

[Cite as *Gaul v. Grafton Correctional Inst.*, 2005-Ohio-4464.]

IN THE COURT OF CLAIMS OF OHIO
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VICTOR GAUL :

Plaintiff : CASE NO. 2003-09041

v. : Judge Joseph T. Clark

: DECISION

GRAFTON CORRECTIONAL :
INSTITUTE, et al. :

Defendants :

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

{¶ 1} On June 30, 2005, defendants filed a second motion for partial summary judgment as to the issue of the civil immunity of Corrections Officer (CO) Heathcote. The motion is unopposed. The case is now before the court for a non-oral hearing on defendants' motion for partial summary judgment. Civ.R. 56(C) and L.C.C.R. 4(D).

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} "**** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the

evidence or stipulation construed most strongly in the party's favor. ***" See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} R.C. 2743.02(F) reads, in part:

{¶ 5} "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. ***"

{¶ 6} R.C. 9.86 states, in part:

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

{¶ 8} This case arises out of a workplace assault allegedly committed upon plaintiff by Heathcote. In the motion for partial summary judgment defendants argue that Heathcote acted manifestly outside the scope of his employment as a CO when he repeatedly pushed plaintiff and then struck him in the face.

{¶ 9} The motion is directed only to Count Three of the complaint which reads as follows:

{¶ 10} "Defendants are liable for Mr. Heathcote's conduct pursuant to R.C. 2743.02(A) should it be determined that Mr. Heathcote has immunity from this lawsuit."

{¶ 11} The issue of whether Heathcote is entitled to immunity is a question of law. *Chitwood v. University Med. Ctr., Gen. Div.* (May 5, 1998), Franklin App. No. 97API09-1235, citing *Conley v. Shearer*, 64 Ohio St.3d 284, 292, 1992-Ohio-133. However, the question whether he acted within the scope of his employment is one of fact. *Chitwood*, supra, citing *Tschantz v. Ferguson* (1989), 49 Ohio App.3d 9.

{¶ 12} In support of the motion for partial summary judgment defendants submitted a stipulation of facts. Attached thereto are numerous documents containing information relevant to the incident in question. Among those documents are a CO's position description, the Ohio Highway Patrol Report of Investigation, relevant portions of defendants' Standards of Employee Conduct, and the Notice of Disciplinary Action and Summary of Discipline taken against Heathcote.

{¶ 13} Defendants' first motion for summary judgment on this issue was denied because of defendants' failure to comply with Civ.R. 56(E) and the existence of a question of fact concerning immunity. Those deficiencies have been eliminated by the stipulation which contains facts that require a determination that Heathcote acted manifestly outside the scope of employment in regard to his assault of plaintiff. The stipulated facts also demonstrate conclusively that Heathcote acted with malicious purpose, in bad faith, and in a wanton matter. Therefore, the

jurisdiction over any action against CO Heathcote arising out of the allegations of plaintiff's complaint.

JOSEPH T. CLARK
Judge

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LP/cmd
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