

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Kevin Hughley,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 09AP-544
v.	:	(C.C. No. 2009-03584)
	:	
Ohio Department of Rehabilitation	:	(ACCELERATED CALENDAR)
and Correction,	:	
	:	
Defendant-Appellee.	:	
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D E C I S I O N

Rendered on November 19, 2009

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*Kevin Hughley, pro se.*

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

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APPEAL from the Court of Claims of Ohio.

SADLER, J.

{¶1} Appellant, Kevin Hughley ("appellant"), filed this appeal seeking reversal of a judgment by the Court of Claims of Ohio dismissing his action against appellee, Ohio Department of Rehabilitation and Correction ("ODRC"). For the reasons that follow, we affirm.

{¶2} Appellant filed a form complaint with the Court of Claims, asserting claims against both ODRC and the Cuyahoga County Court of Common Pleas.<sup>1</sup> The complaint identified the causes of action as negligence, bad faith, defamation, and civil conspiracy. The complaint further alleged that the defendants "deleted mandatory jail time credit" to "cover up false imprisonment" in three cases in the Cuyahoga County Court of Common Pleas: case Nos. 462014, 473878, and 481899.

{¶3} The complaint referred to a nunc pro tunc entry issued by the Cuyahoga County Court of Common Pleas. Attached to the complaint was a page printed from the Cuyahoga County Clerk of Courts web site entitled with the heading "DOCKET INFORMATION" for case No. 462014. The page reads, in relevant part:

03/04/2009 \* \* \* UPON REVIEW OF DEPARTMENT OF CORRECTIONS SENTENCING PROCEEDURES [sic], THE COURT HEREBY CLARIFIES THE PREVIOUS SENTENCING JOURNAL ENTRY. JAIL TIME CREDIT SHALL BE APPLIED FIRST TO THIS CASE, AS THIS IS THE OLDEST CASE DEFENDANT HAD PENDING FOR SENTENCING. DEFENDANT'S 304 DAYS OF JAIL TIME CREDIT FROM THE CUYAHOGA COUNTY JAIL SHALL BE APPLIED TO THE MISDEMEANOR SENTENCE IN THIS CASE. UPON COMPLETION OF FELONY PRISON SENTENCE IN THIS CASE AS WELL AS CASE CR 473878 AND CR 481899, DEFENDANT SHALL BE RETURNED TO CUYAHOGA COUNTY JAIL TO SERVE THE REMAINING SENTENCE OF 243 DAYS ON THE MISDEMEANOR CHARGES.

{¶4} In a pre-screening entry, the court dismissed the Cuyahoga County Court of Common Pleas as a defendant on the grounds that only state agencies and

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<sup>1</sup> It appears from the complaint that appellant intended to name Cuyahoga County Court of Common Pleas Judge Timothy McMonagle as a defendant. However, the trial court treated the claim as one against the court itself.

instrumentalities can be defendants in original actions filed in the Court of Claims.<sup>2</sup> ODRC filed a motion to dismiss the complaint for failure to state a claim for which relief can be granted pursuant to Civ.R. 12(B)(6). The trial court granted the motion, finding that appellant's claims were actually an attempt to appeal the result of his criminal cases. The court also treated appellant's claims as seeking recovery for false imprisonment and civil conspiracy, and dismissed them on the grounds that such claims are not ripe until the claimant has been released from custody.

{¶5} Appellant filed this appeal seeking reversal of the trial court's decision, alleging a single assignment of error:

Trial Court erred by dismissing appellant's complaint when all factual allegations of the complaint are true & appellant beyond a doubt can prove all facts entitling appellant to relief.

{¶6} 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. Plain Dealer Publishing Co.*, 72 Ohio St.3d 279, 1995-Ohio-187.

{¶7} 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

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<sup>2</sup> This would have been the result regardless of whether Judge Timothy McMonagle individually or the Cuyahoga County Court of Common Pleas as a whole was the named defendant.

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.

{¶8} On reviewing appellant's complaint, it is clear that the basis for his claims is that the Cuyahoga County Court of Common Pleas incorrectly allocated jail time credit in appellant's three cases. Thus, appellant's complaint was an attempt to obtain a review of the proceedings in appellant's criminal cases in the Cuyahoga County Court of Common Pleas. Therefore, the trial court did not err when it dismissed appellant's complaint for failure to state a claim for which relief could be granted. Appellant's assignment of error is overruled.

{¶9} Having overruled appellant's assignment of error, we affirm the judgment of the Court of Claims of Ohio.

*Judgment affirmed.*

BROWN and CONNOR, JJ., concur.

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