

[Cite as *Fair v. Ross Correctional Inst.*, 2003-Ohio-2164.]

IN THE COURT OF CLAIMS OF OHIO

MARK A. FAIR :  
Plaintiff :  
v. : CASE NO. 2002-08441-AD  
ROSS CORRECTIONAL INSTITUTION : ENTRY OF DISMISSAL  
Defendant :

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

{¶1} THE COURT FINDS THAT:

{¶2} 1) On September 16, 2002, plaintiff, Mark A. Fair, filed a complaint against defendant, Ross Correctional Institution. Plaintiff alleges on or about May 15, 2002, he was assaulted by four correction officers. He asserts the officers took him to a location where they would not be viewed by other officers or inmates and out of the view of any cameras and then assaulted him. He seeks damages in the amount of \$2,500.00;

{¶3} 2) On January 29, 2003, defendant filed a motion to dismiss pursuant to Civil Rule 12(B)(1) lack of jurisdiction over the subject matter;

{¶4} 3) In support of the motion to dismiss, defendant stated in pertinent part:

{¶5} “This Court has determined it lacks subject matter jurisdiction over the merits of a complaint alleging the defendant’s agents acted with malicious purpose and bad faith, or in a wanton or reckless manner so as to avoid immunity granted to them under Revised Code §9.86. *Madison v. Pickaway Correctional Institution* (1991), 90-08637-AD.

{¶6} “The plaintiff’s complaint alleged the defendant’s agents physically assaulted him with malice. Assuming arguendo the plaintiff’s allegations of malicious physical assault were true, the defendant’s agents acted manifestly outside the scope of their employment

so as to avoid immunity granted to them under R.C. §9.86. Because the plaintiff has alleged the defendant's agents assaulted him maliciously, which would be manifestly outside the scope of their employment, this Court lacks jurisdiction over the merits of the complaint.”;

{¶7} 4) On February 20, 2003, plaintiff filed a response to defendant's motion to dismiss. Plaintiff asserts this court should have jurisdiction over this case even though he concedes the officers were not acting under the authority of the defendant.

{¶8} THE COURT CONCLUDES THAT:

{¶9} 1) R.C. 2743.02(E) states:

{¶10} “The only defendant in original actions in the court of claims is the state.”;

{¶11} 2) An employer is not liable where the employee commits an intentional tort for his own personal purposes. *Szydlowski v. Ohio Dept. of Rehab. & Corr.* (1992), 79 Ohio App. 3d 303, 607 N.E. 2d 103;

{¶12} 3) Constitution and Section 1983, Title 42, U.S. Code claims are not actionable in the court of claims. *Bleicher v. Univ. of Cincinnati College of Med.* (1992), 78 Ohio Ap. 3d 302, 604 N.E. 2d 783;

{¶13} 4) R.C. 2743.02(F) states:

{¶14} “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 his 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.

{¶15} “The filing of a claim against an officer or employee under this division tolls the running of the applicable statute of limitations until the court of claims determines

whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code.”;

{¶16} 5) Only a judge of the Court of Claims has the authority to make rulings with respect to R.C. 2743.02(F).

{¶17} IT IS ORDERED THAT:

{¶18} 1) Defendant’s motion to dismiss is GRANTED;

{¶19} 2) Plaintiff’s case is DISMISSED;

{¶20} 3) The court shall absorb the court costs of this case.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Mark A. Fair, #254-416  
P.O. Box 7010  
Chillicothe, Ohio 45601

Plaintiff, Pro se

Gregory C. Trout,  
Chief Counsel  
Department of Rehabilitation  
and Correction  
1050 Freeway Drive North  
Columbus, Ohio 43229

For Defendant

DRB/laa  
4/4  
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