

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

DANIEL HAIRSTON

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2008-10765-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On November 6, 2008, plaintiff, Daniel Hairston, filed a complaint against defendant, Ohio State Penitentiary. Plaintiff asserts he was awarded a judgment in the amount of \$400.00 in Claim No. 2005-11370-AD on August 4, 2006. On October 5, 2006, he received a warrant in the amount of \$402.16 which included interest, however, on November 11, 2006, this money was removed from his account for the purposes of paying criminal restitution. Plaintiff asserts the money received for a judgment from the Court of Claims should not be subject to attachment to pay restitution.

{¶ 2} On February 13, 2009, defendant filed a motion to dismiss pursuant to Civ.R. 12(B)(1), lack of subject matter jurisdiction. In support of the motion to dismiss, defendant stated in pertinent part:

{¶ 3} “Pursuant to Ohio Revised Code §5120.133 and Rule 5120-5-03 of the Administrative Code, the Defendant withdrew money from the Plaintiff’s inmate account and mailed checks to that clerk in order to pay the court-ordered Victim’s Reparations assessed against Plaintiff. Defendant complied with its statutory and rule duties.

{¶ 4} “The order requiring payment of court costs was a final appealable order.

The Court of Claims of Ohio is a court of original jurisdiction, therefore, it does not have appellate jurisdiction over any Court or agency. ORC §2743.03, cf. This Court is, therefore, without jurisdiction to determine the issues raised in Plaintiff's complaint by reviewing the Journal Entry ordering payment of the Victim's Reparations of Plaintiff's criminal case."

{¶ 5} On March 16, 2009, plaintiff filed a response to defendant's motion to dismiss. Plaintiff argues that the defendant is precluded by the doctrines of res judicata and estoppel from allowing the Court of Claims judgment to be used to satisfy his lawful debt to the Ohio Victims of Crime Compensation Program ("OVCCP"). Plaintiff asserts defendant was obligated to inform this court of the outstanding debt he had with OVCCP and this court would decide how the judgment should be distributed. However, plaintiff fails to address the jurisdictional issue raised by defendant.

{¶ 6} On March 30, 2000, the Common Pleas Court of Franklin County issued a judgment entry requiring Daniel Hairston to pay the OVCCP the sum of \$50,000 plus interest. On June 20, 2001, a Court Order to Pay a Stated Obligation was filed with defendant by the Franklin County Common Pleas Court. This document in pertinent part stated:

{¶ 7} "If you believe that some or all of the money in your account should not be withdrawn due to an exemption under R.C. section 2329.66 or because of a defense(s) in other provisions of law, then you may explain such belief by filling out the enclosed DRC form 1599, or a substantially similar form . . .

{¶ 8} "If you are unable to fully explain your exemption and/or defense, in writing, then you may request an informal discussion with me. This discussion shall be limited to a consideration of what portion, if any, of monies in your account cannot be taken from you to satisfy all or part of the debt owed as well as any defense to the validity of the court judgment itself.

{¶ 9} "If my office does not receive a timely asserted exemption or defense then the cashier may proceed to withdraw monies from your account.

{¶ 10} “If my office timely receives a claim for an exemption or defense, then I shall review it and determine, within fourteen days of such receipt, what portion, if any, of your personal account may be retained under R.C. section 2329.66 or other provision of such law. Once a decision is made, the hold will either be removed and no money withdrawn or payments initiated. The cashier will notify you each time money is withdrawn.”

{¶ 11} It is clear from the Court Order to Pay Stated Obligation that the authority to determine whether an exemption, as claimed by plaintiff, falls under R.C. 2329.66 falls under the purview of the Franklin County Common Pleas Court, not this court.

{¶ 12} R.C. 2743.02(E) states:

{¶ 13} “The only defendant in original actions in the court of claims is the state.”

{¶ 14} R.C. 2743.02(A)(1) in pertinent part states:

{¶ 15} “The state hereby waives its immunity from liability . . . and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties . . . To the extent that the state has previously consented to be sued, this chapter has no applicability.”

{¶ 16} Upon review, defendant’s motion to dismiss is GRANTED. This court lacks subject matter jurisdiction. Plaintiff’s case is DISMISSED. The court costs of this case are absorbed by the court.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Case No. 2006-03532-AD

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ENTRY

Daniel Hairston, #A320-335
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Stephen A. Young
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DRB/laa
3/26
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