

[Cite as *Farra v. Sinclair Community College*, 2006-Ohio-1019.]

IN THE COURT OF CLAIMS OF OHIO

DONALD M. FARRA :
Plaintiff :
v. : CASE NO. 2005-10411-AD
SINCLAIR COMMUNITY COLLEGE : ENTRY OF DISMISSAL
Defendant :
: : : : : : : : : : : : : : : :

{¶ 1} On October 20, 2005, plaintiff filed a complaint against defendant, Sinclair Community College, alleging construction activities by the college damaged his adjoining property. Plaintiff seeks damages in the amount of \$1,117.26. Plaintiff submitted the filing fee on October 24, 2005.

{¶ 2} On November 4, 2005, defendant filed a motion to dismiss. Defendant asserted plaintiff's claim should be dismissed 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} "The law is well settled that the only proper defendant in an action before the Ohio Court of Claims is the state. Specifically, R.C. § 2743.02(E) provides in relevant part: 'The only defendant in original actions in the court of claim is the state.' Furthermore, R.C. § 2743.01 defines 'state' as 'the state of Ohio, including but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state. 'State' does not include political subdivisions.' (Emphasis added.)

{¶ 4} "Sinclair is a 'community college district' governed by Chapter 3354 of the Ohio Revised Code. A 'community college district' is defined in R.C. § 3354.01(A) as a 'political subdivision' of the state. Since Sinclair is considered to be a 'political subdivision' and not the 'state' its actions are expressly excluded from this Court's jurisdiction under R.C. § 2743.02(E). See also, R.C. §§ 3354.03, and 3354.07; 1992 Ohio Op. Attny. Gen. No. 92-034. In other words, then, under R.C. § 2743.02(E), this Court does not have subject matter jurisdiction over the Plaintiffs' alleged claims against Sinclair. See also, *Graham v. Ohio Board of Bar Examiners, et al.* (1994), 98 Ohio App. 3d 620, 649 N.E. 2d 282; *Bell v. Management & Training Corp.*, 2002 WL 31986390 (Ohio Ct. Cl.), 2002-Ohio-3532, copy attached."

{¶ 5} On December 2, 2005, plaintiff filed a memorandum in opposition to motion to dismiss. Plaintiff relies on the holding of *Miller v. Washington State Community College* (1997), 121 Ohio App. 3d 78, 698 N.E. 2d 1058, to support his position that the Court of Claims has jurisdiction in the matter. The holding in *Miller, supra*, supports the proposition that state community colleges are an arm of the state and have to be sued in the Court of Claims.

{¶ 6} On December 12, 2005, defendant filed a motion for leave to file a reply to plaintiff's memorandum in opposition to motion to dismiss and a reply. In support of the reply defendant in pertinent part states:

{¶ 7} "The Plaintiff's reliance is misplaced and discloses his failure to differentiate between a 'state community college,' which is governed by Chapter 3358 of the Ohio Revised Code, and a 'community college district,' which is governed by Chapter 3354 of

the Ohio Revised Code. The entity involved in *Miller* was a 'state community college.' Conversely, Sinclair is a 'community college district.' As this Court is aware, this is a distinction with a fundamental difference.

{¶ 8} "Sinclair does not dispute that a '[s]tate community college [is] an arm of the state subject to suit only in the Ohio Court of Claims.' *Id.* However, as this court is well aware Sinclair is not such an arm of the state and is deemed to be an 'autonomous political subdivision of the state subject to suit in common pleas courts.' *See, id.* Thus, under the authority cited in the Plaintiff's own Memorandum in Opposition, as well as the authority cited by Sinclair in its motion to dismiss, this tribunal simply does not have subject matter jurisdiction over this action."

{¶ 9} When considering a Civ. R. 12(B)(1) motion to dismiss for lack of subject matter jurisdiction, the court must determine whether the complaint raises any action cognizable in that court. *See State ex rel. Bush v. Spurlock* (1989), 42 Ohio St. 3d 77, 80, 537 N.E. 2d 641, 644. *Westside Cellular, Inc. v. Northern Ohio Cellular Telephone Company* (1995), 100 Ohio App. 3d 768, 770, 654 N.E. 2d 1298, 1299.

{¶ 10} In *Nimmo v. Southern State Community College* (Nov. 19, 1985), S.D. Ohio No. C-1-83-738, unreported, the Federal District Court in pertinent part stated:

{¶ 11} "Ohio has statutorily created, *inter alia*, three types of institutions for higher education. They are, the state college or university *** the state community college *** and the community college. The first, the state college or university, is clearly an arm of the state ***. The third type of institution, the community college, is not an arm of the state; rather it is a political

subdivision *** a community college district, also named a political subdivision in the statute's definitional section, O.R.C. Section 3354.01, has its status further defined in O.R.C. Section 3354.03 which is captioned 'District to be political subdivision.' Section 3354.03 provides in relevant part:

{¶ 12} "A community college district organized pursuant to section 3354.02 of the Revised Code shall be a political subdivision of the state and a body corporate with all the powers of a corporation, existence, with power to sue and be sued, to incur debts, liabilities, and obligations, to exercise the right of eminent domain and of taxation and assessment as provided in section 3354.01 to 3354.18 inclusive ***."

{¶ 13} Furthermore, a judge of the Court of Claims in *Davis v. Attorney General* (1996), 96-01321, determined that Sinclair Community College is a community college district and is not a state agency, but a political subdivision. Pursuant to R.C. 2743.02(E), the Court of Claims has no jurisdiction over political subdivisions.

{¶ 14} Defendant's motion for leave to file a reply is GRANTED. Defendant's motion to dismiss is GRANTED pursuant to Civ.R. 12(B)(1), lack of subject matter jurisdiction. Plaintiff's case is DISMISSED. The court shall absorb the court costs of this case. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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