

Court of Claims of Ohio

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HUGH M. FAVOR, III

Plaintiff

v.

THE OHIO STATE UNIVERSITY

Defendant

Case No. 2008-09937

Judge J. Craig Wright

JUDGMENT ENTRY

{¶ 1} On May 19, 2009, the parties filed a stipulation regarding the civil immunity of Douglas A. Cunningham. Therein, it is stipulated and agreed that Cunningham is entitled to immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against him based upon the allegations of plaintiff's complaint.

{¶ 2} The stipulation is hereby APPROVED. Based upon the stipulated facts, the court finds that Douglas A. Cunningham is entitled to immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against him based upon the allegations in plaintiff's complaint.

{¶ 3} On May 29, 2009, the court conducted an evidentiary hearing to determine whether Robert S. Coleman is entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86.

{¶ 4} In the context of immunity, "[i]f the Court of Claims determines that the employee's acts did not further the interests of the state, i.e., the employee was acting

outside the scope of his employment, maliciously, in bad faith, or in a wanton or reckless manner, the state has not agreed to accept responsibility for the employee's acts and the employee is personally answerable for his acts in a court of common pleas." *Conley v. Shearer*, 64 Ohio St.3d 284, 287, 1992-Ohio-133.

{¶ 5} At all times relevant, plaintiff was enrolled as a student at the defendant university; Coleman was a professor and vice chair in defendant's Department of Chemistry and Chemical Studies. At approximately 11:30 a.m. on September 27, 2007, Coleman left his office carrying a defective microphone that he sought to replace at the nearby classroom services building. As Coleman attempted to cross a street on his way to the classroom services building, plaintiff drove his vehicle through the crosswalk very near Coleman. Plaintiff proceeded to park and exit his vehicle just beyond the crosswalk, whereupon he and Coleman exchanged words. Plaintiff approached Coleman and shoved him, at which time Coleman placed a 911 call using his mobile phone. According to Coleman, plaintiff continued to harass him while he spoke with the 911 dispatcher and he therefore placed his hand against plaintiff's chest as a defensive measure. However, according to plaintiff, Coleman grabbed his throat and threatened him. It is undisputed that plaintiff then punched Coleman in the face and left the scene.

{¶ 6} As a result of the altercation, plaintiff was convicted of assault by the Franklin County Municipal Court and his conviction was upheld by the Tenth District Court of Appeals in *State v. Favor*, Franklin App. No. 08AP-215, 2008-Ohio-5371. Plaintiff relates that as a further result of the altercation, defendant dismissed him from his course of study.

{¶ 7} Plaintiff brings this action alleging that Coleman committed assault and battery by grabbing his throat and threatening him, and he claims that such acts were committed outside the scope of Coleman's employment, with malice, in bad faith, and in a wanton or reckless manner. Defendant argues that to the extent it was actually plaintiff who threatened and assaulted Coleman, Coleman properly defended himself

and remained within the scope of his employment when doing so. The court agrees.

{¶ 8} Upon review of plaintiff's testimony, the court finds that plaintiff's version of the events lacks credibility. Furthermore, plaintiff's assertions that it was Coleman who caused the altercation and that he thus punched Coleman in self-defense were rejected by the trial court in his criminal case. The doctrine of collateral estoppel precludes plaintiff from re-litigating those issues in this court. See *Thompson v. Wing*, 70 Ohio St.3d 176, 183, 1994-Ohio-358. The court is persuaded that Coleman's act of placing his hand against plaintiff's chest was a reasonable measure of self-defense against plaintiff's aggression. See *Martin v. Central Ohio Trans. Auth.* (1990), 70 Ohio App.3d 83, 93 ("Generally, one has a right to defend oneself by force, if that force is not excessive."). Inasmuch as Coleman was furthering the interests of his employer while walking to the classroom services building, his contemporaneous acts of self-defense also occurred within the scope of his employment. *Id.* at 93-94. Moreover, there is no credible evidence that Coleman acted with malice, in bad faith, or in a wanton or reckless manner.

{¶ 9} Based upon the foregoing, the court finds that Coleman is entitled to immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against him based upon the allegations in this case.

{¶ 10} Lastly, the oral motion that defendant made during the hearing to dismiss plaintiff's complaint on the basis of res judicata is DENIED. The portion of the court's September 11, 2009 entry scheduling a status conference for November 13, 2009, is hereby VACATED and the case will be set for trial.

J. CRAIG WRIGHT
Judge

Case No. 2008-09937

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