

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
www.cco.state.oh.us

ROBERT E. PERDUE

Plaintiff

v.

LEBANON CORRECTION INST.

Defendant

Case No. 2007-05393-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

{¶ 1} Plaintiff, Robert E. Perdue, an inmate formerly incarcerated at defendant, Lebanon Correctional Institution (“LeCI”), alleges that he was exposed to environmental tobacco smoke (“ETS”) while incarcerated at LeCI and suffered personal injury as a result of this exposure. Plaintiff maintains his fellow inmates and LeCI personnel smoked indoors at LeCI in violation of the State and Federal law and the exposure to the ETS caused him to suffer undue stress. Apparently plaintiff asserts he suffered the exposure to ETS from November 2005 to May 2007. Plaintiff filed this complaint seeking to recover \$2,500.00 in damages for stress associated with being subjected to a hazardous environment with substandard air quality caused by ETS. Plaintiff contends both inmates and LeCI staff continued to smoke inside LeCI in violation of law and internal regulations. Although plaintiff claims he suffered personal injury from the exposure to ETS, he did not offer any evidence other than his own assertion to establish any injury. Plaintiff was not required to pay a filing fee to pursue this action.

{¶ 2} Defendant denied any liability in this matter. Defendant maintains plaintiff has not offered any evidence to support his claim that smoking was permitted in LeCI buildings or that the non-smoking policies were not enforced. Furthermore, defendant contends plaintiff has failed to offer any proof to establish he was actually injured by ETS while incarcerated at LeCI. Defendant explains “that LeCI has been compliant with all applicable non-smoking policies.” Defendant relates, “persons caught violating the

smoking restrictions are subject to discipline,” including LeCI staff, contractors, and inmates. Defendant contends plaintiff has no right to pursue a cause of action for damages based on individuals at LeCI violating non-smoking policies. Defendant urges plaintiff’s claim based on exposure to ETS be dismissed.

{¶ 3} Plaintiff filed a response asserting defendant ignores the smoking bans in place and allows smoking to continue inside institutions. Plaintiff states he is fearful of contracting certain illnesses related to smoking due to his continued exposure to ETS.

{¶ 4} The court construes plaintiff’s claim that he is being subjected to secondhand smoke as a claim based upon the conditions of his confinement. Inmate complaints regarding the conditions of confinement are treated as claims arising under 42 U.S.C. 1983. *State ex rel. Carter v. Schotten*, 70 Ohio St. 3d 89, 91, 1994-Ohio-37, 637 N.E. 2d 306. Such claims may not be brought against the state in the Court of Claims because the state is not a “person” within the meaning of Section 1983. See, e.g. *Jett v. Dallas Indep. School Dist.* (1989), 491 U.S. 701, 109 S. Ct. 2702, 105 L. Ed. 2d 598; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App. 3d 170, 528 N.E. 2d 607; *White v. Chillicothe Correctional Institution* (Dec. 29, 1992), Franklin Appl. No. 92AP-1230. Accordingly, this court is without jurisdiction to determine plaintiff’s claims. See *Maxwell v. Richland Corr. Inst.* (Jan. 14, 2008), Ct. of Cl. No. 2007-07230.

{¶ 5} Additionally, plaintiff’s claim of deliberate indifference regarding enforcement of smoking bans is also construed as a constitutional claim and consequently this court is without jurisdiction to make a determination on that matter. See *Jett*. Plaintiff’s claim is hereby dismissed.



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Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE  
DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, plaintiff's claim is DISMISSED. Court costs are assessed against plaintiff.

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MILES C. DURFEY  
Clerk

Entry cc:

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RDK/laa  
4/8  
Filed 5/15/08  
Sent to S.C. reporter 8/1/08