

[Cite as *Hunt v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-6423.]

IN THE COURT OF CLAIMS OF OHIO

RICKIE LEE HUNT :

Plaintiff :

v. :

CASE NO. 2003-05682-AD

OHIO DEPT. OF REHABILITATION AND CORRECTIONS :

ENTRY OF DISMISSAL

Defendant :

.....

{¶1} THE COURT FINDS THAT:

{¶2} 1) On May 7, 2003, plaintiff filed a complaint against defendant, Department of Rehabilitation and Correction. Plaintiff alleges that on April 29, 2003, defendant erroneously confiscated money from his prison account. Plaintiff asserts the money taken from his account to satisfy court costs was in excess of the amount allowed by statute;

{¶3} 2) On August 12, 2003, defendant filed a motion to dismiss;

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

{¶5} "Pursuant to Ohio Revised Code §5120.133 and Rule 5120-5-03 of the Administrative Code, the Defendant withdrew money from the Plaintiff's inmate account and mailed checks to the Tenth District Clerk of Court of Appeals in order to pay the court-ordered costs assessed against him. Defendant complied with its statutory and rule duties.

{¶6} "The order requiring payment of the court costs was a final appealable order. The Court of Claims of Ohio is a court of original jurisdiction, therefore, it does not have appellate jurisdiction over any Court or agency. ORC §2743.03, cf. This Court is, therefore, without jurisdiction to determine the issues raised in this amended complaint by

reviewing the Journal Entry ordering payment of the costs of Plaintiff's appeal. The order also may not be attacked collaterally in this Court.

{¶7} "The Defendant has acted in accordance with ORC §5120.133 and Administrative Rule 5120-5-02 and consistent with the Journal Entry pursuant to the request of the Clerk of Courts, therefore, the Plaintiff's case must be dismissed.";

{¶8} 4) Defendant attached a copy of the judgment entry from the Tenth Appellate District Court of Appeals and an itemized bill showing the specific costs which was forwarded to the plaintiff;

{¶9} 5) On August 20, 2003, plaintiff filed a response to defendant's motion to dismiss;

{¶10} 6) In support of the response, plaintiff stated in pertinent part:

{¶11} "The Plaintiff's claims against the Defendants' are that they have erroneously assessed costs in excess of the limits set in Sections 2303.20(U), and 2303.20.1(A)(1) of the Ohio Revised Code. These claims, clearly stated in Hunt's Amended Complaint, alleges that the Defendant's are in violation of statutory law (emphasis added).

{¶12} "As such, this court has original jurisdiction to determine the question of law in this case, and the Plaintiff invokes jurisdiction on the court of claims pursuant to Ohio Revised Code Sections 2743.02, 2969.22, 2969.23, 2303.20(U), and 2303.20.1(A)(1).

{¶13} "The very first paragraph of Section 2303.20 states that the clerk of the court of common pleas shall assess costs pursuant to the limits set under that statute and 'no more'."

{¶14} THE COURT CONCLUDES THAT:

{¶15} 1) R.C. 5120.133(A) in pertinent part states:

{¶16} "The department of rehabilitation and correction, upon receipt of a certified copy of the judgment of a court of record in an action in which a prisoner was a party that orders a prisoner to pay a stated obligation, may apply toward payment of the obligation money that belongs to a prisoner and that is in the account kept for the prisoner by the

department. The department may transmit the prisoner's funds directly to the court for disbursement or may payment in another manner as directed by the court.”;

{¶17} 2) Administrative Code 5120-5-03(C) in pertinent part states:

{¶18} “When a certified copy of a judgment from a court of proper jurisdiction is received directing the DRC to withhold funds from an inmate's account, the warden's designee shall take measures to determine whether the judgment and other relevant documents are facially valid. . . . If no defect is found, the warden's designee shall promptly deliver to the inmate adequate notice of the court-ordered debt and its intent to seize money from his/her personal account. The required notice must inform the inmate of a right to claim exemptions and types of exemptions available under section 2329.66 of the Revised Code and a right to raise a defense as well as an opportunity to discuss these objections with the warden's designee. This practice provides safeguards to minimize the risk of unlawful deprivation of inmate property.”;

{¶19} 3) Defendant followed the proper procedures pursuant to R.C. 5120.133(A) and Administrative Code 5120-5-03(C) prior to any seizure of plaintiff's funds in his inmate account;

{¶20} 4) R.C. 2303.201 and 2303.20 have no applicability in this case since they involve fees charges by courts of common pleas not courts of appeal;

{¶21} 5) Plaintiff seeks to collaterally attack the judgment entry issued by the Tenth District Court of Appeals in this court. Plaintiff could have appealed that entry, but chose not to, instead filing suit in this forum. This court is not a court of appeals. See *Midland Ross Corp. v. Industrial Commission* (1992), 63 Ohio Misc. 2d 311.

{¶22} IT IS ORDERED THAT:

{¶23} Defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT

Deputy Clerk

Entry cc:

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DRB/laa
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