

[Cite as *Hardy v. Belmont Correctional Inst.*, 2006-Ohio-623.]

IN THE COURT OF CLAIMS OF OHIO  
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JOSEPH HARDY :

Plaintiff : CASE NO. 2004-09631  
Judge J. Craig Wright

v. :  
DECISION

BELMONT CORRECTIONAL :  
INSTITUTION, et al. :  
Defendants :

: : : : : : : : : : : : : : : :

{¶ 1} On November 23, 2005, defendants filed a motion for summary judgment. On December 1, 2005, plaintiff filed a motion to strike and a memorandum in opposition to defendants' motion. The case is now before the court for a non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} "\*\*\* Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's

favor. \*\*\*" See, also, *Gilbert v. Summit County* (2005), 104 Ohio St.3d 660, 2004-Ohio-7108, citing, *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} At all times relevant to this action, plaintiff was an inmate in the custody and control of the Department of Rehabilitation and Correction (DRC) pursuant to R.C. 5120.16.

{¶ 5} Plaintiff alleges that defendants are liable for "wrongful" imprisonment by maintaining his incarceration beyond the maximum time authorized by law. Defendants assert that DRC had an absolute privilege to confine plaintiff in accordance with a sentencing order imposed by the Cuyahoga County Court of Common Pleas.

{¶ 6} As defined in R.C. 2743.48, a wrongfully imprisoned individual is one who was found guilty of an offense that is subsequently determined by a court of common pleas not to have been committed by that individual. Although the crux of plaintiff's complaint is that he was "wrongfully sentenced and jailed," he is unable to maintain a claim for wrongful imprisonment because a court of common pleas has not determined that he was not the individual who committed the offense for which he was imprisoned.

{¶ 7} However, plaintiff's complaint arguably states a claim for false imprisonment. The tort of false imprisonment is defined as an intentional confinement of an individual in the absence of an intervening justification, despite knowledge that the privilege initially justifying that confinement no longer exists. *Bennett v. Ohio Dept. of Rehab. and Corr.* (1991), 60 Ohio St.3d 107.

{¶ 8} In support of the motion for summary judgment, defendants submitted the affidavit of Mickie Rigsby, the chief of DRC's Bureau of Sentence Computation. Rigsby's affidavit states, in pertinent part, as follows:

{¶ 9} \*\*\*

{¶ 10} "3. On May 13, 2002, Hardy pled guilty to Count One Workers' Compensation Fraud and Count Two Attempted Workers' Compensation Fraud.

{¶ 11} "4. Hardy was sentenced by the Cuyahoga County Common Pleas Court on June 10, 2002 and given a total of five years of Community Control on Count One Workers' Compensation Fraud and Count Two Attempted Workers' Compensation Fraud. See Case # CR415634, Court of Common Pleas of Cuyahoga County. \*\*\* [Defendants' Exhibit A.]

{¶ 12} "5. At a hearing on August 26, 2002, Hardy was found in violation of the terms of his community control. As a result, the court sentenced him to 18 months on Count One Workers' Compensation Fraud and 12 months on Count Two Attempted Workers' Compensation Fraud, sentences to be served concurrently. See Case # CR415634, Court of Common Pleas of Cuyahoga County. \*\*\* [Defendants' Exhibit B.]

{¶ 13} "6. On August 29, 2002, Hardy was delivered to Lorain Correctional Institution.

{¶ 14} "7. On October 29, 2002, a hearing was held pursuant to R.C. 2929.20 upon Hardy's request for judicial release. At the judicial release hearing, the court sentenced Hardy to five years of community control. See Case # CR415634, Court of Common Pleas of Cuyahoga County. \*\*\* [Defendants' Exhibit C.]

{¶ 15} "8. At a July 16, 2003 violation hearing, Hardy was found in violation of the terms of his community control, and the court sentenced him to 17 months on Count One Workers' Compensation Fraud and 11 months on Count Two Attempted Workers' Compensation Fraud, sentences to be served consecutively. \*\*\* [Defendants' Exhibit D.]

{¶ 16} "9. On July 18, 2003, Hardy was returned to Lorain Correctional Institution.

{¶ 17} "10. Hardy appealed his sentence to the Eighth District Court of Appeals of Ohio. On May 27, 2004 the Court of Appeals announced the case was reversed and remanded for resentencing. \*\*\* [Defendants' Exhibit E.]

{¶ 18} "11. On August 18, 2004, a resentencing hearing was held in the Cuyahoga County Court of Common Pleas. The court imposed a revised prison sentence of 17 months as to Count One Workers' Compensation and 11 months as to Count Two Attempted Workers' Compensation Fraud, sentences to run concurrently. \*\*\* [Defendants' Exhibit F.]

{¶ 19} "12. On September 2, 2004, the Ohio Department of Rehabilitation and Correction received the new journal entry resentencing Hardy.

{¶ 20} "13. On September 3, 2004, Hardy's release date was certified by the Bureau of Sentence Computation for September 9, 2004. Hardy received 498 days of credit on a 17 month sentence. I have reviewed Hardy's file and have found no errors in his sentence or length of incarceration.

{¶ 21} "14. Hardy was released from prison on September 9, 2004."

{¶ 22} In order to withstand defendants' motion for summary judgment, plaintiff must produce some evidence establishing the existence of a genuine issue of fact as to each of the elements of a claim of false imprisonment: expiration of the lawful term, intentional confinement after the expiration; and knowledge that the privilege initially justifying confinement no longer exists. *Bennett*, supra; *Corder v. Ohio Dept. of Rehab. & Corr.* (1994), 94 Ohio App.3d 315. However, "an action for false imprisonment cannot be maintained where the wrong complained of is imprisonment in accordance with the judgment or order of a court, unless it appear[s] that such judgment or order is void." *Bennett* at 111,

citing *Brinkman v. Drolesbaugh* (1918), 97 Ohio St. 171, paragraphs five and six of the syllabus and *Johns v. State* (1981), 67 Ohio St.2d 325, paragraph one of the syllabus, certiorari denied (1982), 455 U.S. 944.

{¶ 23} The court has reviewed defendants' motion for summary judgment and the memoranda filed by the parties. The court has also reviewed the affidavits and other evidence submitted by the parties. Plaintiff has not alleged in his numerous pleadings that the jail-time credit calculations that were used by DRC were inaccurate. Therefore, construing the evidence most strongly in favor of plaintiff, the court finds that no genuine issues of material fact exist with regard to the term of his imprisonment.

{¶ 24} Plaintiff also alleges that the trial judge in his criminal case acted with bias and prejudice regarding his workers' compensation claims and that the court made rulings that were contrary to law. However, plaintiff had the opportunity to raise any assignment of error from his criminal conviction in his direct appeal and he cannot now substitute an action in this court for a right of appeal in a different court. See *Swaney v. Bureau of Workers' Compensation* (Nov. 10, 1998), Franklin App. No. 98AP-299; *Midland Ross Corp. v. Industrial Commission* (1992), 63 Ohio Misc.2d 311.

{¶ 25} Moreover, "\*\*\* Ohio law is clear that 'no civil action can be maintained against a judge for the recovery of damages by one claiming to have been injured by judicial action within the scope of the judge's jurisdiction.' *State ex rel. Fisher v. Burkhardt* (1993), 66 Ohio St.3d 189. Similarly, 'a judge cannot be held liable for actions taken that are within the judge's discretion.' *Newdick v. Sharp* (1967), 13 Ohio App.2d 200. \*\*\*" *Evans v. Supreme Court of Ohio*, 119 Ohio Misc.2d 34, 2002-Ohio-3518.

{¶ 26} The Tenth District Court of Appeals has held: "When the State of Ohio created the Court of Claims and abrogated the state's traditional sovereign immunity at common law, the state consented to be sued pursuant to R.C. 2743.02 in accordance with the rules of law applicable to suits between private parties but preserved the state's immunity 'for its legislative or judicial functions.' *Reynolds v. State Div. of Parole & Community Servs.* (1984), 14 Ohio St.3d 68, syllabus; accord *Semadeni v. Ohio Dept. of Transp.* (1996), 75 Ohio St.3d 128, 132. It is thus clear that judicial immunity applies not only to judges personally, but to courts and the state itself." See *Ajamu M. Kafele v. The State of Ohio* (Sept. 21, 2004), Franklin App. No. 03AP-838. Accordingly, plaintiff may not recover from defendants for claims that are related to the rulings that were made by the common pleas court in his criminal case or other proceedings concerning any workers' compensation claim.

{¶ 27} Plaintiff next alleges a claim of defamation. Although plaintiff's complaint does not specify the alleged defamatory statements, it does refer to participants in his criminal trial and actions taken by workers' compensation "agents."

{¶ 28} Defamation is defined as "the unprivileged publication of a false and defamatory matter about another \*\*\* which tends to cause injury to a person's reputation or exposes him to public hatred, contempt, ridicule, shame or disgrace or affects him adversely in his trade or business." *McCartney v. Oblates of St. Francis deSales* (1992), 80 Ohio App.3d 345, 353. To survive a motion for summary judgment in a defamation action, plaintiff must make a sufficient showing of the existence of every element essential to maintaining the case. See *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 322.

{¶ 29} Statements made during judicial proceedings are afforded an absolute privilege when they are relevant to the issues at hand. *Surace v. Wuliger* (1986), 25 Ohio St.3d 229; *Oakwood v. Makar* (1983), 11 Ohio App.3d 46, 48. The privilege applies even if the statement is untrue. *Pease Co. v. Huntington National Bank* (1985), 24 Ohio App.3d 227, 232. The same policy considerations underlying the privilege relating to judicial proceedings also apply to quasi-judicial proceedings such as workers' compensation hearings before the Industrial Commission of Ohio. *Willitzer v. McCloud* (1983), 6 Ohio St.3d 447. See, also, *Pasanovic v. American General Finance, Inc.* (Sept. 17, 1992), Franklin App. No. 92AP-651, (concerning R.C. 4141.21 and information furnished to the Bureau of Employment Services); *Hecht v. Levin*, 66 Ohio St.3d 458, 1993-Ohio-110 (discussing statements made in the context of disciplinary proceeding before local bar association).

{¶ 30} Therefore, even if plaintiff had proved that any of the alleged statements made in connection with either his criminal trial or his workers' compensation proceedings were false, defendants are protected from liability by an absolute judicial privilege since those statements were reasonably related to the proceedings. See *Surace*, supra; *Erie County Farmers' Ins. Co. v. Crecelius* (1930), 122 Ohio St. 210.

{¶ 31} Furthermore, any of defendants' employees who allegedly made defamatory statements not directly related to the judicial or quasi-judicial proceedings may also invoke the defense of qualified privilege in order to avoid liability. *A & B-Abell Elevator Co. v. Columbus/Central Ohio Bldg. & Constr. Trades Council* (1995), 73 Ohio St.3d 1, 8-9. A qualified privilege can only be defeated by a clear and convincing showing that the communication was made with actual malice. *Jacobs v. Frank* (1991), 60 Ohio St.3d 111, paragraph two of the syllabus. "Actual malice" is defined as

acting with knowledge that the statements are false or acting with reckless disregard as to their truth or falsity. *Id.* In order to determine whether the defamatory statements are entitled to a qualified privilege, the court must consider the circumstances under which they were made. Where the circumstances of the occasion for the alleged defamatory publication are not in dispute, the determination of whether there is a qualified privilege is a question of law for the court. *A & B-Abell, supra*, at 7. Plaintiff must offer some evidence, beyond the mere conclusory allegations in his complaint, that defendants' employees acted with knowledge that their statements were false or acted with reckless disregard as to their truth or falsity. *Evelyn v. Carlton Co.* (1983), 4 Ohio St.3d 163, 165.

{¶ 32} Plaintiff did not offer any evidence that the alleged publications were made with actual malice. Accordingly, there is no factual dispute that statements made by defendants' employees concerning plaintiff's workers' compensation proceedings were entitled to a qualified privilege.

{¶ 33} Additionally, to the extent that plaintiff's complaint alleges violations of the United States Constitution, this court is without jurisdiction to consider such claims. See, e.g., *Graham v. Ohio Bd. of Bar Examiners* (1994), 98 Ohio App.3d 620; *White v. Chillicothe Correctional Institution* (Dec. 29, 1992), Franklin App. No. 92AP-1230; *White v. Dept. of Rehab. & Corr.* (Dec. 22, 1992), Franklin App. No. 92AP-1229.

{¶ 34} In conclusion, construing the evidence most strongly in favor of plaintiff, the court finds that no genuine issues of material fact exist and that defendants are entitled to judgment as a matter of law. Accordingly, defendants' motion for summary judgment shall be granted.

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JOSEPH HARDY :

Plaintiff : CASE NO. 2004-09631  
Judge J. Craig Wright

v. :  
JUDGMENT ENTRY

BELMONT CORRECTIONAL :  
INSTITUTION, et al. :  
Defendants :

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Based upon the evidence and for the reasons set forth in the decision filed concurrently herewith, defendants' motion for summary judgment is GRANTED. Judgment is rendered in favor of defendants. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

\_\_\_\_\_  
J. CRAIG WRIGHT  
Judge

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To S.C. reporter February 13, 2006