

*malicious purpose, in bad faith, or in a wanton or reckless manner. ****” (Emphasis added.)

{¶6} In *Thomson v. University of Cincinnati College of Medicine* (October 17, 1996), Franklin App. No. 96 API-02260, at pp. 10-11, the court noted that:

{¶7} “Under R.C. 9.86, an employee who acts in the performance of his duties is immune from liability. However, if the state employee acts manifestly outside the scope of his or her employment or acts with malicious purpose, in bad faith, or in a wanton or reckless manner, the employee will be liable in a court of general jurisdiction. ‘It is only where the acts of state employees are motivated by actual malice or other such reasons giving rise to punitive damages that their conduct may be outside the scope of their state employment.’ *James H. v. Dept. of Mental Health & Mental Retardation* (1980), 1 Ohio App.3d 60, 61. Even if an employee acts wrongfully, it does not automatically take the act outside the scope of the employee’s employment even if the act is unnecessary, unjustified, excessive, or improper. *Thomas v. Ohio Dept. of Rehab. and Corr.* (1988), 48 Ohio App.3d 86. The act must be so divergent that its very character severs the relationship of employer and employee. *Wiebold Studio, Inc. v. Old World Restorations, Inc.* (1985), 19 Ohio App.3d 246.”

{¶8} Based upon the totality of the evidence presented, the court finds that Dr. Sitler acted within the scope of her employment with defendant at all times relevant hereto. Additionally, the court finds that Dr. Sitler did not act with malicious purpose, in bad faith, or in a wanton or reckless manner. Accordingly, it is recommended that Dr. Sitler be granted civil immunity pursuant to R.C. 9.86 and 2743.02(F). Therefore, the courts of common pleas do not have jurisdiction over civil actions against her based on the allegations in this case.

Magistrate

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