

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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www.cco.state.oh.us

PATRICK GUILLORY aka TIMOTHY
HUNTER

Plaintiff

v.

OHIO DEPT. OF REHABILITATION
AND CORR.

Defendant

Case No. 2007-06501-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶1} On October 24, 2007, this court issued an entry granting plaintiff's July 26, and August 1, 2007, motions to submit additional evidence. Defendant's motion to require plaintiff to submit the filing fee was denied, while defendant's motion for an extension of time to submit the investigation report was granted. Plaintiff's motion to initiate discovery was denied as well as his motion for default judgment and his request that the claim be reviewed by an Administrative Law Judge.

{¶2} On November 30, 2007, defendant filed a motion for extension of time to submit the investigation report. On December 6, 2007, plaintiff filed a motion to strike defendant's motion for extension of time. Plaintiff asserts defendant's motion for extension of time is in contravention of court rules. However, Court of Claims Rule 6(A) provides in pertinent part:

{¶3} "[B]y written motion, may request an extension of time for filing the investigation report, provided that he sets forth reasons for the extension. If an extension is granted, the clerk shall set a date certain for the filing of the investigation report."

{¶4} Defendant's motion for extension of time complied with C.C.R. 6(A) and, accordingly, plaintiff's motion to strike is DENIED.

{¶15} On December 24, 2007, plaintiff filed a motion to hold defendant in contempt. The powers conferred on the deputy clerk are set forth in C.C.R. 6(C). This rule does not confer the power to hold a party in contempt. Accordingly, plaintiff's motion is DENIED.

{¶16} On January 2, 2008, defendant filed a motion to dismiss. Defendant characterized plaintiff's complaint as alleging defendant's agents action against plaintiff were malicious, in bad faith, and acting beyond the scope of their employment. If the actions plaintiff asserts defendant's agents are deemed as true, defendant's agents would not be afforded sovereign immunity and consequently, this claim could not be litigated in the Court of Claims. Finally, plaintiff asserts that he was denied access to court by the refusal of defendant's agents to timely provide him with his legal mail. Defendant contends this cause of action should be dismissed since the court does not have jurisdiction to consider constitutional issues.

{¶17} Plaintiff has not directly responded to defendant's motion to dismiss. However, plaintiff consistently throughout his pleading and subsequent motions including his December 3, 2007 motion for summary judgment accused the defendant's agents of unlawful activities in violation of Ohio's criminal code.

{¶18} R.C. 2743.02(A)(1) in pertinent part states:

{¶19} "[F]iling a civil action in the court of claims results in a complete waiver of any cause of action, based on the same act or omission, which the filing party has against any officer or employee, as defined in section 109.36 of the Revised Code. The waiver shall be void if the court determines that the act or omission was manifestly outside the scope of the officer's or employee's office or employment or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner."

{¶10} After a thorough review of plaintiff's pleadings and additional evidence filed on July 26, and August 1, 2007, the plaintiff is asserting certain agents in defendant's employ were manifestly acting outside the scope of their employment.

Plaintiff asserts documents were altered and signatures of local court employees were forged for the sole purpose of stealing money from plaintiff. Plaintiff also asserts defendant's agents altered state account book and perjured themselves on numerous occasions to continue the theft of plaintiff's funds.

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

{¶12} "The only defendant in original actions in the court of claims is the state." Since plaintiff's allegations assert defendant's employees were acting manifestly outside the scope of their employment, the court of claims does not have jurisdiction to hear this matter.

{¶13} Plaintiff also contends defendant's agents were interfering with his access to the courts by delaying or not delivering his legal mail. In essence, plaintiff is asserting his constitutional rights have been violated. Constitutional claims are not actionable in the court of claims. *Bleicher v. Univ. of Cincinnati College of Med.* (1992), 78 Ohio App. 3d 302, 604 N.E. 2d 783; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App. 3d 170, 528, N.E. 2d 607.

{¶14} Accordingly, defendant's motion to dismiss is GRANTED and plaintiff's claim is DISMISSED. All other pending motions are DENIED.

{¶15} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED. Plaintiff's claim is DISMISSED. The court shall absorb the court costs of this case.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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