

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Kevin Hughley,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 09AP-562
	:	(C.C. No. 2009-01387)
Ohio Department of Rehabilitation and	:	
Correction et al.,	:	(REGULAR CALENDAR)
	:	
Defendants-Appellees.	:	
	:	

D E C I S I O N

Rendered on April 22, 2010

Kevin Hughley, pro se.

Richard Cordray, Attorney General, and *Kristin S. Boggs*, for appellees.

APPEAL from the Court of Claims of Ohio

CONNOR, J.

{¶1} Appearing pro se, plaintiff-appellant, Kevin Hughley ("appellant"), appeals the decision of the Court of Claims of Ohio dismissing his claims against the Ohio Department of Rehabilitation and Correction ("appellees" or "ODRC") and Southeastern Correctional Institute ("appellees" or "SCI") for false imprisonment, intentional infliction of

emotional distress, and negligence. For the following reasons, we affirm the judgment of the trial court.

{¶2} On January 14, 2009, appellant filed a form complaint with the trial court, asserting claims against ODRC and SCI. On March 9, 2009, appellant filed a motion for default judgment pertaining to SCI. Appellees filed a motion to dismiss SCI as a party defendant on the basis of surplusage because it is an entity of ODRC. The trial court, in its entry of dismissal, overruled this motion to dismiss and instead incorporated SCI into the original answer filed by ODRC. As a result, the trial court overruled appellant's motion for default judgment.

{¶3} On March 27, 2009, ODRC filed its motion for summary judgment. The basis for this motion was that appellant was lawfully incarcerated pursuant to a valid sentencing order. On May 26, 2009, the trial court filed an entry of dismissal. The court held that appellant's claims were unripe because he was still incarcerated. As a result, the court held that it lacked subject-matter jurisdiction over this matter. It therefore dismissed appellant's complaint.

{¶4} This appeal ensued and presents the following assignments of error:

[I] Trial court erred by ruling the tort of false imprisonment wasn't ripe when both sentencing entries are void on its face since appellees are not authorized to detain appellant on misdemeanor convictions pursuant to R.C. 5145.01 & 2929.34 and a 9 month sentence pursuant to R.C. 4505.19(B).

[II] Trial court erred by incorporating defendant's DRC answer as defendant's SCI answer when a default judgment motion was filed by plaintiff.

{¶5} An order granting a motion to dismiss for failure to state a cause of action for which relief can be granted is subject to de novo review by an appellate court.

Perrysburg Twp. v. Rossford, 103 Ohio St.3d 79, 2004-Ohio-4362. In reviewing whether such a motion to dismiss can be granted, we are required to accept as true all factual allegations in the complaint. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190. When granting a motion to dismiss, it must appear beyond doubt that the plaintiff can prove no set of facts that would entitle the plaintiff to relief. *Vail v. The Plain Dealer Publishing Co.*, 72 Ohio St.3d 279, 1995-Ohio-187.

{¶6} A party who has had the opportunity to appeal a criminal conviction cannot substitute an action in the Court of Claims of Ohio for an appeal to the proper appellate court. *Dunlap v. Ohio Pub. Defender's Office*, 10th Dist. No. 08AP-474, 2009-Ohio-363. Furthermore, the statute governing actions in the Court of Claims, R.C. 2743.02, was not intended to confer jurisdiction for the Court of Claims to review criminal proceedings occurring in the court of common pleas. *Id.*, citing *Donaldson v. Court of Claims of Ohio* (May 19, 1992), 10th Dist. No. 91AP-1218; *Troutman v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 03AP-1240, 2005-Ohio-334.

{¶7} Nevertheless, our court recently outlined the elements of a false imprisonment claim. See *Williams v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-77, 2009-Ohio-3958. In *Williams*, our court held:

Plaintiff's complaint asserts a common law claim of false imprisonment. "Pursuant to R.C. 2743.02(A)(1), the state may be held liable for the false imprisonment of its prisoners." *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St. 3d 107, 573 N.E.2d 633, paragraph two of the syllabus. "False imprisonment occurs when a person confines another intentionally 'without lawful privilege and against his consent within a limited area for any appreciable time, however short.'" *Id.* at 109, quoting *Feliciano v. Kreiger* (1977), 50 Ohio St.2d 69, 71, 362 N.E.2d 646. "[T]he elements for wrongful imprisonment of an inmate beyond a lawful term of incarceration would be: (1) expiration of the lawful term of

confinement, (2) intentional confinement after the expiration, and (3) knowledge that the privilege initially justifying the confinement no longer exists." *Corder v. Ohio Dept. of Rehab & Corr.* (1994), 94 Ohio App. 3d 315, 318, 640 N.E.2d 879. However, an action for false imprisonment cannot be maintained when the imprisonment is in accordance with the judgment or order of a court, unless it appears such judgment or order is void on its face. *Bradley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 07AP-506, 2007 Ohio 7150, P10, citing *Bennett*. Thus, although the state may be liable for false imprisonment, it retains immunity under common law for claims of false imprisonment when the plaintiff was incarcerated pursuant to a facially valid judgment or order. *Id.* at P11.

Id. at ¶12.

{¶8} Upon our review of the record, it is clear that appellant's claims are premised upon the allegation that appellant is being wrongfully detained pursuant to void sentencing entries. Indeed, even appellant's claims for intentional infliction of emotional distress and negligence are derivative in nature, and based again upon the position that he is being wrongfully detained pursuant to void sentencing entries.

{¶9} We note, however, that the sentencing entries forming the basis of appellant's claims have already been determined to be valid. See *State v. Hughley*, 8th Dist. No. 92588, 2009-Ohio-5824, ¶22, discretionary appeal not allowed by 124 Ohio St.3d 1477, 2010-Ohio-354. It is also clear that appellant has made similar challenges throughout various courts across this state. See *State v. Hughley*, 8th Dist. No. 90323, 2008-Ohio-6146; *Hughley v. Kinsel*, 5th Dist. No. 2009 CA 00032, 2009-Ohio-4741; *Hughley v. Saunders*, 5th Dist. No. 09 CA 6, 2009-Ohio-1294; *Hughley v. Southeastern Corr. Inst.*, 5th Dist. No. 09-CA-18, 2009-Ohio-4912; *Hughley v. Duffy*, 5th Dist. No. 09-CA-43, 2009-Ohio-6085; *State ex rel. Hughley v. Berens*, 5th Dist. No. 2009-CA-24, 2009-Ohio-3277; *State ex rel. Hughley v. McMonagle*, 8th Dist. No. 93366, 2009-Ohio-

4543; *State ex rel. Hughley v. Ohio Dept. of Rehab & Corr.*, 10th Dist. No. 09AP-586, 2009-Ohio-6276; *Hughley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-544, 2009-Ohio-6126. Notably, the Supreme Court of Ohio has even gone so far as to declare appellant a vexatious litigator under S.Ct.Prac.R.XIV(5)(B). See *Hughley v. Duffey*, 122 Ohio St.3d 1519, 2009-Ohio-4776.

{¶10} Because appellant's claims are premised upon the position that he is being wrongfully detained pursuant to void sentencing entries and those sentencing entries have already been determined to be valid, we find that the trial court did not err in dismissing appellant's claims. Accordingly, we overrule appellant's first assignment of error. Because the trial court did not err in dismissing appellant's substantive claims, the trial court did not err to the prejudice of appellant by incorporating SCI into ODRC's answer. We therefore overrule appellant's second assignment of error.

{¶11} Having overruled each of appellant's two assignments of error, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

BROWN and FRENCH, JJ., concur.
