

[Cite as *Bundza v. Ohio Attorney Gen.*, 2002-Ohio-4147.]

IN THE COURT OF CLAIMS OF OHIO

JOANNE BUNDZA :
Plaintiff : CASE NO. 2002-04275
v. : ENTRY OF DISMISSAL
ATTORNEY GENERAL :
Defendant :
: : : : : : : : : : : : : : : :

{¶1} On June 3, 2002, defendant filed a "motion to dismiss" which the court construes as a motion to dismiss for failure to state a claim upon which relief could be granted under Civ.R. 12(B)(6). Plaintiff did not file a response.

{¶2} The standard of granting a motion to dismiss pursuant to Civ.R. 12(B)(6) is "whether it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Kodish v. Public Employees Retirement Bd.* (1975), 45 Ohio App.2d 147.

{¶3} The facts underlying plaintiff's malicious prosecution claim are set forth in paragraph 2 of plaintiff's complaint as follows: "On or about June 8, 1999, Defendants initiated criminal proceedings against the Plaintiff with the Clerk of the Franklin County Common Pleas Court, Criminal Division, charging the plaintiff with one count Theft, O.R.C. 2913.02, a Felony of the Fourth Degree, one count Workers' Compensation Fraud, O.R.C. 2913.48, A Felony of the Fourth Degree, and sixteen counts of Forgery, O.R.C. 2913.31, Felonies of the fourth Degree. This

action being captioned 'State of Ohio v. Joanne Bundza, Case No 99 CR 2741.' "

{¶4} Plaintiff's claim of malicious prosecution arises from defendant's filing of these criminal charges. Defendant claims absolute privilege based on its role as a "quasi-judicial officer."

The Restatement of the Law 2d, Torts (1967), 414, Section 656, provides: "A public prosecutor acting in his official capacity is absolutely privileged to initiate, institute, or continue criminal proceedings."

{¶5} Comment a to Restatement Section 656 defines a public prosecutor as:

{¶6} "**** an official whose duty it is to prosecute on behalf of the government criminal proceedings initiated by him or by other public officials or by a private person. Such an official is variously described in different parts of the United States as 'district attorney,' 'prosecuting attorney,' 'state's attorney,' 'county attorney,' 'public commissioner' and by other terms. The important thing is not the name by which he is called but the function that he exercises. ****" Id. at 415.

{¶7} R.C. 109.02 designates the attorney general as the "chief law officer for the state and all its departments." Administrative officers performing quasi-judicial tasks are granted absolute privilege from liability for their judicial acts. *Mack, D.D.S. v. Ohio Dental Bd. et al.* (March 30, 2001), 10th Dist. No. 309115. Citing *Butz v. Economou* (1978), 438 U.S. 478. Indeed, comment b to Restatement Section 656 states that, "[t]he privilege stated in this Section is absolute. It protects the public prosecutor against inquiry into his motives, and from liability, even though he knows that he has no probable cause for the institution of the

proceedings and initiates them for an altogether improper purpose."
Id.

{¶8} Here, plaintiff's complaint conclusively establishes that defendant, as public prosecutor for the state, initiated criminal proceedings against plaintiff. In short, plaintiff's complaint leaves no doubt that defendant is entitled to absolute privilege.

{¶9} Therefore, plaintiff's complaint fails to state a claim upon which relief can be granted. Defendant's motion to dismiss is hereby GRANTED and plaintiff's complaint is DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JUDGE

Entry cc:

Michael L. Gollings
4410 Market Street
Youngstown, Ohio 44512

Attorney for Plaintiff

Randall W. Knutti
65 East State St., 16th Fl.
Columbus, Ohio 43215

Assistant Attorney General

ML/LP/cmd
Filed 7-12-2002
Jr. Vol. 711, Pgs. 176-178
To S.C. reporter 8-12-2002