

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Brian P. Hanna,	:	
Plaintiff-Appellant,	:	
v.	:	No. 09AP-374
Ohio Department of Rehabilitation	:	(C.C. No. 2008-05397)
& Correction et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on September 17, 2009

Brian P. Hanna, pro se.

Richard Cordray, Attorney General, and *Eric A. Walker*, for appellee Ohio Department of Rehabilitation & Correction.

APPEAL from the Ohio Court of Claims.

BROWN, J.

{¶1} Brian P. Hanna, plaintiff-appellant, appeals from a judgment of the Ohio Court of Claims, in which the court dismissed appellant's complaint.

{¶2} Appellant is an inmate at North Central Correctional Institution ("NCCI"), defendant-appellee, which is operated by the Ohio Department of Rehabilitation and Correction ("ODRC"), defendant-appellee. In the complaint, appellant asserts that appellees wrongly denied his wife visitation with him in prison by claiming she was a

threat to the security of the institution. On November 26, 2008, appellant filed a motion for appointment of counsel, which the court denied on January 29, 2009. On December 31, 2008, appellees filed a motion to dismiss appellant's complaint for lack of subject-matter jurisdiction pursuant to Civ.R. 12(B)(6). On March 4, 2009, the trial court granted appellees' motion to dismiss pursuant to Civ.R. 12(B)(6) and 12(H)(3). Appellant appeals the judgment, asserting the following assignments of error:

[I.] THE COURT OF CLAIMS ERRED BY DISMISSING COMPLAINT BASED ON LACK OF JURISDICTION AND WOULD HAVE TO BRING CLAIMS IN A 42 U.S.C. 1983 CLAIM. THIS RULING ACTUALLY BARS APPELLANT FROM PURSUING ANY FURTHER ACTION IN ANY COURT. THUS VIOLATING APPELLANT'S RIGHT TO BRING GRIEVANCE AGAINST STATE ACTIONS.

[II.] THE COURT OF CLAIMS ERRED WHEN APPELLANT REQUESTED APPOINTMENT OF COUNSEL. THE APPELLANT PROVIDED CASE LAW TO SUPPORT APPOINTMENT OF COUNSEL, WHEN CASE IS COMPLICATED AND INVOLVES EVIDENCE OF SUCH A NATURE THAT AN INCARCERATED LITIGATOR COULD NOT POSSIBLY PRESENT HIS COMPLAINT/CASE ADEQUATELY TO THE COURT.

{¶3} Appellant argues in his first assignment of error that the Court of Claims erred when it granted appellees' motion to dismiss his complaint. Pursuant to Civ.R. 12(B)(6), a defendant may move to dismiss a complaint for failure to state a claim upon which relief can be granted. The dismissal of a complaint for failure to state a claim is proper when it appears, beyond doubt, that the plaintiff can prove no set of facts entitling him to relief. *Celeste v. Wiseco Piston*, 151 Ohio App.3d 554, 2003-Ohio-703, ¶12. A Civ.R. 12(B)(6) motion to dismiss tests the sufficiency of a complaint. *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, 245. In ruling on a motion to dismiss, the court must conduct a de novo review, construe the complaint in a light most

favorable to the plaintiff, presume all factual allegations in the complaint are true, and make all reasonable inferences in favor of the plaintiff. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. The court may not rely on allegations or evidence outside the complaint in addressing a motion under Civ.R. 12(B)(6) unless, with reasonable notice to the parties, it treats the motion as a Civ.R. 56 motion for summary judgment. Civ.R. 12(B); *State ex rel. Natalina Food Co. v. Ohio Civ. Rights Comm.* (1990), 55 Ohio St.3d 98, 99.

{¶4} Civ.R. 12(H)(3) provides:

Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction on the subject matter, the court shall dismiss the action.

{¶5} In the present case, appellant argues that the trial court erred when it dismissed his complaint. Appellant asserts the trial court has essentially stopped him from pursuing his claims, pursuant to 42 U.S.C. 1983, which he maintains must first be presented to the Court of Claims to have liability determined before a litigant can pursue the claim any further.

{¶6} The trial court found the claims raised in appellant's complaint were ones related to his conditions of confinement, which must be construed as claims arising under 42 U.S.C. 1983. The Court of Claims was correct that inmate claims concerning the conditions of confinement are treated as civil right actions under 42 U.S.C. 1983. See *Baker v. Ohio Dept. of Rehab. & Corr.*, 144 Ohio App.3d 740, 2001-Ohio-2553. It is also true that a cause of action under 42 U.S.C. 1983 may not be brought against the state in the Court of Claims because the state is not a "person" within the meaning of 42 U.S.C. 1983. See, e.g., *Jett v. Dallas Indep. School Dist.* (1989), 491 U.S. 701, 109 S.Ct. 2702;

Burkey v. Southern Ohio Correctional Facility (1988), 38 Ohio App.3d 170; *White v. Chillicothe Correctional Inst.* (Dec. 29, 1992), 10th Dist. No. 92AP-1230. Therefore, the court's findings, in these respects, were proper.

{¶7} However, in his reply brief, appellant seems to change his argument and claims that the court erred by interpreting his complaint as an action under 42 U.S.C. 1983. He claims that nowhere did he claim to be filing an action, pursuant to 42 U.S.C. 1983, which provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State * * * subjects, or causes to be subjected, any citizen * * * or other person * * * to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

{¶8} In his amended complaint, appellant asserted that appellees, by denying his wife visitation, were negligent in failing to resolve the visitation issue, hindered his rights to maintain his marriage, infringed upon the rights of his own and his family's, and demonstrated wanton and reckless disregard of his right to visit his wife. After reviewing these claims, we find the trial court did not err when it construed appellant's action as a 42 U.S.C. 1983 action. The mere fact that claims in a complaint are couched in certain legal terms is insufficient to confer jurisdiction upon a court. See *State ex rel. Columbia Gas of Ohio, Inc. v. Henson*, 102 Ohio St.3d 349, 2004-Ohio-3208, ¶19. Instead, in order to resolve the issue of whether a court has subject-matter jurisdiction over a party's claims, the court must look beyond the language used in the complaint and examine the underlying nature of the claims. *Id.*, ¶20.

{¶9} Despite appellant's use of the term "negligence" and "wanton and reckless disregard" in parts of his complaint, appellant's claims all fall into the classification of constitutional claims and/or claims based upon unlawful conditions of confinement. See, e.g., *Gumpl v. Wilkinson* (Aug. 31, 1994), 9th Dist. No. 94CA005858 (trial court analyzed claim of reduced visitation due to prison overcrowding as a claim regarding condition of confinement under the Eighth Amendment); see also *State ex rel. Manson v. Morris* (1993), 66 Ohio St.3d 440, 442 (trial court analyzed the denial of prison access to a particular visitor as a claim regarding the conditions of confinement under the Fourteenth Amendment rights to due process and equal protection); cf. *Wilson v. Seiter* (1991), 501 U.S. 294, 111 S.Ct. 2321 (when an inmate makes a claim that he has been deprived of a single, identifiable human need, the claim relates to a condition of confinement). Neither of these categories of claims is actionable in the Court of Claims. The Court of Claims lacks subject-matter jurisdiction over alleged violations of constitutional rights and claims arising under 42 U.S.C. 1983. *Bleicher v. Univ. of Cincinnati College of Medicine* (1992), 78 Ohio App.3d 302. Therefore, because none of the claims in appellant's complaint were actionable in the Court of Claims, we find the court did not err when it dismissed appellant's complaint. Appellant's first assignment of error is overruled.

{¶10} Appellant argues in his second assignment of error that the Court of Claims erred when it failed to appoint him counsel. Appellant claims he was in a dire circumstance and severely disadvantaged by representing himself. However, litigants do not have a right to counsel in civil cases, like here, that do not involve the state seeking to take an individual's life, liberty or property. *Scott v. Scott*, 10th Dist. No. 03AP-411, 2004-

Ohio-1405, ¶31. Thus, the court did not err by denying appellant's motion for appointment of counsel, and we overrule appellant's second assignment of error.

{¶11} Accordingly, appellant's first and second assignments of error are overruled, and the judgment of the Ohio Court of Claims is affirmed.

Judgment affirmed.

BRYANT and McGRATH, JJ., concur.
