

[Cite as *Crawford v. Univ. of Cincinnati College of Medicine*, 2004-Ohio-310.]

IN THE COURT OF CLAIMS OF OHIO

BRANDY CRAWFORD, Individ., etc., et al.	:	
	:	CASE NO. 2003-05658
Plaintiffs	:	Judge J. Warren Bettis
	:	
v.	:	<u>DECISION</u>
	:	
THE UNIVERSITY OF CINCINNATI COLLEGE OF MEDICINE	:	
	:	
Defendant	:	
.....	:	

{¶1} On December 18, 2003, the court held an evidentiary hearing in this case to determine whether Jared Robins, M.D., is entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86.

{¶2} R.C. 2743.02(F) provides, in part:

{¶3} “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. ****”

{¶4} R.C. 9.86 provides, in part:

{¶5} “**** no officer or employee [of the state] shall be liable in any civil action that arises under the law of this state 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. ***"

{¶6} Plaintiffs allege that on October 18, 2000, Dr. Robins was negligent in the care and treatment of plaintiff, Brandy Crawford, while she was in labor. Plaintiffs assert that Dr. Robins was acting outside the scope of his employment with defendant when he rendered care to Brandy. Defendant argues that Dr. Robins was acting within the course and scope of his employment.

{¶7} Dr. Robins testified that he was employed as a Fellow with University Hospital, Inc., from June 1998 to June 2001 and that his field of work was reproductive endocrinology and infertility. He stated he also worked as a volunteer professor for University of Cincinnati College of Medicine (UCCM) during the same time frame. In 2000, Dr. Robins received \$37,000.20 from University Hospitals, Inc. in salary for his fellowship. Dr. Robins acknowledged that he was paid a stipend by the private practice group, Foundation of Obstetrics and Gynecology (FOG), in the amount of \$3,333.40. Dr. Robins stated that he treated patients of the private practice group and performed surgery on private patients. However, according to Dr. Robins, he was not working for the private practice group on October 18, 2000; he was working instead for the university as a faculty-attending physician. Dr. Robins explained that in September 2000, at the request of the Chairman of the Department of Obstetrics and Gynecology at UCCM, he accepted scheduled, on-call assignments to be the attending physician in the Labor and Delivery unit at the hospital. Dr. Robins insisted that Brandy Crawford was not a private patient of FOG; that the care he rendered to her was delivered in conjunction with a team of residents and medical students assigned to the Labor and Delivery Department; and that he was not paid for being the on-call, attending physician. In addition, Dr. Robins testified that neither he nor FOG billed plaintiff for the care which she received.

{¶8} Dr. Robins was appointed as a volunteer professor at UCCM, as evidenced by a letter dated August 7, 1998. (Plaintiffs' Exhibit 4.) The letter contains the provision that failure to participate actively in educating students and residents is grounds for loss of such appointment. Plaintiffs insisted that Dr. Robins was not an employee of defendant because the faculty position was not a paid position. In addition, the evidence submitted at trial verified that Dr. Robins did not become an employee of FOG until November 2000. Defendant maintains that Dr. Robins was an employee of UCCM as a volunteer professor and that this employment governed his duties on the night in question. Defendant argues that the letter constitutes a contract between UCCM and Dr. Robins and that Dr. Robins was required to sign the letter if the terms and conditions were acceptable to him.

{¶9} Based on the totality of the evidence submitted and the decision rendered in *Jacobs v. Univ. of Cincinnati Med. Ctr.*, Franklin App. No. 02AP-316, 2002-Ohio-6030, the court finds that Dr. Robins was acting within the scope of his employment with defendant at all times relevant to this action. The court finds that Dr. Robins was acting in his capacity as a faculty professor, teaching and supervising students on October 18, 2000; that Brandy Crawford came under his care in a random manner; that she was never treated as a private patient; that he was not paid for treating her; and that he did not bill her for his services. The court further finds that Dr. Robins did not act with malicious purpose, in bad faith, or in a wanton or reckless manner toward plaintiffs.

{¶10} 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 Jared Robins, M.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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal. Pursuant to Civ.R. 54(B), this court makes the express determination that there is no just reason for delay.

J. WARREN BETTIS

Judge

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SJM/cmd
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