

[Cite as *Lockley v. Lake Erie Corr. Inst.*, 2005-Ohio-6815.]

IN THE COURT OF CLAIMS OF OHIO

NATHANIEL LOCKLEY	:	
Plaintiff	:	
v.	:	CASE NO. 2005-09880-AD
LAKE ERIE CORRECTION INST.	:	<u>ENTRY OF DISMISSAL</u>
Defendant	:	

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

{¶ 1} On September 21, 2005, Nathaniel Lockley, filed a complaint against defendant, Lake Erie Correctional Institution. Plaintiff alleges his Zenith Color Television with remote control was stolen while he was away from his cell. Plaintiff contends he was then transferred to Lorain Correctional Institution. He reported his television set and remote were found by agents of defendant institution. Plaintiff was again transferred to Mansfield Correctional Institution and told his television set and remote were being shipped to Blanche Freeman. Plaintiff asserts Blanche Freeman never received his television set and remote. Accordingly, plaintiff seeks damages in the amount of \$156.00 for the loss of this property due to defendant's negligence.

{¶ 2} On October 19, 2005, defendant filed a motion to dismiss. In support of the motion to dismiss defendant stated in pertinent part:

{¶ 3} "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 no duty toward plaintiff with regard to the subject matter of the complaint. Any duty should fall to the contractor.

{¶ 4} "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.

{¶ 5} "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 3 O Jur 3d Agency, Sect. 218 (1999). Given that Plaintiff alleges Management & Training Corporation's employees were responsible for his loss, he has not stated a claim against Lake Erie Correctional Institution upon which relief can be granted."

{¶ 6} Plaintiff did not respond to defendant's motion to dismiss.

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

{¶ 8} "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"

{¶ 9} R.C. 2743.02(F) states in pertinent part:

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

{¶ 11} A review of plaintiff's pleadings reveals he is alleging negligence against personnel who are employed by Management & Training Corporation and not the defendant.

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

{¶ 13} "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"

{¶ 14} Plaintiff did not file a response to defendant's motion to dismiss.

{¶ 15} 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 affirmed jud (3-7-02); *Hernandez v. Lake Erie Correctional Institution* (2001), 2001-06428-AD affirmed jud (4-15-02).

{¶ 16} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. The court shall absorb the court costs of this case. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Nathaniel Lockley, #470-738
P.O. Box 8107
Mansfield, Ohio 44901

Plaintiff, Pro se

Vincent E. Lagana, Staff Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

For Defendant

DRB/laa
11/21
Filed 12/1/05
Sent to S.C. reporter 12/22/05