

[Cite as *Beach v. Ohio State Penitentiary*, 2002-Ohio-5118.]

IN THE COURT OF CLAIMS OF OHIO

DARRELL BEACH, et al. :

Plaintiffs : CASE NO. 2002-06871

v. : ENTRY OF DISMISSAL

THE OHIO STATE PENITENTIARY :

Defendant :

: : : : : : : : : : : : : : : :

{¶1} On August 23, 2002, defendant filed a motion to dismiss pursuant to Civ.R. 12(B)(6) on the grounds that plaintiffs have failed to state a claim upon which relief can be granted. Plaintiffs have not filed a response.

{¶2} In construing a complaint upon a motion to dismiss for failure to state a claim, the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190. Then, before the court may dismiss the complaint, it must appear beyond doubt that plaintiffs can prove no set of facts entitling them to recovery. *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242. The unsupported conclusions of a complaint are, however, not taken as admitted and are insufficient to withstand a motion to dismiss. *Mitchell*, supra, at 193.

{¶3} In their complaint, plaintiffs alleges that plaintiff, Darrell Beach, is an employee of defendant, that he was injured in a fall at work and that the fall was caused by the negligence of

defendant. Defendant argues that plaintiffs' complaint is barred by R.C. 4123.74 which provides in relevant part: "Employers who comply with section 4123.35 of the Revised Code shall not be liable to respond in damages at common law or by statute for any injury, \*\*\* received or contracted by any employee in the course of or arising out of his employment \*\*\*."

{¶4} Accepting the allegations of the complaint as true, there can be no doubt that plaintiffs' claim for relief is barred by the Workers' Compensation Act. See *McComas v. Ohio National Guard* (1980), 69 Ohio App.2d 87; *Thomas Schoff v. Ohio Dept. of Rehab. & Correction* (February 15, 1989), Ct. of Claims No. 88-010591. Thus, plaintiffs' complaint fails to state a claim upon which relief can be granted. Defendant's motion to dismiss is GRANTED. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

---

JUDGE

Entry cc:

Anthony Donofrio  
42 North Phelps Street  
Youngstown, Ohio 44503

Attorney for Plaintiffs

Tracy M. Greuel  
65 East State St., 16th Fl.  
Columbus, Ohio 43215

Assistant Attorney General

LP/cmd  
Filed 9-24-2002  
Jr. Vol. 720, Pgs. 3-4  
To S.C. reporter 9-27-2002