

evidence or stipulation construed most strongly in the party's favor. ***" See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} R.C. 2743.02(F) reads, in part:

{¶ 5} "A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer's or employee's conduct was manifestly outside the scope of his employment or official responsibilities, or that the officer, or employee acted with malicious purpose, in bad 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. ***"

{¶ 6} R.C. 9.86 states, in part:

{¶ 7} "**** 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.)

{¶ 8} This case arises out of a workplace assault allegedly committed upon plaintiff by Heathcote. In the motion for partial summary judgment defendants argue that Heathcote acted manifestly outside the scope of his employment as a CO when he repeatedly pushed plaintiff and then struck him in the face.

{¶ 9} The motion is directed only to Count Three of the complaint which reads as follows:

{¶ 10} "Defendants are liable for Mr. Heathcote's conduct pursuant to R.C. 2743.02(A) should it be determined that Mr. Heathcote has immunity from this lawsuit."

{¶ 11} The issue of whether Heathcote is entitled to immunity is a question of law. *Chitwood v. University Med. Ctr., Gen. Div.* (May 5, 1998), Franklin App. No. 97API09-1235, citing *Conley v. Shearer*, 64 Ohio St.3d 284, 292, 1992-Ohio-133. However, the question whether he acted within the scope of his employment is one of fact. *Chitwood*, supra, citing *Tschantz v. Ferguson* (1989), 49 Ohio App.3d 9.

{¶ 12} In support of the motion for partial summary judgment defendants submitted a stipulation of facts. Attached thereto are numerous documents containing information relevant to the incident in question. Among those documents are a CO's position description, the Ohio Highway Patrol Report of Investigation, relevant portions of defendants' Standards of Employee Conduct, and the Notice of Disciplinary Action and Summary of Discipline taken against Heathcote.

{¶ 13} Defendants' first motion for summary judgment on this issue was denied because of defendants' failure to comply with Civ.R. 56(E) and the existence of a question of fact concerning immunity. Those deficiencies have been eliminated by the stipulation which contains facts that require a determination that Heathcote acted manifestly outside the scope of employment in regard to his assault of plaintiff. The stipulated facts also demonstrate conclusively that Heathcote acted with malicious purpose, in bad faith, and in a wanton matter. Therefore, the

court finds that Heathcote is not entitled to immunity pursuant to R.C. 9.86 and 2743.02(F).

{¶ 14} Additionally, based upon this finding, the court concludes that defendants cannot be held liable to plaintiff under the theory of respondeat superior, as a matter of law. Defendants' motion for partial summary judgment shall be granted and judgment shall be rendered in favor of defendants as to Count Three of plaintiff's complaint.

IN THE COURT OF CLAIMS OF OHIO
www.cco.state.oh.us

VICTOR GAUL	:	
Plaintiff	:	CASE NO. 2003-09041
v.	:	Judge Joseph T. Clark
	:	<u>JUDGMENT ENTRY</u>
GRAFTON CORRECTIONAL	:	
INSTITUTE, et al.	:	
Defendants	:	
: : : : : : : : : : : : : : : :		

A non-oral hearing was conducted in this case upon defendants' motion for partial summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendants' motion for partial summary judgment is GRANTED and judgment is hereby rendered in favor of defendants as to Count Three of plaintiff's complaint.

Additionally, the court finds that Corrections Officer (CO) Brian Heathcote is not entitled to immunity pursuant to R.C. 9.86 and 2743.02(F). Therefore, the courts of common pleas have

jurisdiction over any action against CO Heathcote arising out of the allegations of plaintiff's complaint.

JOSEPH T. CLARK
Judge

Entry cc:

Robert J. Mann
800 East Broad Street
Columbus, Ohio 43205

Attorney for Plaintiff

Velda K. Hofacker Carr
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendants

LP/cmd
Filed August 12, 2005
To S.C. reporter August 29, 2005