

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

RONALD A. NAPIER

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL FACILITY

Defendant

Case No. 2008-11648-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶ 1} On December 19, 2008, plaintiff, Ronald A. Napier, filed a complaint against defendant, Southern Ohio Correctional Facility. Plaintiff alleges from August 2008 through December 2008, defendant “deliberately ‘denied’ Medical-treatment(s) and ‘emergency’ medical care to plaintiff, through such deliberate indifference(s) act(s) caused plaintiff (and is ‘causing’ plaintiff ‘severe’ and ‘prolonged’ ‘pain’ and ‘suffering’ ‘unwarrantedly’ ‘and ‘unduly’ tantamount to ‘cruel and unusual punishment’ and ‘unnecessary’ delay/denial of ‘medical treatment(s)’ ‘relief’ and ‘repeated’ threat(s) of ‘retaliation’ by prison official(s)/agent-defendant(s).” Plaintiff seeks damages in the amount of \$2,500.00.

{¶ 2} On February 13, 2009, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶ 3} “There is nothing in the complaint that alleges negligence or violation of any standard of care. It is clear that the plaintiff is asserting a claim of medical deliberate indifference in violation of the 8th amendment. The law is well established

that this court does not have jurisdiction to hear claims of civil rights violations brought against the state.

{¶ 4} “Furthermore, the plaintiff has alleged that the defendant’s employees acted ‘deliberately’ to cause him harm. He further alleges that they have made ‘threats of retaliation’ against him. Such intentional actions would be clearly outside the scope of their employment. The state is not liable for actions of their employees that are outside the scope of their employment.”

{¶ 5} Plaintiff has not responded to defendant’s motion to dismiss.

{¶ 6} Defendant is not responsible for intentional torts committed by its agents, when they are acting outside of their scope of employment. *Thomas v. Dept. of Rehab. and Corr.* (1988), 48 Ohio App. 3d 86, 548 N.E. 2d 991. The willful and malicious action of defendant’s agents, as alleged by plaintiff, are outside the scope of their employment and, accordingly, the state cannot be held to be responsible. *James H. v. Department of Mental Health & Mental Retardation* (1980), 1 Ohio App. 3d 60, 1 OBR 6, 439 N.E. 2d 437; *Webb v. Southern Ohio Correctional Facility* (1986), 85-07633-AD.

{¶ 7} The Court of Claims does not have jurisdiction over civil rights actions pursuant to 42 U.S.C. 1983 or over claims based solely on the alleged violation of the eighth amendment that requires “state action.” *Sherrills v. Mansfield Correctional Institution* (1983), 83-05439-AD; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App. 3d 170, 528 N.E. 2d 607.

{¶ 8} R.C. 2743.02 provides only the state may be sued in the Court of Claims. R.C. 2743.02(F) provides a mechanism for determining whether or not an employee has acted outside the scope of employment. However, only a judge of the Court of Claims may make determinations under R.C. 2743.02(F).

{¶ 9} Upon review, defendant’s motion to dismiss is GRANTED. Plaintiff’s case is DISMISSED. The court shall absorb the court costs of this case.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/laa
3/31
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