[Cite as *Hughley v. Kinsel*, 2009-Ohio-4741.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

KEVIN HUGHLEY, Pro se	:	JUDGES:
	:	William B. Hoffman, P.J.
Plaintiff-Appellant	:	Julie A. Edwards, J.
	:	Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2009 CA 00032
DAN KINSEL	:	
	:	
Defendant-Appellee	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal From Fairfield County Court Of Common Pleas Case No. 2008 CV 866
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	September 1, 2009

APPEARANCES:

For Plaintiff-Appellant

KEVIN HUGHLEY, Pro se
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For Defendant-Appellee

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Edwards, J.

{¶1} Plaintiff-appellant, Kevin Hughley, appeals from the May 15, 2009, Entry of the Fairfield County Court of Common Pleas dismissing his complaint against defendant-appellee Sergeant Dan Kinsel.

STATEMENT OF THE FACTS AND CASE

{¶2} On July 8, 2008, appellant, who is an inmate at Southern Correctional Institute, filed a complaint against appellee Sergeant Dan Kinsel. Appellant, in his complaint, alleged that appellee maliciously "uttered a frivolous conduct report" against appellant and that, as a result, appellant was removed from an intensive prison program and suffered a loss of liberty. Appellant sought $1,750,000.00 in compensatory and punitive damages.

{¶3} On August 13, 2008, appellee filed a Motion for Judgment on the Pleadings pursuant to Civ.R. 12(C). On the same date, appellee filed an answer to the complaint. Appellant, on August 22, 2008, filed a motion to strike both the motion and the answer, arguing that he was not properly served with the same.

{¶4} On September 25, 2008, appellant filed a Motion for Default Judgment pursuant to Civ.R. 55. Appellant, in his motion, stated that "[t]he record shall reflect answer by defendant isn't perfected via wrong address reasons." Appellant filed another Motion for Default Judgment on November 12, 2008.

{¶5} Pursuant to an Entry filed on January 30, 2009, the trial court sustained appellant's motion to strike, finding that appellee had failed to properly perfect service on appellant because appellee sent service of his Motion for Judgment and Answer to the wrong address for appellant. The trial court also ordered appellant to submit

evidence on his Motion for Default Judgment. The trial court in its Entry, stated, in relevant part, as follows:

{¶6} "Here, the Court finds it necessary to conduct a non-oral hearing to determine the truth of the averments within Hughley's [appellant's] complaint. The Court is also interested to learn how Hughley, who claims he was never actually served with copies of Kinsel's papers, knew the address of Kinsel's counsel later in the course of this action. Thus, the Court will order Hughley to submit documentation of how he knew the address of Kinsel's counsel and evidence which supports his complaint before the Court determines whether Hughley is entitled to default judgment."

{¶7} In response, appellant filed an affidavit on February 17, 2009.

{¶8} On February 19, 2009, appellee filed a Motion for Leave to File an Answer and Motion for Judgment on the Pleadings Instanter. On the same date, appellee filed a separate Motion for Judgment on the Pleadings Instanter. Appellee, in such motion, argued, in part, that the trial court lacked subject matter jurisdiction over appellant's claims. Appellee argued that the Court of Claims had exclusive jurisdiction. Appellant, on February 25, 2008, filed a Motion to Strike both the Motion for Leave and the Motion for Judgment on the Pleadings Instanter.

{¶9} Pursuant to an Entry filed on May 15, 2009, the trial court, on its own motion, dismissed appellant's complaint, finding that it had no jurisdiction to hear appellant's case. The trial court, in its Entry, which cited to R.C. 2743.02(F), held that until the Court of Claims determined whether appellee was immune from suit, the trial court was without jurisdiction over the case against him.

{¶10} Appellant now raises the following assignment of error on appeal:

{¶11} "TRIAL COURT ERRED AND ABUSED HIS (SIC) DISCRETION BY DISMISSING COMPLAINT IN ITS ENTIRETY INSTEAD OF TRANFERRING (SIC) TO THE OHIO COURT OF CLAIMS IF HE RULED THEY HAVE JURISDICTION SINCE IN FACT APPELLEE WAS IN DEFAULT THUS CAUSING MATERIAL PREJUDICE TO APPELLANT'S COMPLAINT."

I

{¶12} Appellant, in his sole assignment of error, argues that the trial court had jurisdiction over his claim and that the trial court erred in dismissing his case rather than transferring it to the Court of Claims.

{¶13} R.C. 2743.02 states, in relevant part, as follows: "(F) A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer's or employee's conduct was manifestly outside the scope of the officer's or employee's employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims, which has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action." (Emphasis added).

{¶14} In turn, R.C. 9.86 states as follows: "Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, no officer or employee shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official

responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner."

{¶15} Pursuant to R.C. Section 109.36: "(A)(1) "Officer or employee" means any of the following: "(a) A person who, at the time a cause of action against the person arises, is serving in an elected or appointed office or position with the state or is employed by the state." Appellee, as an officer employed by the Ohio Department of Rehabilitation and Correction, is a State employee.

{¶16} As is stated above, appellant, in his complaint, alleged that appellee acted maliciously in "utter[ing] a frivolous conduct report" against appellant. We find that appellant, therefore, was required to file his complaint in the Court of Claims and that the trial court lacked jurisdiction over his complaint.[1]

{¶17} Appellant also argues that the trial court erred in failing to transfer his case to the Court of Claims. However, "[t]here is no provision for ordering a transfer of an improperly filed complaint to the court of claims; in effect, it accomplished nothing other than placing the case in 'limbo.'" *Adams v. Cox*, Scioto App. No. 07CA3181, 2008-Ohio-719 at paragraph 6. As noted by the court in *Adams*: " The proper procedure for addressing a case that has been improperly filed in the Common Pleas Court against the state of Ohio or employees is to dismiss it for lack of subject matter jurisdiction. See *Rose v. Ohio Dept. of Rehab. & Corr.,* Franklin App. No. 07AP-472, 2007-Ohio-6184;

[1] Appellant, in his brief, cites *Clark v. Ohio State Penitentiary*, 2003 WL 21350587, 2003-Ohio-2978 for the proposition that the Court of Claims does not have jurisdiction over his claims. In such case, an inmate was ordered to undergo drug testing based on time separate offenses involving possession of an intoxicating liquid. The inmate brought an action against the correctional facility seeking to recover money withdrawn from his account for drug tests that were allegedly never performed. The Court of Claims, in such case, held that the action arose out of conduct reports and dispositions of the Rule of Infraction Board over which the Court of Claims did not have jurisdiction. In contrast, in the case sub judice, appellant has filed an action alleging that appellee falsely reported him and that, as a result, he suffered damages.

Patel v. Vance, Belmont App. No. 07 BE 16, 2007-Ohio-6223; *Bla-con Industries, Inc. v. Miami Univ.,* Butler App. No. CA2006-06-127, 2007-Ohio-785; *Martin v. Mengel,* Franklin App. No. 05AP-77, 2005-Ohio-3684; *Barr v. Jones,* 160 Ohio App.3d 320, 2005-Ohio-1488 (all affirming dismissal for lack of jurisdiction). In fact, our research has uncovered no case where the trial court transferred such a matter.

{¶18} "R.C. 2743.03(E)(1) does provide for a removal of an action to the Court of Claims. But only in those cases where a complaint was properly filed in the Common Pleas Court against individual defendants and a subsequent counterclaim or third party action against the state requires 'transfer' to the Court of Claims." Id at paragraphs 7-8.

{¶19} We find, therefore, that the trial court did not err in dismissing appellant's complaint rather than transferring it to the Court of Claims.

{¶20} Appellant's sole assignment of error is, therefore, overruled.

{¶21} Accordingly, the judgment of the Fairfield County Court of Common Pleas is affirmed.

By: Edwards, J.

Hoffman, P.J. and

Delaney, J. concur

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JUDGES

JAE/d0624

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IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO

FIFTH APPELLATE DISTRICT

KEVIN HUGHLEY, Pro se	:	
Plaintiff-Appellant	:	
-vs-	:	JUDGMENT ENTRY
DAN KINSEL	:	
Defendant-Appellee	:	CASE NO. 2009 CA 00032

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Fairfield County Court of Common Pleas is affirmed. Costs assessed to appellant.

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JUDGES