

[Cite as *Lacey v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-5599.]

IN THE COURT OF CLAIMS OF OHIO
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FRANK LACEY :
Plaintiff : CASE NO. 2005-07453-AD
v. : Judge J. Craig Wright
Magistrate Steven A. Larson
OHIO DEPARTMENT OF : DECISION
REHABILITATION AND CORRECTION :
Defendant :
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{¶ 1} On August 15, 2005, defendant filed a motion for judgment on the pleadings pursuant to Civ.R. 12(B)(1) and (6). On October 3, 2005, plaintiff filed a motion to strike and a request for an oral hearing. Upon review, plaintiff’s motion to strike is DENIED.

{¶ 2} A motion for judgment on the pleadings presents only a question of law and may be granted only where no material factual issues exist and when the moving party is entitled to judgment as a matter of law. *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161.

{¶ 3} It is not disputed that plaintiff was an inmate in the custody and control of defendant at defendant’s Lima Correctional Institution (LCI) at all times relevant to this action. In his complaint, plaintiff alleges wrongful imprisonment, false imprisonment, conversion, medical negligence, and invasion of privacy.

{¶ 4} To the extent that plaintiff alleges that his confinement violates rights guaranteed by the Ohio or United States Constitutions, this court lacks jurisdiction to consider those claims. See, e.g, *Thompson v. Southern State Community College*

(June 15, 1989), Franklin App. No. 89AP-114; cf. *National Collegiate Ath. Ass'n. v. Tarkanian* (1988), 488 U.S. 179; *White v. Ohio Dept. of Rehab. and Corr.* (Dec. 22, 1992), Franklin App. No. 92AP-1229. Thus, defendant is entitled to judgment as a matter of law as to plaintiff's constitutional claims.

{¶ 5} Plaintiff claims false imprisonment. The elements of that claim are: (1) expiration of the lawful term of confinement; (2) intentional confinement after the expiration; and (3) knowledge that the privilege initially justifying the confinement no longer exists. *Corder v. Ohio Dept. of Rehab. & Corr.* (1994), 94 Ohio App.3d 315; *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107. However, "an action for false imprisonment cannot be maintained where the wrong complained of is imprisonment in accordance with the judgment or order of a court, unless it appear that such judgment or order is void." *Bennett*, at 111, citing *Diehl v. Friester* (1882), 37 Ohio St. 473, 475. In his complaint, plaintiff admits that he was convicted of aggravated murder in 1980 and sentenced to life in prison. Although plaintiff alleges that the criminal proceedings were riddled with procedural and evidentiary defects, none of these alleged defects are jurisdictional in nature. Plaintiff's conclusory allegation that his conviction is void is not supported by the facts pleaded in the complaint. Consequently, plaintiff's complaint fails to state a claim for false imprisonment.

{¶ 6} Plaintiff also claims wrongful imprisonment. This court does not have jurisdiction to make the initial determination that plaintiff is a wrongfully imprisoned individual. *Bennett*, supra. Plaintiff must first seek that determination from the common pleas court pursuant to R.C. 2743.48. Plaintiff has not alleged that he has obtained the necessary determination. Consequently, the court is without jurisdiction to consider his claim.

{¶ 7} Plaintiff seeks damages from defendant for being placed in "the hole" and for being "illegally" transported to Ohio State University Hospital for a medical evaluation. Inmate claims concerning the conditions of confinement are treated as civil rights actions under Section 1983, Title 42, U.S.Code. See *Baker v. Ohio Dept. of Rehab and Corr.*, 144 Ohio App.3d 740, 2001-Ohio-2553. However, a cause of action under Section 1983, Title 42, U.S.Code may not be brought against the state in the Court of Claims because the state is not a "person" within the meaning of Section 1983. See, e.g., *Jett v. Dallas Indep. School Dist.* (1989), 491 U.S. 701; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App.3d 170; *White v. Chillicothe Correctional Institution* (Dec. 29, 1992), Franklin App. No. 92AP-1230. Moreover, Ohio courts have consistently held that the state cannot be sued for its legislative or judicial functions, or the exercise of an executive function involving a high degree of official discretion or judgment. See *Deavors v. Ohio Dept. of Rehab. and Corr.* (May 20, 1999), Franklin App. No. 98AP-1105. See, also, *Bell v. Wolfish* (1979), 441 U.S. 520, 547.

{¶ 8} Next, plaintiff's complaint asserts that defendant lost or destroyed certain items of personal property that were being stored in the institutional vault while plaintiff was in segregation. When prison authorities obtain possession of an inmate's property, a bailment relationship arises between the correctional facility and the inmate. *Miller v. Ohio Dept. of Rehab. and Corr.* (1985), Court of Claims No. 84-08661-AD; *Buhrow v. Ohio Dept. of Rehab. and Corr.* (1985), Court of Claims No. 85-01562-AD. By virtue of this relationship, defendant must exercise ordinary care in handling and storing the property. *Id.*

{¶ 9} Inasmuch as there is an issue of fact as to whether defendant exercised ordinary care in handling and storing any items

of plaintiff's property in its possession, plaintiff's claims of conversion shall remain pending.

{¶ 10} To the extent that plaintiff alleges medical negligence based upon defendant's decision to confiscate leg weights he used as treatment for an ankle injury, plaintiff's complaint conclusively demonstrates that his action was not timely filed. R.C. 2305.113 requires that a medical claim must be brought within one year of the date the cause of action accrued. Plaintiff alleges that he discovered his leg weights had been confiscated when he was released from segregation on June 16, 2003. Plaintiff's complaint was not filed until June 13, 2005, almost two years after his cause accrued.

{¶ 11} Plaintiff alleges that the unauthorized disclosure of his medical records violated his privacy rights. An inmate's right to privacy is not an absolute right nor necessarily equivalent to that of a non-incarcerated citizen. Indeed, R.C. 5120.21 permits employees of defendant to access prisoners' records. *Wilson v. Ohio Dept. of Rehab. and Corr.* (1991), 73 Ohio App.3d 496. Similarly, Ohio Adm.Code 5120-9-49(F) expressly provides that: "Non-public records of the department may, in the sole discretion of the director, or designee, be made available to *** other persons with a need for access to such documents ***."

{¶ 12} In his complaint, plaintiff alleges that his "confidential medical information was illegally released to prison authorities." Plaintiff has not alleged disclosure to any unauthorized party; moreover, plaintiff invited the disclosure of his prison medical records when he filed several grievances related to his leg weights that placed his medical history and/or condition at issue. See *Wilson*, supra. In short, plaintiff's complaint fails to state a claim for invasion of privacy.

{¶ 13} With respect to plaintiff’s claim that he suffered emotional injuries, plaintiff has failed to allege any conduct on the part of defendant that could be reasonably characterized as extreme and outrageous as that term is defined in the case law. See *Yeager v. Local Union 20, Teamsters* (1983), 6 Ohio St.3d 369, 374-375.

{¶ 14} For the foregoing reasons, defendant’s motion for judgment on the pleadings shall be granted, in part, as to plaintiff’s claims for wrongful imprisonment, false imprisonment, medical negligence, and invasion of privacy. Plaintiff’s complaint does, however, state a claim for relief for the conversion of his personal property.

{¶ 15} Additionally, the court finds that the value of plaintiff’s claim for the conversion of his alarm clock, six missing bags of potato chips, and leg weights is less than or equal to \$2,500 and, accordingly, this case shall be transferred to the administrative docket pursuant to R.C. 2743.10.

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 OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	 : :	 <u>JUDGMENT ENTRY</u>
Defendant	:	
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For the reasons set forth in the decision filed concurrently herewith, defendant’s motion for judgment on the pleadings is

