

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

ANDRE COLLIER	:	JUDGES:
	:	Julie A. Edwards, P.J.
	:	William B. Hoffman, J.
Plaintiff-Appellant	:	John W. Wise, J.
	:	
-vs-	:	Case No. 2009 CA 0087
	:	
	:	
TERRY COLLINS, et al.,	:	<u>OPINION</u>
	:	
Defendants-Appellees	:	

CHARACTER OF PROCEEDING:	Civil Appeal from Richland County Court of Common Pleas Case No. 2008 CV 2321
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	June 10, 2010
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APPEARANCES:

For Plaintiff-Appellant

For Defendants-Appellees

ANDRE COLLIER, #233-115  
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*Edwards, P.J.*

{¶1} Appellant, Andre Collier, appeals a judgment of the Richland County Common Pleas Court dismissing his complaint against appellees Terry Collins, Cynthia Mausser, Jim Bedra, Sandra Mack, Peter Davis, Betty Mitchell, Robert Maszcynski, Kathleen Kovach, Ellen Venters and Fritz Raushenberg.

#### STATEMENT OF FACTS AND CASE

{¶2} In 1991, appellant pleaded guilty to murder with gun specifications and was sentenced to a term of incarceration of 180 months to life. He is incarcerated at the Mansfield Correctional Institution.

{¶3} On June 23, 2004, appellant received a parole hearing. Based on his offense category score and his criminal history/risk score, the Parole Board determined that appellant's aggregate guideline range was 216-258 months. He received a second parole hearing on November 11, 2008. He was again denied parole and his guideline range was altered to 0-888 months.

{¶4} Appellant filed the instant action seeking money damages, declaratory judgment and injunctive relief against Collins, the Director of the Ohio Department of Rehabilitation and Corrections; Mausser, Chairperson of the Adult Parole Authority; and Bedra, Mack, Davis, Mitchell, Maszcynski, Kovach, Venters and Raushenberg, all members of the Adult Parole Authority. Appellant's complaint alleged that the parole board violated the Equal Protection Clause, that he is being forced to serve "bad time credit" for substandard institutional conduct, and that Ohio Administrative Code (OAC) §5120-1-1-20 violates the ex post facto clause.

{¶5} Appellees filed a motion for judgment on the pleadings arguing that the court lacked subject matter jurisdiction because the Court of Claims has exclusive jurisdiction. Appellees also argued that appellant failed to comply with the mandatory requirements for inmates filing actions in state courts found in R.C. 2969.21 et seq. Appellees further argued that appellant failed to state a claim upon which relief could be granted because he received a meaningful parole hearing and failed to demonstrate purposeful discrimination. Appellees argued that OAC 5120-1-1-20 does not violate the ex post facto clause because it is not a criminal statute.

{¶6} The court granted the motion to dismiss for all the reasons argued by appellees. Appellant assigns five errors:

{¶7} "I. APPELLANT PLAINTIFF WAS DENIED HIS RIGHT TO DUE PROCESS OF LAW AND HIS CONSTITUTIONAL RIGHT TO HAVE HIS CONSTITUTIONAL CLAIMS CASE HEARD ON THE MERITS, BY JUDGE HENSON GRANTED DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS 6/15/2008, STATING "THIS COURT LACKS JURISDICTION TO ENTERTAIN PLAINTIFF'S COMPLAINT," WHICH DISMISSED APPELLANT PLAINTIFF'S CASE.

{¶8} "II. APPELLANT PLAINTIFF WAS DENIED HIS RIGHT TO DUE PROCESS OF LAW AND HIS CONSTITUTIONAL RIGHT TO HAVE HIS CONSTITUTIONAL CLAIMS CASE HEARD ON THE MERITS, BY JUDGE HENSON GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS 6/15/2009, STATING "PLAINTIFF FAILED TO COMPLY WITH R.C. 2969.21 ET SEQ.," WHICH DISMISSED APPELLANT PLAINTIFF'S CASE.

{¶9} “III. APPELLANT PLAINTIFF WAS DENIED HIS RIGHT TO DUE PROCESS OF LAW AND HIS CONSTITUTIONAL RIGHT TO HAVE HIS CONSTITUTIONAL CLAIMS CASE HEARD ON THE MERITS, BY JUDGE HENSON GRANTING DEFENDANT’S MOTION FOR JUDGMENT ON THE PLEADINGS 6/15/2009, STATING, “PLAINTIFF FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND PLAINTIFF FAILED TO PROVE HE WAS PURPOSEFULLY DISCRIMINATED AGAINST BY THE PAROLE BOARD,” WHICH DISMISSED APPELLANT’S CASE.

{¶10} “IV. APPELLEE DEFENDANT’S UNCONSTITUTIONALLY APPLIED SENATE BILL 2 STATUTES TO APPELLANT, RETROACTIVE, AT APPELLANT’S 6/23/2004 AND 11/17/2008 PAROLE HEARINGS, IN VIOLATION OF APPELLANT’S FIRST AMENDMENT, EX POST FACTO CLAUSE, DUE PROCESS, EQUAL PROTECTION OF LAW, SEPARATION OF POWERS AND CONTRACT CLAUSE CONSTITUTIONAL RIGHTS, WHICH DENIED PLAINTIFF’S CONSTITUTIONAL RIGHT TO MEANINGFUL PAROLE CONSIDERATION.

{¶11} “V. APPELLANT PLAINTIFF WAS DENIED HIS RIGHT TO DUE PROCESS OF LAW AND HIS CONSTITUTIONAL RIGHT TO HAVE HIS MOTION FOR SUMMARY JUDGMENT RULED ON. JUDGE HENSON NEVER RULED ON APPELLANT PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT, ALTHOUGH, APPELLEE DEFENDANT NEVER DISPUTED APPELLANT’S MOTION FOR SUMMARY JUDGMENT.”

I

{¶12} Appellant argues that the court erred in dismissing his complaint on the basis that the Court of Claims has exclusive jurisdiction because his complaint raises federal civil rights claims.

{¶13} Complaints for money damages against the State of Ohio must be instituted in the Court of Claims, and the Common Pleas Court does not have jurisdiction to entertain such actions. See R.C. 2743.03. “State” is defined to include 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. R.C. 2743.01(A). Ohio courts also lack jurisdiction over civil actions for money damages against state officers and employees until the Court of Claims initially determines that the individual is not entitled to immunity and the common pleas court, therefore, has jurisdiction. R.C. 2743.02(F). R.C. 109.36(A)(1)(a) defines officer or employee to include anyone who at the time a cause of action against the person arises, is serving in an elected or appointed office or position with the state or is employed by the state.

{¶14} The Court of Claims has exclusive original jurisdiction in all civil suits for money damages against the state and its employees even when ancillary relief such as injunctive relief or declaratory judgment is sought. R.C. 2743.03(A)(2); *Ohio Hosp. Assn. v. Ohio Dept. of Human Services* (1991), 62 Ohio St.3d 97, 103; 579 N.E.2d 695.

{¶15} Appellant relies on *Gumpl v. Bost* (1992), 81 Ohio App.3d 370, 611 N.E.2d 343, for the proposition that because he raises federal constitutional claims, jurisdiction properly lies in the common pleas court rather than the Court of Claims.

{¶16} In *Gumpl*, the complaint specifically stated that the defendants were being sued in their official and individual capacity and asserted jurisdiction under 42 U.S.C. Sec. 1983, 1985, 1986, and 1987. *Id.* at 372.

{¶17} In the instant case, appellant does not specifically set forth a civil rights claim under the United States Code. Ohio courts have consistently held that a complaint alleging an action under 42 U.S.C. 1983 must meet two requirements: (1) there must be an allegation that the conduct in question was performed by a person acting under color of state law, and (2) the complaint must allege that the conduct deprived the plaintiff of a federal right. *Cooperman v. University Surgical Assoc., Inc.* (1987), 32 Ohio St.3d 191, 199, 513 N.E.2d 288. While appellant alleges violations of the Equal Protection and Ex Post Facto clauses of the U.S. Constitution, appellant makes no allegation that the appellees acted under color of state law. The complaint does not contain language sufficient to raise a civil rights claim under federal law, but rather alleges that the new parole review policies as codified in the Ohio Administrative Code are unconstitutional.

{¶18} In *Morway v. Ohio Bureau of Workers' Compensation*, Court of Claims 2003-10198, 2004-Ohio-6577, the appellant relied on *Gumpl* for the proposition that the Court of Claims did not have jurisdiction over her complaint which asserted claims under the Fair Labor Standards Act, 29 U.S.C.S. Sec. 201, et seq. The Court of Claims determined that it did have jurisdiction despite the allegations of violations of the FLSA, as the gravamen of the complaint concerned the conduct that followed such violations and presented allegations which on their face appeared to assert state law claims. *Id.* at ¶17.

{¶19} In the instant case, while appellant's complaint alleges violations of the United States Constitution, the complaint does not set forth a federal cause of action. Rather, the gravamen of his complaint is that he is being punished for poor behavior in prison, and the changes in the parole board policies which have been made after his incarceration began as set forth in the OAC are unconstitutional. While appellant seeks money damages from appellees, he does not specifically set forth on what conduct he is basing his claim for money damages and, as noted above, does not include language sufficient to state a 42 U.S.C. 1983 claim. Because appellant's complaint set forth state law claims against employees or agents of the state<sup>1</sup>, the trial court did not err in finding that the Court of Claims had exclusive jurisdiction over appellant's complaint. The trial court properly dismissed appellant's complaint for want of subject matter jurisdiction.

{¶20} The first assignment of error is overruled.

II, III, IV

{¶21} Appellant's second, third, and fourth assignments of error are rendered moot by our determination in the first assignment of error that the court did not have subject matter jurisdiction over the complaint.

V

{¶22} In his fifth assignment of error, appellant argues the court erred in failing to rule on his motion for summary judgment. Because the court found that it lacked jurisdiction over the complaint and accordingly dismissed the complaint, the court didn't have jurisdiction, to rule on the motion. The fifth assignment of error is overruled.

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<sup>1</sup> Appellant's complaint facially sets forth information sufficient to demonstrate that all appellees are agents or employees of the state, and that fact is not disputed by appellant.

{¶23} The judgment of the Richland County Common Pleas Court is affirmed.

By: Edwards, P.J.

Hoffman, J. and

Wise, J. concur

s/Julie A. Edwards

s/William B. Hoffman

s/John W. Wise

JUDGES

JAE/r0322

