit from it and this intent could scarcely have been more clearly expressed." *Walls*, 186 Ga. App. at 392(2). Cf. *Estate of Pitts v. City of Atlanta*, 323 Ga. App. 70, 85-86(4)(c) (746 SE2d 698) (2013) (contractual provision stating that purpose was to "benefit all participants involved in the project" expressed the intent to include participant as a beneficiary). "[T]he fact that [Grace was] an employee of one of the parties to the contract, without more, does not evince

the requisite intent to make plaintiff a beneficiary to the contract.” *Burton v. DeKalb County*, 209 Ga. App. 638, 639 (434 SE2d 82) (1993).

Hagins argues that in certain provisions of the contract, the department committed “to implement and follow its own mandatory safety and supervision policies so that civilian food-service workers could safely perform their obligations inside the prison.” But she does not identify such contractual provisions, and our review of the contract has shown none. See *Love*, 311 Ga. at 684 (“To the extent there are inconsistencies between the allegations in the complaint and exhibits attached to the complaint, the exhibits control.”).

Hagins alleged in her complaint and argues on appeal that the contract expressly incorporated the department’s standard operating procedures governing inmate supervision and safety inside food-service areas, but again, she fails to point to such a provision in the contract and we have found none. She argues that the contract and the allegedly incorporated standard operating procedures “regulate inmate movement in and out of the kitchen, require supervision of inmates near civilian staff, restrict access to the kitchen area, mandate officer presence, and govern tool and weapon

control,” all for the benefit of Aramark’s employees, but we see no such provisions in the contract attached to her complaint.

“It is clear that the contract, when read as a whole, was intended to delineate the relative duties and responsibilities of the parties” regarding Aramark’s provision of food services to the prison, and that “any benefit to [Grace] from the ... contract was merely incidental and did not render [her] a third-party beneficiary to the contract.” *Donnalley v. Sterling*, 274 Ga. App. 683, 686(1) (618 SE2d 639) (2005). See also *Gay v. Ga. Dep’t of Corrections*, 270 Ga. App. 17, 22-24(2) (606 SE2d 53) (2004) (inmate on work detail was not a third-party beneficiary of contract between Department of Corrections and Stone Mountain Memorial Association because contractual terms requiring the provision of a safe workplace for inmates were not intended to benefit the inmates, were “better characterized as an acknowledgment of ... general responsibilities than a specific undertaking on behalf of the inmates,” and any benefit to them was incidental). Cf. *Youngblood v. Gwinnett Rockdale Newton Community Svc. Bd.*, 273 Ga. 715, 718(4) (545 SE2d 875) (2001) (case remanded to trial court for consideration of third-party beneficiary claim where at least two written

agreements between county service board and caregiver identified plaintiff as specific individual for whom personal support and residential services would be provided).

For these reasons, we hold that the trial court erred by denying the department's motion to dismiss the complaint for failure to state a claim. See *U. S. Bank, N.A. v. Phillips*, 318 Ga. App. 819, 821-24(1) (734 SE2d 799) (2012) (reversing denial of motion to dismiss for failure to state a claim plaintiff's claim for third-party beneficiary breach of contract).

Judgment reversed. Watkins and Padgett, JJ., concur.