

for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were *manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.* ***" (Emphasis added.)

{¶6} During the 2000-2001 school year, plaintiff was an undergraduate student of geology at defendant, Kent State University (KSU), and Dr. Rachael Craig was employed by KSU as a tenured professor in the department of geology. From June 18 to July 13, 2001, 15 students, including plaintiff, attended "Geology Field Camp," which was taught by Dr. Craig and her teaching assistant James McCombs, in the Black Hills of South Dakota. Geology Field Camp was an intensive four-week course for juniors and seniors who were pursuing degrees in geology. Geology Field Camp included studies from 7 a.m. to 4 p.m. six days a week at various outdoor sites, and other activities such as hiking strenuous trails and creating geologic maps. The entire group from KSU was housed in a university dormitory in Spearfish, South Dakota. Plaintiff's allegations arise out of conduct that occurred during the field camp.

{¶7} On June 20, 2001, at approximately 5:30 a.m., plaintiff was in a computer lab waiting to go to breakfast when she saw McCombs and Dr. Craig in the hallway. Dr. Craig asked for plaintiff's assistance, and plaintiff followed Dr. Craig into Dr. Craig's dorm room. Dr. Craig told plaintiff that she had discovered a tick on her upper thigh and asked if plaintiff would feel comfortable in helping remove the tick. After plaintiff agreed to help, Dr. Craig asked plaintiff to close the door to the dorm room. Dr. Craig was wearing a T-shirt, jeans and underwear at

the time. She lowered her jeans so that the tick was exposed. At the hearing, Dr. Craig described the location of the tick as being "one to two inches outside of a normal bathing suit"; plaintiff described it as "outside but near the panty line." Plaintiff successfully removed the tick using matches and tweezers and then flushed the tick down the sink drain. Dr. Craig asked plaintiff if she had removed the entire tick and plaintiff stated that she had. Dr. Craig asked plaintiff to look again to make sure that she had removed the entire tick. Plaintiff looked again and confirmed that she had removed the entire tick. Dr. Craig thanked plaintiff for her assistance and then plaintiff left the room.

{¶8} Plaintiff alleges that later in the day, another female student asked how her "little surgical procedure" went. When plaintiff asked the student what she was talking about, the student stated that she was talking about the tick. Plaintiff also asserts that other students who had heard that she had assisted Dr. Craig in removing a tick teased her and asked her inappropriate questions. Plaintiff testified that she was embarrassed and humiliated about the situation.

{¶9} Plaintiff also asserts that Dr. Craig told her throughout Geology Field Camp that she was a slower hiker than the other students and that she was delaying the group. Plaintiff also asserts that on June 22, 2001, she got stuck in the opening of Rainbow Cave during a scheduled field exercise in an unexplored cave, that Dr. Craig did not personally assist in freeing her from the cave opening, and that Rainbow Cave was too dangerous a site to be explored by the group.

{¶10} Plaintiff asserts that Dr. Craig acted outside the scope of her employment with KSU in the following circumstances: 1)

asking and obtaining plaintiff's assistance in removing a tick from her upper leg; 2) telling another student about the tick incident; 3) telling plaintiff during field exercises that she was slower than the other students; 4) organizing a caving trip in which plaintiff became stuck in the cave entrance; and 5) failing to personally render assistance to plaintiff when plaintiff became stuck in the cave opening. KSU contends that all of plaintiff's allegations with the exception of the tick incident and any discussion thereof were within the scope of Dr. Craig's employment.

Dr. Craig also contends that all of the actions that plaintiff complains of were within the scope of her employment with KSU.

{¶11} Dr. Craig testified that she had discovered the tick while she was taking a shower and that it felt like it was imbedded; that she had tried to remove the tick on her own but was unsuccessful; and that in 1998, she believed she contracted viral encephalitis from a tick bite and became seriously ill. According to Dr. Craig, she wanted to remove the tick quickly because of the potential risk of contracting Rocky Mountain Spotted Fever or Lyme Disease, and that she asked plaintiff for assistance because plaintiff happened to be nearby at the time. Dr. Craig testified that she felt more comfortable asking a female student for assistance than her male teaching assistant because she herself is female; that she pointed to the location of the tick over her jeans while she asked plaintiff whether she was comfortable in helping remove it; that plaintiff did not hesitate to assist her; that she did not go to the nearest hospital for medical assistance because she wanted to be on time for class that morning and that it would have been "ridiculous" to seek medical assistance for tick removal; that she considered tick removal to be part of any job at field

camp; that tick safety was a specific topic addressed in preparation for field camp; that tick removal was a reasonable first aid practice at field camp; and that she had told another student about the tick incident to remind the group to be aware of the possibility of tick bites.

{¶12} In *Thomson v. University of Cincinnati College of Medicine* (Oct. 17, 1996), Franklin App. No. 96 API02-260, at pp. 10-11, the court noted that:

{¶13} "Under R.C. 9.86, an employee who acts in the performance of his duties is immune from liability. However, if the state employee acts manifestly outside the scope of his or her employment or acts with malicious purpose, in bad faith, or in a wanton or reckless manner, the employee will be liable in a court of general jurisdiction. 'It is only where the acts of state employees are motivated by actual malice or other such reasons giving rise to punitive damages that their conduct may be outside the scope of their state employment.' *James H. v. Dept. of Mental Health & Mental Retardation* (1980), 1 Ohio App.3d 60, 61. Even if an employee acts wrongfully, it does not automatically take the act outside the scope of the employee's employment even if the act is unnecessary, unjustified, excessive, or improper. *Thomas v. Ohio Dept. of Rehab. and Corr.* (1988), 48 Ohio App.3d 86. The act must be so divergent that its very character severs the relationship of employer and employee. *Wiebold Studio, Inc. v. Old World Restorations, Inc.* (1985), 19 Ohio App.3d 246."

{¶14} Based upon the totality of the evidence presented, the court finds that Dr. Rachael Craig acted within the scope of her employment with KSU at all times relevant hereto. The court finds that Dr. Craig was exposed to a tick as a result of her teaching

duties at Geology Field Camp. The court further finds that, under the unique circumstances present at Geology Field Camp, asking a student to assist with tick removal is not so divergent that its very character severs the relationship of employer and employee. The court also finds that Dr. Rachael Craig acted within the scope of her employment regarding the exploration of Rainbow Cave and any statements made to plaintiff about her hiking ability. The court further finds that Dr. Rachael Craig did not act with malicious purpose, in bad faith, or in a wanton or reckless manner toward plaintiff. Consequently, Dr. Rachael Craig is entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F). Therefore, the courts of common pleas do not have jurisdiction over civil actions against her based upon the allegations in this case.

{¶15} The court held an evidentiary hearing to determine civil immunity pursuant to R.C. 9.86 and 2743.02(F). Upon hearing all the evidence and for the reasons set forth in the decision filed concurrently herewith, the court finds that Rachael Craig, Ph.D., is entitled to immunity pursuant to R.C. 9.86 and 2743.02(F). Therefore, the courts of common pleas do not have jurisdiction over this matter. Pursuant to Civ.R. 54(B), this court makes the express determination that there is no just reason for delay.

FRED J. SHOEMAKER
Judge

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