

faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims, which has exclusive, original jurisdiction to determine initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action. ***

[Cite as *McBride v. Richland Corr. Inst.*, 2001-Ohio-6992.]

R.C. 9.86 provides, in part:

*** no officer or employee [of the state] shall be liable in any civil action that arises under the law of this state for damages or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official responsibilities or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner. *** (Emphasis added.)

In *Thomson v. University of Cincinnati College of Medicine* (October 17, 1996), Franklin App. No. 96 API-02260, unreported, at pp. 10-11, the court noted that:

Under R.C. 9.86, an employee who acts in the performance of his duties is immune from liability. However, if the state employee acts manifestly outside the scope of his or her employment or acts with malicious purpose, in bad faith, or in a wanton or reckless manner, the employee will be liable in a court of general jurisdiction. 'It is only where the acts of state employees are motivated by actual malice or other such reasons giving rise to punitive damages that their conduct may be outside the scope of their state employment.' *James H. v. Dept. of Mental Health & Mental Retardation* (1980), 1 Ohio App.3d 60, 61. Even if an employee acts wrongfully, it does not automatically take the act outside the scope of the employee's employment even if the act is unnecessary, unjustified, excessive, or improper. *Thomas v. Ohio Dept. of Rehab. and Corr.* (1988), 48 Ohio App.3d 86. The act must be so divergent that its very character severs the relationship of employer and employee. *Wiebod Studio, Inc. v. Ohio World Restorations, Inc.* (1985), 19 Ohio App.3d 246.

[Cite as *McBride v. Richland Corr. Inst.*, 2001-Ohio-6992.]

Based upon the totality of the evidence presented, the court finds that Toni Brooks, Captain Ralph Harr and Lt. John Summers acted within the scope of their employment with defendant at all times relevant hereto. The court further finds that Toni Brooks, Captain Ralph Harr and Lt. John Summers did not act with malicious purpose, as that term is used in R.C. 2743.02(F) and 9.86, in bad faith, or in a wanton or reckless manner toward plaintiff. Consequently, Toni Brooks, Captain Ralph Harr and Lt. John Summers are entitled to civil immunity pursuant to R.C. 9.86 and R.C. 2743.02(F). Therefore, the courts of common pleas do not have jurisdiction over civil actions against them based upon the allegations in this case. Pursuant to Civ.R. 54(B), this court makes the express determination that there is no just reason for delay. The case will be set for trial in the normal course.

J. WARREN BETTIS
Judge

Entry cc:

Julia M. Bourdeau
Six West Third Street, Suite 200
P.O. Box 268
Mansfield, Ohio 44901-0268

Attorney for Plaintiff

Sally Ann Walters
65 East State St., 16th Fl.
Columbus, Ohio 43215

Assistant Attorney General

HTS/cmd
Filed 12-3-2001
Jr. Vol. 688, Pgs. 97-99
To S.C. reporter 12-19-2001