

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

CHARLES IMBURGIA

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2010-12214-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On November 29, 2010, plaintiff, Charles Imburgia, filed a complaint against defendant, Department of Rehabilitation and Correction. Plaintiff alleges on June 14, 2010 at approximately 9:55 a.m., defendant's agent refused to allow him to use the restroom facility resulting in him defecating on himself. Plaintiff seeks damages in the amount of \$2,500.00. The filing fee was waived.

{¶ 2} On December 22, 2010, defendant filed a motion to dismiss. Defendant asserts that plaintiff's case should be dismissed on two grounds. First, plaintiff asserts that defendant's agent acted manifestly outside the scope of defendant's agent's employment, with malicious purpose, in bad faith or in wanton or reckless manner. This court does not have subject matter jurisdiction concerning an individual who acts beyond the scope of his employment. Second, plaintiff asserts his constitutional rights were violated. It is well settled that constitutional claims are not actionable in the Court of Claims. For these reasons plaintiff's case should be dismissed.

{¶ 3} On December 30, 2010, plaintiff filed an objection to defendant's motion to

dismiss. It appears from a reading of this document that plaintiff asserts defendant is in violation of the Eighth Amendment of the United States Constitution. 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.

{¶ 4} Therefore, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. the court shall absorb the court costs of this case.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/laa
Filed 1/21/11
Sent to S.C. reporter 4/8/11