

does not have jurisdiction over civil rights actions pursuant to 42 U.S.C. 1983 or over claims based solely on the alleged violation of constitutional provisions that require “state action”. *Sherrills v. MCI*, (1983) Case No. 83-05439-AD and *Burkey v. Southern Ohio Correctional Facility*, 38 Ohio App. 3d 170; 528 N.E. 2d 607; 1988 Ohio App. LEXIS 166. The cases stand for the proposition that the State is not a person amenable to suit under Section 1983.

{¶7} Even if plaintiff’s complaint is not a civil rights action, this Court would not have jurisdiction. Ohio Revised Code Section 2743.02 provides that the State waives its immunity from liability and consents to be sued in the Court of Claims. It acknowledges that the State accepts responsibility for the acts and omissions of its employees unless they were manifestly outside the scope of the employee’s duties. Section 2743.03 establishes the Court’s jurisdiction. It confers exclusive, original jurisdiction in all civil actions against the state permitted by the waiver of immunity contained in Section 2743.02. Plaintiff argues that defendant’s employees intentionally injured him. If their actions were deliberate, they would be outside the scope of their authority. An officer’s acts outside the scope of his/her authority are not grounds for finding defendant liable, *Hawley v. SOCF* (1995), 96-05891-AD citing *Thomas v. Dept. of Rehab. And Corr.* (1988), 48 Ohio App. 3d 86, 89; *Szydowski v. Ohio Department of Rehabilitation and Correction*, 70 Ohio App. 3d 303, 607 N.E. 2d 103, 1992 Ohio App. LEXIS 2147; *Flourney v. Dept. of Rehabilitation and Correction* (1987), 84-09365-AD.”;

{¶8} “5) On May 14, 2002, plaintiff filed a motion to amend complaint;

{¶9} “6) In support of the motion to amend complaint, plaintiff stated in pertinent part:

{¶10} “Plaintiff submits with “Good Cause” shown, that even though plaintiff is a layman at law, it is no easy task for the plaintiff to assert specifics in the application of every statute and law that has been accorded a licensed attorney, although plaintiff has attempted to navigate the filing of a proper motion of procedural requirements, of the claims that are contained in the complaint”;

{¶11} “7) Plaintiff filed an amended complaint on May 22, 2002. Plaintiff wishes any allegations concerning the violation of his rights under Title VII of the Federal Civil Rights Act and 42 U.S.C. § 1997 Civil Rights of Institutionalized Persons Act be removed. Plaintiff asserts his

remaining cause of action is as follows:

{¶12} “Plaintiff allegations that are contained within the body of the complaint and supporting documentation of a continuous pattern of violation of civil rights and abuse during the commission of the alleged acts, by certain state officials, who have acted outside the scope of their personal authority to violate mandates set forth by the Ohio Legislature’s and that are strictly enforced by the Supreme Court of Ohio, were punitive in purpose. *State ex rel. Humphrey v. Jago*, 74 Ohio St. 3d 675, 660 N.E. 2d 1206; *Hattie v. Hallack*, (N.D. Ohio 1998), 87 F.Supp. 685, amended 16 F.Supp. 2d 834.”;

{¶13} “8) On November 20, 2002, this court issued an order (Jr. Vol. 725, Pgs. 180-181) granting plaintiff’s request that defendant supply plaintiff with copies of unpublished cases that appear in defendant’s motion to dismiss;

{¶14} “9) On November 27, 2002, defendant filed a response to the court’s order with copies of the unpublished cases cited in defendant’s motion to dismiss.

{¶15} THE COURT CONCLUDES THAT:

{¶16} 1) Nothing in the statute, the Rules, or the Local Rules of the Court of Claims give the deputy clerk the authority to rule on or grant a motion for declaratory judgment. That power is reserved to the judge of the Court of Claims;

{¶17} 2) Defendant is not liable for the intentional tort of one of its agents, when he is acting outside the scope of his employment. *Thomas v. Dept. of Rehab. And Corr.* (1988), 48 Ohio App. 3d 86, 89;

{¶18} 3) The willful and malicious actions of defendant’s agents, as alleged by plaintiff, are outside the scope of their employment and accordingly, the state cannot be held to be responsible. *James H. v. Department of Mental Health & Mental Retardation* (1980), 1 Ohio App. 3d 60; *Webb v. Southern Ohio Correctional Facility* (1986), 85-07633-AD;

{¶19} 4) The Court of Claims does not have jurisdiction over civil rights actions pursuant to 42 U.S.C. 1983 or over claims based solely on the alleged violation of constitutional provisions that require “state action” *Sherrills v. Mansfield Correctional Institution* (1983), 83-

05439-AD; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App. 3d 170, 528 N.E. 2d 607. Accordingly, alleged violations of Title VII of the Federal Civil Rights Act and 42 U.S.C. § 1997 Civil Rights of Institutionalized Persons Act are not actionable in the Court of Claims;

{¶20} 5) R.C. 2743.03 provides only the state may be sued in the Court of Claims. R.C. 2743.02(F) provides a mechanism for determining whether or not an employee has acted outside the scope of his employment. However, only the judge of the Court of Claims may make determinations under R.C. 2743.02(F);

{¶21} 6) Accordingly, plaintiff has failed to state a cause of action that can be either adjudicated in the Court of Claims or at the administrative determination level.

{¶22} IT IS ORDERED THAT:

{¶23} 1) Plaintiff's motion to amend his complaint is GRANTED;

{¶24} 2) Defendant's motion to dismiss is GRANTED;

{¶25} 3) Plaintiff's case is DISMISSED;

{¶26} 4) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Alan L. Glover Plaintiff, Pro se
1876 Crosstown Road
Williamsburg, Ohio 45176

Austin Stout, For Defendant
Assistant Chief Counsel
Department of Rehabilitation and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

Case No. 2002-02809-AD

- 5 -

ENTRY

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