



action.’ *Sherills 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 his complaint. Plaintiff wishes to strike the portion of his complaint that dealt with violation of Title VII of the Federal Civil Rights Act and 42 U.S.C. §1997, Civil Rights of Institutionalized Person Act. However, he still contends that defendant’s agents acted in a willful wanton manner outside the scope of their employment, but defendant should be held responsible for their actions;

{¶9} 6) On May 28, 2002, plaintiff again asserted defendant has not supplied plaintiff with copies of unpublished cases;

{¶10} 7) On June 5, 2002, defendant filed a motion to dismiss amended complaint;

{¶11} 8) In support of the motion to dismiss, defendant stated in pertinent part:

{¶12} “Notwithstanding plaintiff’s removal of references to civil rights law, this Court still 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 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.”;

{¶13} 9) On June 17, 2002, plaintiff filed a response in opposition to defendant’s motion to dismiss;

{¶14} 10) In support of the response, plaintiff stated in pertinent part:

{¶15} “Counsel for the defendant has not set forth any real basis and/or grounds for his Motion To Dismiss, they have redundantly repeated the same Motion to Dismiss, that was filed on April 30, 2002 with this Court. The Department has repeatedly, in every claim or valid issue, filed motion(s) to dismiss, under Civ. R. 12(B)(6), in an attempt to persuade the Court’s in Ohio, to dismiss claim’s of real controversy. . .

{¶16} “Furthermore, in *Aust v. Ohio State Dental Board*, (2002), 136 Ohio App. 3d 677, the court set forth the elements for declaring relief, under a declaratory judgment: ‘(1) a real controversy exist between the parties; (2) the controversy is justiciable in character; and (3) speedy relief is necessary to preserve the rights of the parties.’ Again, reversing the trial court which granted the State’s Motion to dismiss under Civ. R. 12(B)(6). Plaintiff, presents a real controversy in which the defendant(s) have violated his rights, the mandates of the Ohio Supreme Court and the Laws and Statutes enacted by the Ohio

General Assembly. Repeatedly, over and over again, the defendant's have not only attempted to persuade the Court's in Ohio in ruling on 12(B)(6) motions, in which there was no real set of facts that existed, in their filings under Civ. R. 12(B)(6) Civil Rules of Procedures, contrary of the actual evidence submitted to a Court of law in the reviewing of documented claims of a plaintiff.”;

{¶17} 11) On November 20, 2002, this court issued an order (Jr. Vol. 725, Pgs. 158-159) requiring defendant to supply plaintiff with copies of all unpublished opinions cited in defendant's motion to dismiss;

{¶18} 12) On December 9, 2002, plaintiff filed a motion to dismiss defendant's motion to dismiss;

{¶19} 13) In support of the motion, plaintiff stated in pertinent part:

{¶20} “This Court ORDERED the Defendant to comply with this order on or before December 3, 2002. Defendant has not requested an enlargement of time in which to comply with the Court's order, to correct its insufficiency of service upon the Plaintiff. Nor have they supplied Williams with the required documents essential to his defense. Defendant, by its inaction, is in contempt of Court. And denying Williams, a full and fair opportunity to litigate his claims in the courts of Ohio.”;

{¶21} 14) On May 28, 2003, this court issued an entry requiring defendant to provide plaintiff with copies of all unpublished cases appearing in defendant's motion to dismiss;

{¶22} 15) On June 12, 2003, defendant filed a response to order, which forwarded copies of all unpublished cases to plaintiff;

{¶23} 16) On June 24, 2003, plaintiff filed a motion to dismiss defendant's motion to dismiss based on defendant's failure to comply with the court's order of May 28, 2003. However, defendant has complied with this court's order.

{¶24} THE COURT CONCLUDES THAT:

{¶25} 1) Even though plaintiff's amended complaint wants to remove any reference to the United State Constitution, the Federal Civil Rights Act and 42 U.S.C. §1997, Civil Rights of Institutionalized Persons Act, the fact remains plaintiff is contending

a number of defendants willfully and wantonly acted beyond the scope of their employment to cause injury to plaintiff;

{¶26} 2) In *James H. v. Department of Mental Health & Mental Retardation*, Appelle (1980), 1 Ohio App. 3d 60, the court stated:

{¶27} “Employees can act unreasonably and still be in the scope of their duty so as to permit the doctrine of respondent superior to apply to make their employer the state liable. It is only where the acts of state employees are motivated by actual malice or other reasons giving rise to punitive damages that their conduct may be outside the scope of their state employment.”

{¶28} Normally, the burden would be on the state to show the actual malice or “other reasons” necessary for the employees to be outside the scope of employment. However, plaintiff in this case alleges, indeed insists, that the acts of defendant’s agents were willfully, wanton, malicious and specifically discriminated against plaintiff;

{¶29} 3) Defendant is not liable for the intentional torts of its agents when they act beyond the scope of their employment. *Thomas v. Department of Rehabilitation and Correction* (1988), 48 Ohio App. 3d 86;

{¶30} 4) In *Freeman v. Denson* (1976), 76-0463, the court stated:

{¶31} “Clearly this Court is not a court of appeals in any sense. It has no jurisdiction to review any judgment or order of any court nor any decision or finding of an administrative agency, commission, board or any other governmental authority.”;

{¶32} 5) Accordingly, plaintiff’s case is dismissed pursuant to Civ. R. 12(B)(2) and 12(B)(6).

{¶33} IT IS ORDERED THAT:

{¶34} Defendant’s motion to dismiss is GRANTED. All other pending motions are MOOT. Having considered all the evidence in the claim file and for the reasons set forth above. plaintiff’s case is DISMISSED. Court costs shall be assessed against plaintiff. The clerk shall serve upon all parties notice of this entry and its date of entry upon the journal.

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DANIEL R. BORCHERT

Deputy Clerk

Entry cc:

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