

[Cite as *Jones v. Lake Erie Correctional Inst.*, 2003-Ohio-4301.]

IN THE COURT OF CLAIMS OF OHIO

EDGAR M. JONES, JR. :

Plaintiff :

v. : CASE NO. 2002-09552-AD

LAKE ERIE CORRECTIONAL : ENTRY OF DISMISSAL

INSTITUTION :

Defendant :

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**{¶1}** THE COURT FINDS THAT:

{¶2} 1) On October 23, 2002, plaintiff, Edgar M. Jones, Jr., filed a complaint against defendant, Lake Erie Correctional Institution. Plaintiff alleges his personal property was lost while in possession of defendant. Plaintiff seeks damages in the amount of \$209.95. Plaintiff submitted the filing fee with the complaint;

**{¶3}** 2) On December 24, 2002, defendant filed a motion to dismiss;

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

{¶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 not 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. Pursuant to Section 9.06 of the Ohio Revised Code Management & Training Corporation's employees do not enjoy the same immunity conferred on state employees. There is no agency relationship between the parties. The Department is simply a party to a contract where Management & Training Corporation supplies personnel and performs services.

{¶7} "A long line of Ohio cases stands for the proposition that an employer is not generally liable for the acts of an independent contractor or the contractor's employees. See 30 Jur3d Agency, Sect. 218 (1999). Given that Plaintiff alleges Management & Training Corporation's employees were responsible for this loss, he has not stated a claim against Lake Erie Correctional Institution upon which relief can be granted.";

{¶8} 4) Plaintiff did not respond to defendant's motion to dismiss.

{¶9} THE COURT CONCLUDES THAT:

{¶10} 1) R.C. 2743.03(A) in pertinent part states:

{¶11} "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 . . .";

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

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

{¶14} 3) 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;

{¶15} 4) R.C. 9.06(D) in pertinent part states:

{¶16} "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 . . .";

{¶17} 5) 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.

{¶18} IT IS ORDERED THAT:

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

{¶20} 2) Plaintiff's response is considered a motion contra to defendant's motion to dismiss and is DENIED;

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

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

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DANIEL R. BORCHERT

Deputy Clerk

Entry cc:

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