

[Cite as *Swiger v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-4733.]

IN THE COURT OF CLAIMS OF OHIO

SHELBY F. SWIGER :
 :
 Plaintiff :
 :
 v. : CASE NO. 2004-06101-AD
 :
 OHIO DEPARTMENT OF : ENTRY OF DISMISSAL
 REHABILITATION AND CORRECTIONS :
 :
 Defendant :
 :
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{¶1} On May 27, 2004, plaintiff, Shelby F. Swiger, filed a complaint against defendant, Department of Rehabilitation and Correction. Plaintiff alleges on May 17, 2004, Darlene S. Krandall and J. Everly 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 pursuant to R.C. 2901.23 and 2901.24, acted as an "aidor & abbetors" [sic] in violation of Revised Code Sections 2923.01, conspiracy; 2923.02, attempt; 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 \$1,827.87, which represents \$125.65 for compensatory damages, \$126.55 for nominal damages, and \$1,575.67 for exemplary damages for the "wantoness infliction of mental anguish, emotional stress and to further prevent other persons from doing the same in the future to claimant

and others similarly situated."

{¶2} On May 28, 2004, this court issued a notice requiring plaintiff to submit the filing fee or a poverty statement with supporting documentation.

{¶3} On June 10, 2004, plaintiff filed a motion to waive costs and fees due to indigency status. On June 21, 2004, defendant filed a motion to order plaintiff to pay the filing fee and a motion for extension of time to file the investigation report. On June 25, 2004, plaintiff filed a second motion to waive costs and fees due to his indigency status. On June 28, 2004, plaintiff filed a motion to "dismiss and squash & strike under Civ.R. 12(F)."

{¶4} R.C. 2743.02(E) in pertinent part states:

{¶5} "The only defendant in original actions in the court of claims is the state."

{¶6} Accordingly, this court will not consider any cause of action against Darlene S. Krandall and J. Everly for any activities allegedly taken outside the scope of their employment. With respect to the criminal charges leveled against defendant, this court has no jurisdiction concerning criminal matters. 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 those 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.

{¶7} Civ.R. 12(H)(3) states:

{¶8} "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."

{¶9} Having considered all the evidence in the claim file, and for the reasons set forth above, plaintiff's and defendant's motions are 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:

Shelby F. Swiger, #A215-336
2500 S. Avon-Belden Road
Grafton, Ohio 44044-9802

Plaintiff, Pro se

Stephen A. Young
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

For Defendant

DRB/laa
7/28
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