

[Cite as *Swiger v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-3660.]

IN THE COURT OF CLAIMS OF OHIO

SHELBY F. SWIGER :
Plaintiff :
v. : CASE NO. 2004-04558-AD
OHIO DEPARTMENT OF : ENTRY OF DISMISSAL
REHABILITATION AND CORRECTIONS :
Defendant :
:.....

On April 13, 2004, plaintiff, Shelby F. Swiger, filed a complaint against defendant, Department of Rehabilitation and Correction. Plaintiff alleges on March 18, 2004, Warden, Carl Anderson, engaged in criminal conduct in violation of Revised Code sections 2921.21, compounding a crime; 2921.44, dereliction of duty; and 2921.45, interfering with civil rights. Accordingly, plaintiff asserts defendant, Department of Rehabilitation and Correction, acted as an "aiddor & abettor" [sic] in violation of Revised Code sections 2923.01, conspiracy; 2923.03, complicity; and 2923.31, a pattern of corrupt activity. All actions plaintiff alleges that were committed against him were criminal in nature. Plaintiff seeks damages in the amount of \$2,018.67 which represents \$204.89 for compensatory damages, \$126.55 for nominal damages and \$1,683.23 for exemplary damages for "wantonness infliction of mental anguish, emotion stress and to prevent persons from doing the same in the future to claimant and others similarly situated."

On May 6, 2004, this court issued an entry requiring plaintiff

to submit the filing fee. On May 17, 2004, plaintiff filed a motion pursuant to Civ.R. 60(H) and (B).

On May 27, 2004, defendant filed a motion to consolidate claim nos. 2004-04523-AD, 2004-04531-AD, 2004-04540-AD and 2004-04558-AD under 2004-04523-AD and dismiss the remaining cases. Defendant argues all the claims concern the same subject matter, the mailing out of plaintiff's legal mail/personal property, and all claims involve the same defendant. On May 27, 2004, plaintiff filed a motion in opposition to defendant's motion to consolidate. Plaintiff argues the cases should not be consolidated since he is asserting causes of actions against a number of individuals who have committed crimes against him. In support of the motion, plaintiff stated in pertinent part:

"Plaintiff filed five (5) different complaints against nine Severally [sic] Liable Defendants' for their allegedly-Independent-Illegal (Criminal) Action (Conduct) of placing plaintiff under Duress and Stress by the use of Coercion and Force to Mail-Out ALL of his Current-Pending Legal Material, of-which plaintiff has a Statutory Right of Severalty [sic]."

In the alternative, plaintiff states he would agree to a consolidation of his claims only if claim no. 2004-04931-AD, a claim against defendant, Attorney General's Office, and claim no. 2004-UNFILED-AD are included. Also, he believes if judgment is rendered in his favor he should receive judgment based on the actions of the individuals involved in the amounts specified in each complaint.

On June 7, 2004, plaintiff filed a second motion in opposition to defendant's motion to consolidate. On June 10, 2004, plaintiff filed a motion to waive costs and fees due to indigency status.

R.C. 2743.02(E) in pertinent part states:

"The only defendant in original actions in the court of claims is the state."

Accordingly, this court will not consider any cause of action against Warden Anderson for any activities allegedly taken outside the scope of his employment. With respect to the criminal charges leveled against defendant, this court has no jurisdiction. This court has no criminal jurisdiction and is statutorily limited to civil actions. See R.C. 2743.10. In the alternative, if plaintiff is alleging his civil rights were violated by defendant, this court has no jurisdiction over these matters either. *Conley v. Shearer* (1992), 64 Ohio St. 3d 284; *Bleicher v. University of Cincinnati College of Medicine* (1992), 78 Ohio App. 3d 302.

Civ. R. 12(H)(3) states:

"Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

Having considered all the evidence in the claim file, and for the reasons set forth above, plaintiff's motion pursuant to 60(A) and (B) is DENIED, defendant's motion to consolidate is DENIED, plaintiff's motions in opposition are MOOT, and plaintiff's motion to waive costs and fees is MOOT. Plaintiff's case is DISMISSED for lack of subject matter jurisdiction pursuant to Civ. R. 12(H)(3). The court shall absorb the court costs of this case. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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Defendant

DRB/laa
5/24
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