

[Cite as *Norman v. Lake Erie Correctional Inst.*, 2003-Ohio-1118.]

IN THE COURT OF CLAIMS OF OHIO

MILTON NORMAN, #193-514 :
501 Thompson Road :
Conneaut, Ohio 44030 : Case No. 2002-07061-AD

Plaintiff : ORDER DISMISSING
 : PLAINTIFF'S CASE

v. :

LAKE ERIE CORRECTIONAL :
INSTITUTION :

Defendant :

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

For Defendant: Vincent E. Lagana, Staff Counsel
Department of Rehabilitation and
Correction
1050 Freeway Drive North
Columbus, Ohio 43229
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{¶1} THE COURT FINDS THAT:

{¶2} 1) On July 29, 2002, plaintiff, Milton Norman, filed a complaint against defendant, Lake Erie Correctional Institution. Plaintiff submitted the filing fee with the complaint;

{¶3} 2) On October 2, 2002, defendant filed a motion to dismiss;

{¶4} 3) The motion to dismiss, in pertinent part, stated:

{¶5} "The Department contends Lake Erie is not the proper defendant. Rather, the proper defendant is the Management & Training Corporation. According to the complaint, its employees were culpable for the loss of plaintiff's property. The Department's position is based on the fact it (the State) only owns the property and facilities that comprise the institution, and the belief Lake Erie is a proper defendant only to the extent that a

complaint states a claim relating to the realty. As such, Lake Erie had no duty toward plaintiff with regard to the subject matter of the complaint. Any duty should fall to the contractor.

{¶6} "The Department is not involved in the institution's maintenance or operations. Employees of Management & Training Corporation conduct these functions. While the vendor operates and maintains Lake Erie in accordance with contractual and statutory criteria, it does so independently. The Department is not involved in the vendor's decision making. The Department does not play any part in hiring, paying, or supervising the vendor's employees. . .";

{¶7} 4) On October 17, 2002, plaintiff filed a motion requesting the case be transferred to court of proper jurisdiction. Plaintiff requests this court transfer the case to Conneaut Municipal Court.

{¶8} THE COURT CONCLUDES THAT:

{¶9} 1) Civ. R. 12(H)(3) states:

{¶10} "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.";

{¶11} 2) R.C. 2743.03(A) in pertinent part states:

{¶12} "The court of claims is a court of record and has exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code . . .";

{¶13} 3) R.C. 2743.02(F) states, in pertinent part:

{¶14} "The only defendant in original actions in the court of claims is the state.";

{¶15} 4) A review of plaintiff's pleadings and additional documentation reveals he is alleging negligence against personnel who are employed by Management & Training Corporation and not the defendant;

{¶16} 5) R.C. 9.06(D) in pertinent part states:

{¶17} "A contractor that has been approved to operate a facility under this section . . . shall indemnify and hold harmless the state, its officers, agents, and employees, and any local government entity in the state having jurisdiction over the facility or ownership of the facility . . .";

{¶18} 6) Management & Training Corporation is not a state entity and accordingly cannot be sued in an original action in the Court of Claims. *Johnson v. Lake Erie Correctional Institution* (2001), 2001-06142-AD; *Hernandez v. Lake Erie Correctional Institution* (2001), 2001-06428-AD;

{¶19} 7) No authority is given by the statute, the Rules of the Court of Claims or the Local Rules of the Court of Claims for transfer of a case from this court to a municipal court, when an improper defendant has been named.

{¶20} IT IS ORDERED THAT:

{¶21} 1) Defendant's motion to dismiss is GRANTED;

{¶22} 2) Plaintiff's motion to transfer is DENIED;

{¶23} 3) Plaintiff's case is DISMISSED;

{¶24} 4) The court shall absorb the court costs of this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

Case No. 2002-07061-AD

- 4 -

ORDER

2/4

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