ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.,
GREGORY T. HOWARD

Appellant,

-vs-

SEAWAY FOOD TOWN, INC., et al.,

Appellees.

: Case No. 03-1572
: Trial Court Case No. 97AP-860

RECEIVED
JUN 24 2009
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
JUN 24 2009
CLERK OF COURT
SUPREME COURT OF OHIO

APPLICATION FOR LEAVE AND MOTION TO DECLARE THAT THE COURTS ACROSS THE STATE CONDUCT HAS OVERWHELMINGLY NOT BEEN WARRANTED UNDER EXISTING LAW AND HAS NOT BEEN SUPPORTED BY A GOOD FAITH JUDGMENT/PROCEEDING FOR EXTENSION, MODIFICATION OR REVERSAL OF EXISTING LAW WITHIN THE MEANING OF R.C. §9.86 AND ARTICLE IV §2 (B)(2)(a)(iii), INSTANTER

On September 24, 2004, this Court improperly found that Appellant, Gregory T. Howard has continued to habitually, persistently, and without reasonable cause, engage in frivolous conduct, as defined by S. Ct. Prac. R. (5)(A) and to be a vexatious litigator under S. Ct. Prac. R. XIV (5)(B). This Court further ordered that Appellant was prohibited from continuing or instituting legal proceedings in the Court without obtaining leave. Also, ordered that any request for leave be submitted to the Clerk of this Court for this Court's review.

In full compliance with that decision and as a matter of right, contemporaneously herewith the Relator files this application for leave and motion to declare that the Courts across the State Conduct has overwhelmingly not been warranted under existing law and has not been supported by a good faith judgment/proceeding for extension, modification or reversal of existing law within the meaning of R.C. 9.86 and Article IV, Section 2(B)(2)(a)(iii), instanter.

The Appellant asks leave to file the accompanying motion to dismiss without prepayment of costs and to proceed *informa pauperis.* The grounds for this application are that this motion has an "arguable basis either in law or in fact." See *Brown v. Bargery*, 207 F. 3d 863, 866-67 (6th Cir. 2000).

**MOTION TO DECLARE**

Pursuant to Ar icle IV, Section 2(B)(2)(d), the State Supreme Court has the authority in cases of public or great general interest to direct any court of appeals to certify its record to it and to review and affirm, modify, or reverse the judgments of the court of appeals. Thus, this Court specifically has the authority to review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of Article IV. Additionally, if the Appellant requests this Court to grant him leave to proceed as described in R.C. §2323.52 (F), and S. Ct. Prac. R. XIV (5)(B), as he has done here on several occasions, the period of time commencing with the filing with this Court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as part of an applicable period of limitation within which the legal proceedings or application involved generally must be instituted or made.

Specifically, this motion alleges that since 1996, pursuant to §9.86 of the Ohio Revised Code that the Courts across the State of Ohio has continued to act in a wanton, willful, and reckless manner, violated the Appellant's constitutional rights, and acted in bad faith in legal proceedings were or are pending. See *In re Oliver* (1948), 33 U.S. 257, 275, 92 L. Ed. 682, 68 S. Ct. 499. In support of Appellant's motion to declare, Appellant files a copy of the judgment entry overruling is assignment of error, sustaining this Court's cross-assignment of error, affirming the judgment of the Ohio Court of Claims, as modified to specifically include

dismissal of the Lucas County Court of Common Pleas which such opinion as attached has been properly authenticated. Article IV, Section 2(B)(1)(b). Appellant admits that the Court of Appeals or the Court of Claims should have granted Appellant's motion to amend the complaint to allow allegations of misconduct against Chief Justice Moyer for consideration of his actions including extra-judicial or acting outside the jurisdiction of the supreme court as set forth in the discussion on extra-judicial misconduct..

Pursuant to R.C. §2921.45, the Courts across the State of Ohio has engaged in conduct in various actions wherein it improperly interpreted the law and made decisions on that improper interpretation of the law; has repeatedly engaged in conduct including but not limited to violating the Appellant's constitutional rights, and acting in bad faith in legal proceedings where or were or are pending within the meaning of the said statute, and therefore, the violation contained in R.C. §2921.45 must operate to the fullest extent. As a result, this Court must find that the Courts across the State of Ohio has engaged in conduct in various actions wherein it improperly interpreted the law and made decisions on that improper interpretation of the law; has repeatedly engaged in conduct including but not limited to violating the Appellant's constitutional rights, and acting in bad faith in legal proceedings where or were or are pending within the meaning of the said statute. Further, that the Courts across the State of Ohio conduct has overwhelmingly not been warranted under existing law and has not been supported by a good faith judgment/proceeding for extension, modification or reversal of existing law within the meaning of R.C. 9.86 and Article IV, Section 2(B)(2)(a)(iii). Accordingly, this Court must issue an order that declares that the Courts across the State of Ohio conduct violates the Appellant's constitutional or statutory rights under R.C. §2921.45 and that the Courts across the State of Ohio are guilty of interfering with the Appellant's civil rights as the terms are used under R.C.

§2921.45 for knowingly depriving, or conspiring or attempting to deprive the Appellant of his constitutional or statutory rights as cited herein. Pursuant to R.C. §2921.45(B), such a violation is a misdemeanor of the first degree.

To the extent, the Appellant requests that he be granted permission to proceed with his case in this Court as required by Chief Justice Moyer's order; and otherwise asks in the interests of judicial economy that the Courts orders in this case be stayed pending the outcome of this motion and that all pending motions be held in abeyance because the outcome of this motion may be dispositive of this case. Therefore, the Appellant asks that this Court direct all of the State of Ohio Court Appeals in connection with this case or whom dealt with the Appellant to certify its records to this Court for review and final resolution pursuant to section 3(B)(4) of Article IV.

In *Hazel-Atlas Co. v. Hartford Co.* (1944), 322 U.S. 238, 244, the United States Supreme Court vacated the inferior courts decisions after twelve years. (On certiorari the U.S. Supreme Court reversed the 3rd Circuit Court of Appeals decision at 137 F. 2d 764 in 1944 twelve years after its decision in 1932 holding that it had the power and the duty to vacate its 1932 judgment and to give the district court appropriate directions). This Court is bound by that decision. Appellant submits that this Court has the power and the duty to vacate the Courts across the State of Ohio judgments and to give the State Courts appropriate directions consistent with this matter. Appellant asks that this Court declare that since 1996, pursuant to §9.86 of the Ohio Revised Code that the Courts across the State of Ohio decisions are vacated and that the instant motion is found well-taken and ordered granted.

Furthermore the Courts across the State of Ohio have interfered with his rights to access to courts and the right to remedy on the grounds that S. Ct. Prac. R. XIV (5) and R.C. §2323.52

violates O.R.C. §2921.45 and the Fourteenth Amendment of the United States Constitution because the statute or rule acts as restraint to deny substantive due process or equal protection to pro-se litigants, to preclude them from proceeding forward on their legitimate claims or for the vindication of their legitimate rights. As a result, upon information and belief, the Appellant submits that the said statute or rule acts as restraint to deny substantive due process or equal protection to pro-se litigants, to preclude them from proceeding forward on their legitimate claims or for the vindication of their legitimate rights as defined by Section 16, Article 1 of the Ohio Constitution.

To the extent that the Appellant submits that the said statute or rule is unconstitutional in all respects and that the screening mechanism under the statute or rule which can be used in the declaring court, on a case-by-case basis, for a determination to arbitrarily deny pro-se litigants of their legitimate claims or vindication of their legitimate rights as defined by Section 16, Article 1 of the Ohio Constitution, even though such proposed actions are not abusive or groundless, as in the Appellant's case. Granted it the statute or rule is designed against criminals or operates to preclude vexatious litigators from depleting judicial resources and unnecessarily encroaching upon the judicial machinery needed by others for the vindication of their legitimate rights, but the Courts have abused it and taken it to a different level by deliberately using the screening mechanism to arbitrarily deny pro-se litigants of their legitimate claims or vindication of their legitimate rights as defined by Section 16, Article 1 of the Ohio Constitution, in violation of O.R.C. §2921.45 and the Fourteenth Amendment of the United States Constitution of the U.S. citizens civil rights. Their conduct is precluded by O.R.C. §2921.45 and the Fourteenth Amendment of the United States Constitution.

Because the O.R.C. §2921.45 and the Fourteenth Amendment of the United States Constitution regulates protected conduct, it acts as a deterrent for an arbitrarily denial by the State of Ohio as to pro-se litigants of their legitimate claims or vindication of their legitimate rights or civil rights as defined by Section 16, Article 1 of the Ohio Constitution. Therefore, because S. Ct. Prac. R. XIV (5) and R.C. §2323.52 encroaches upon the Appellant's civil rights and is unconstitutional in all respects, Appellant's claims are meritorious and application for leave and motion to declare that the Courts across the State Conduct has overwhelmingly not been warranted under existing law and has not been supported by a good faith judgment/proceeding for extension, modification or reversal of existing law within the meaning of R.C. 9.86 and Article IV, Section 2(B)(2)(a)(iii), instanter must be found well-taken and ordered granted.

To the extent, the Appellant challenges S. Ct. Prac. R. XIV (5) and R.C. §2323.52, which deals with sanctions for frivolous conduct, to access to courts and the right to remedy, which are related to the filing restrictions imposed in S. Ct. Prac. R. XIV (5) and R.C. §2323.52. Thus, to the extent that Appellant's allegations request appellate review of the state court judgments, the *Rooker-Feldman* doctrine confers jurisdiction to the United States Supreme over the Appellant's claims made herein. See *Rooker v. Fidelity Trust Company,* 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983). (The United States Supreme Court has long held, pursuant to 28 U.S.C. §1257, that it is vested with the appellate jurisdiction to review a final judgment of a state's highest court); also see *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 544 U.S. 280, 283 (2005). Therefore, because the Appellant has drawn into question the validity of S. Ct. Prac. R. XIV (5) and R.C. §2323.52 on the grounds of its being repugnant to the Fourteenth Amendment of the United States Constitution, the Appellant has a

clear legal right to including but not limited, to access to the United States Supreme Court and the right to remedy and have reviewed the final judgments or decrees rendered by this Court by the United States Supreme Court pursuant to the provisions of 28 U.S.C. §1257.

Accordingly, all of the above stated reasons the Appellant respectfully requests that this Court permit him to file instanter this motion to declare that the Courts across the State Conduct has overwhelmingly not been warranted under existing law and has not been supported by a good faith judgment/proceeding for extension, modification or reversal of existing law within the meaning of R.C. 9.86 and Article IV, Section 2(B)(2)(a)(iii), instanter and all other just and proper relief in the premises.

Respectfully submitted,

Gregory T. Howard
P.O. Box 3096
Toledo, Ohio 43607-0096
Telephone: (419) 450-3408

Relator-Appellant, Pro-se

PROOF OF SERVICE

This is to certify that a copy of the foregoing of Gregory T. Howard was sent via ordinary U.S. Mail or via facsimile this 23rd day of June, 2009 to:

(419) 247-1777
Eastman & Smith, Ltd.
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[1](614) 466-9354
Governor Ted Strickland
77 High Street, 30th Floor
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Ohio Attorney General Office
William R. Creedon, Esq.
150 East Gay Street, 22nd Floor
Columbus, Ohio 43215

(614) 728-7592
Assistant Attorney General
Kent M. Shimeall, Esq.
State Office Tower
30 East Broad Street, 16th Floor

[1] Appellant asserts that he has a right to recover damages from any person who fails to prevent or aid in preventing any wrongs as the terms are used in 42 U.S.C. §1985 which he had knowledge were about to occur and power to prevent. 28 U.S.C. §1343(a)(2).

Columbus, Ohio 43266-0410

The Federal Trade Commission:
Privacy-Steering-Committee
Federal-Trade-Commission
600-Pennsylvania-Avenue,N.W.
Washington,DC-20580

Office of the Ohio Senate
Fax: (614) 644-5208

James G. Carr, Chief Judge-Faxed to 419.213.5563

Attn: Deputy Director, Office of the Executive Director
Re: Eastman & Smith, et al.
State of Ohio Office of the Attorney General Complaint #: 327061 & 330421
Federal Trade Commission Complaint # 10010756,10299071 & 10651814
Comptroller of the Currency #685430-(713) 336-4301

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Gregory T. Howard
Appellant-Claimant, pro-se

# The Supreme Court of Ohio

FILED
JUN 23 2009
CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio ex rel. Gregory T. Howard

v.

Industrial Commission of Ohio et al.

Case No. 2003-1572

ENTRY

On September 24, 2004, this Court found appellant Gregory T. Howard to be a vexatious litigator under S.Ct.Prac.R. XIV(5)(B). This Court further ordered that appellant was prohibited from continuing or instituting legal proceedings in the Court without obtaining leave. On June 18, 2009, Howard filed a motion for leave to file a motion for a court hearing pursuant to Ohio Revised Code Section 3123.05

It is ordered by the Court that the motion is denied.

(Franklin County Court of Appeals; No. 97AP860)

THOMAS J. MOYER
Chief Justice

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|---|---|---|
| Gregory T. Howard, | : | |
| Plaintiff-Appellant, | : | Nos. 04AP-1093 & 04AP-1272 |
| v. | : | (C.C. No. 2004-07743) |
| Supreme Court of Ohio, | : | (REGULAR CALENDAR) |
| Defendant-Appellee. | : | |

FILED
32 MAY 03 2005
COURT OF CLAIMS OF OHIO

OPINION

Rendered on May 3, 2005

*Gregory T. Howard*, pro se.

*Jim Petro*, Attorney General, and *Tracy M. Greuel*, for appellee.

APPEALS from the Ohio Court of Claims.

BRYANT, J.

{¶1} Plaintiff-appellant, Gregory T. Howard, appeals from a judgment of the Ohio Court of Claims dismissing his action against the Supreme Court of Ohio. Because the Court of Claims properly dismissed his complaint, we affirm.

{¶2} On July 29, 2004, plaintiff filed an original action against the Ohio Supreme Court in the Ohio Court of Claims alleging that its judicial decisions against him were improper, biased, and fraudulent. Plaintiff later filed motions to amend his complaint to add the Lucas County Court of Common Pleas and the Lucas County Prosecutor's Office

as defendants. Plaintiff alleged the courts acted in a wanton, willful, and reckless manner, violated his constitutional rights, and acted in bad faith. The Supreme Court filed a motion to dismiss.

{¶3} Apparently also considering the parties plaintiff sought to include through his amended complaint, the Court of Claims granted the motion, concluding (1) it lacked subject matter jurisdiction over constitutional claims, (2) it lacked subject matter jurisdiction over the Lucas County Prosecutor's Office, and (3) the Supreme Court is protected by judicial immunity. On October 7, 2004, plaintiff filed a Motion to Alter or Amend or Vacate the court's October 6, 2004 judgment dismissing his action. Plaintiff's motion is being held in abeyance in the Court of Claims pending his appeal in case No. 04AP-1093.

{¶4} On October 21, 2004, plaintiff filed a Motion to Show Cause and Request for Sanctions pursuant to R.C. 2921.13, a criminal statute prohibiting falsification, because the Supreme Court attached an expired vexatious litigator order to its August 27, 2004 motion to dismiss; plaintiff filed an amended motion on October 27, 2004. On November 12, 2004, the Court of Claims overruled the motion, finding it lacked jurisdiction over criminal matters. On November 30, 2004, plaintiff appealed that decision in case No. 04AP-1272. Further, on November 8, 2004, over a month after the Court of Claims dismissed plaintiff's action, plaintiff filed a Motion to Amend his original complaint to add Chief Justice Moyer as a defendant; the Court of Claims also denied that motion. The two appeals have been consolidated, and in them plaintiff assigns the following error:

> Under the facts and circumstances of this case it was a substantial error to deny appellant's motion to amend complaint and to deny appellant's motion to show cause and

> amended motion to show cause, motion for a nunc pro tunc entry and motion to vacate the trial court's entry of 11-12-2004 pursuant to Civil Rule 60(B) and other applicable legal provisions. [sic.]

{¶5} The Supreme Court assigns the following cross-assignment of error:

> Claims against Courts of Common Pleas are not actionable in the Court of Claims.

{¶6} The Court of Claims granted the Supreme Court's motion to dismiss pursuant to (1) Civ.R. 12(B)(6) for plaintiff's failure to state a claim and (2) Civ.R. 12(B)(1) for lack of subject matter jurisdiction. The appellate standard of review on Civ.R. 12(B)(1) and 12(B)(6) motions to dismiss is de novo. *Kramer v. Installations Unlimited, Inc.* (2002), 147 Ohio App.3d 350.

{¶7} A motion to dismiss for failure to state a claim under Civ.R. 12(B)(6) tests the sufficiency of the complaint. Accepting all factual allegations of the complaint as true and making all reasonable inferences in favor of the non-moving party, the court must determine only whether the allegations of the complaint are legally sufficient to state a claim. Id. In order for a court to dismiss plaintiff's complaint, it must appear beyond doubt that plaintiff can prove no set of facts in support of the claim that would entitle him to relief. *Stewart v. Fifth Third Bank of Columbus, Inc.* (Jan. 25, 2001), Franklin App. No. 00AP-258. Under Civ.R. 12(B)(1), the question is whether plaintiff alleges any cause of action the court has authority to decide. *Troutman v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 03AP-1240, 2005-Ohio-334, citing *McHenry v. Indus. Comm.* (1990), 68 Ohio App.3d 56.

{¶8} Generally, the State of Ohio cannot be sued for civil liability without its express consent. Pursuant to R.C. 2743.02, however, the state waived its immunity from

liability and consented to be sued in the Court of Claims "in accordance with the same rules of law applicable to suits between private parties." R.C. 2743.01(A) defines "state" as "the state of Ohio, including * * * the general assembly, the supreme court * * * and other instrumentalities of the state. 'State' does not include political subdivisions."

{¶9} Plaintiff filed his complaint in the Court of Claims and named as defendants the Lucas County Prosecutor's Office and the Lucas County Court of Common Pleas. R.C. 2743.01(B) defines "political subdivisions" as "municipal corporations, townships, counties, school districts, and all other bodies corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state to which the sovereign immunity of the state attaches." The Lucas County Prosecutor's Office, as a county office, is by definition a political subdivision. As a result, pursuant to R.C. 2743.01(A) the Lucas County Prosecutor's Office many not be sued in the Court of Claims. While plaintiff argues at length in his appellate brief that the Court of Claims did not address Count IV of his complaint, plaintiff is incorrect: Count IV purports to set forth a claim against the Lucas County Prosecutor's Office that the Court of Claims properly dismissed for lack of jurisdiction.

{¶10} Although the Court of Claims dismissed plaintiff's complaint in its entirety, it did not expressly address whether subject matter jurisdiction existed regarding the Lucas County Court of Common Pleas; the cross-assignment of error in effect seeks clarification of that point. Ohio case law holds that county courts of common pleas are specifically excluded from the definition of "state" under R.C. 2743.01(A). Indeed, this court has held that even though the court of common pleas of each county is technically an instrumentality of the state and is not a political subdivision in the ordinary sense, the

definition of political subdivision under R.C. 2743.01(B) expressly eliminates it from the definition of "state." *Sams v. State* (Mar. 4, 1999), Franklin App. No. 98AP-645, citing *Dalton v. Bur. of Criminal Identification and Investigation* (1987), 39 Ohio App.3d 123; *Tymcio v. State of Ohio* (1977), 52 Ohio App.2d 298. Because the Lucas County Court of Common Pleas is not within the definition of state under the language of R.C. 2743.01, the Court of Claims does not have subject matter jurisdiction over it; dismissal of plaintiff's claims against it was proper. Accordingly, the Supreme Court's cross-assignment of error is sustained.

{¶11} In addition, the Court of Claims dismissed plaintiff's allegations against the Ohio Supreme Court, concluding the justices are immune from suit under the doctrine of judicial immunity. Arguing that the justices are not protected by judicial immunity, plaintiff claims the Supreme Court (1) committed fraud by holding the Court of Appeals denied one of plaintiff's previous requests, when the Court of Appeals instead dismissed the defendants in that case, (2) violated his constitutional rights under Section 16, Article I, Ohio Constitution, by denying his mandamus action, and (3) fraudulently dismissed or affirmed various actions in which he was the plaintiff, in violation of his constitutional rights. According to plaintiff, the Supreme Court's actions were extra-judicial, or outside the scope of judicial immunity, because he believes the Supreme Court committed acts of "bad faith and egregious conduct" in its dealing with him. Plaintiff misconstrues the concept of judicial immunity.

{¶12} A judge is exempt from civil liability for actions taken in his or her judicial capacity. *Voll v. Steele* (1943), 141 Ohio St. 293; *Tymcio*, supra. Judicial immunity applies not only to judges personally, but extends to courts and the state itself in its judicial

functions. *Reynolds v. State of Ohio, Div. of Parole and Comm. Serv.* (1984), 14 Ohio St.3d 68, syllabus (holding that the "state cannot be sued for its legislative or judicial functions"). Ohio law is clear that a plaintiff claiming to have been injured by judicial action within the scope of the judge's jurisdiction has no civil action against the judge for recovery of damages. *State ex rel. Fisher v. Burkhardt* (1993), 66 Ohio St.3d 189. Nor is a judge liable for actions taken within the judge's discretion. *Eichenberger v. Petree* (1992), 76 Ohio App.3d 779; *Newdick v. Sharp* (1967), 13 Ohio App.2d 200; *Evans v. Supreme Court of Ohio*, 119 Ohio Misc.2d 34, 2002-Ohio-3518. Indeed, a judge is immune for actions taken within the judge's official capacity even if those actions were in error, in excess of authority, or malicious. *Burkhardt*, supra.

{¶13} Factors to consider in determining whether a judge's act is judicial include (1) the nature of the act itself, and whether it is a function normally performed by a judge, and (2) the expectation of the parties, and whether he or she dealt with the judge in his or her judicial capacity. *Stump v. Sparkman* (1978), 435 U.S. 349, 98 S.Ct. 1099; *Burkhardt*, supra. A judicial function thus includes interpreting the law in matters over which the judge has jurisdiction. Id. A judge will be liable only if (1) the judge acted in a clear absence of all jurisdiction, or (2) the action at issue was not judicial in nature, meaning not normally performed by a judge. *Walk v. Ohio Supreme Court*, Franklin App. No. 03AP-205, 2003-Ohio-5343; *Reasoner v. City of Columbus*, Franklin App. No. 02AP-831, 2003-Ohio-670, at ¶15. The inquiry focuses on the nature of the act, and not on whether the act was proper. *Stump; Walk*, supra.

{¶14} Here, plaintiff's allegations relate to the legal decisions made against him in various actions and proceedings. Nowhere does plaintiff allege any justice of the

Supreme Court took any actions that judges do not normally perform. Nor does plaintiff allege he dealt with the court in a personal or extra-judicial capacity. Although plaintiff alleges the Supreme Court justices acted maliciously and in bad faith because they rendered decisions against him, those decisions, whether proper or improper, are protected by judicial immunity: interpreting the law and making decisions based on the law is precisely a judge's role and clearly within the judge's official capacity. Further, the Supreme Court unquestionably had jurisdiction to decide the cases before it. Notwithstanding plaintiff's disagreement, the decisions rendered against him are protected by judicial immunity.

{¶15} Plaintiff also argues the Court of Claims deliberately failed to consider his allegations of constitutional violations. The Court of Claims, however, does not have jurisdiction to consider claims for relief premised upon violations of the Ohio or United States Constitutions. Constitutional claims are not actionable in the Court of Claims because a plaintiff is limited to causes of action that could be brought between private parties. *Bleicher v. Univ. of Cincinnati College of Medicine* (1992), 78 Ohio App.3d 302, 306-307; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App.3d 170, 171; R.C. 2743.02 (providing the state waived its immunity from liability and consented to be sued in the court of claims "in accordance with the same rules of law applicable to suits between private parties"); *Peters v. Ohio Dept. of Natural Resources*, Franklin App. No. 03AP-350, 2003-Ohio-5895 (holding the constitutional violations alleged by the plaintiff required an element of state action and could not be brought against a private individual, leaving the Court of Claims without jurisdiction); *Webb v. Grafton Correctional Inst.*, Franklin App. No. 03AP-1014, 2004-Ohio-3729 (holding that the Court of Claims lacked

jurisdiction over inmate's alleged constitutional and criminal violations by the correctional facility).

{¶16} Plaintiff also asserts the Court of Claims erred in denying his motion for sanctions and to show cause that he filed after the notice of appeal of the decision dismissing his complaint. Plaintiff contends that because his vexatious litigator status expired on August 15, 2003, the Supreme Court made false statements against him by attaching the vexatious litigator order to its motion to dismiss. His motion requested $10,424,646.54 in sanctions pursuant to criminal statute R.C. 2921.13 and an order directing the Supreme Court to show cause why the document was not false. The Court of Claims concluded it did not have subject matter jurisdiction to grant criminal sanctions. In the current appeal, plaintiff requests an additional $500,000 in compensatory damages and $1 million a year in punitive damages until the case is resolved.

{¶17} R.C. 2921.13 provides that, under certain situations enumerated in the statute, no person shall make a false statement or knowingly swear or affirm the truth of a previously made false statement. As correctly found by the Court of Claims, R.C. 2921.13 is a criminal statute. The Court of Claims does not have jurisdiction over any criminal matters against the state, as "R.C. 2743.02 does not confer jurisdiction to the Court of Claims to consider criminal charges that should be adjudicated in the courts of common pleas." *Troutman*, citing *Donaldson v. Court of Claims* (May 19, 1992), Franklin App. No. 91AP-1218. Nor does plaintiff point to any authority that permits a civil action for alleged violations of R.C. 2921.13.

{¶18} Moreover, the Court of Claims expressly stated in its decision overruling the motion for sanctions that the vexatious litigator document had nothing to do with its

decision to dismiss plaintiff's claims. Rather, the Court of Claims dismissed plaintiff's complaint for purely legal reasons. Accordingly, the Court of Claims properly overruled plaintiff's motion for criminal sanctions.

{¶19} Plaintiff further contends the Court of Claims erred in refusing to allow him to amend his complaint to add Chief Justice Moyer to the original action. The Court of Claims dismissed plaintiff's complaint on October 6, 2004, plaintiff appealed that decision on October 7, 2004, and on November 8, 2004, plaintiff filed the motion to amend.

{¶20} The Supreme Court contends that pursuant to App.R. 3(D), this issue is not properly on appeal. App.R. 3(D) provides that the notice of appeal "shall designate the judgment, order or part thereof appealed from." Plaintiff's second notice of appeal states only that he is appealing from the Court of Claims' decision denying his request for sanctions; it does not state anything regarding the denial of his motion to amend. Notwithstanding plaintiff's arguable violation of App.R. 3(D), to be complete we address the merits of his contention.

{¶21} Plaintiff's motion to amend presents procedural infirmities. Initially, it came after plaintiff filed his notice of appeal, leaving the Court of Claims without jurisdiction to act on plaintiff's motion. *Vavrina v. Greczanik* (1974), 40 Ohio App.2d 129, 132 ("[i]f after entering a final judgment, a timely notice of appeal is filed the trial court does not have authority to act * * * during the pendency of the appeal"). *Bryant Health Ctr., Inc. v. Ohio Dept. of Job & Family Services*, Franklin App. No. 03AP-482, 2004-Ohio-545. Moreover, it followed the trial court's determinative ruling in dismissing plaintiff's complaint, and a trial court does not abuse its discretion when it refuses to allow an amended complaint after a determinative ruling is made. *Meadors v. Zaring Co.* (1987), 38 Ohio App.3d 97.

{¶22} Even had the Court of Claims granted plaintiff's motion to amend the complaint to allow allegations of misconduct against Chief Justice Moyer, the claim would fail for the reasons set forth in the discussion on judicial immunity. Plaintiff fails to allege any action taken by any of the justices; including the Chief Justice, that would be considered extra-judicial or outside the jurisdiction of the Supreme Court. Accordingly, the Court of Claims did not abuse its discretion in refusing to allow the amended complaint.

{¶23} Lastly, plaintiff argues the Court of Claims should have held an evidentiary hearing before dismissing his complaint. Plaintiff's argument is without merit. Because plaintiff did not allege any set of facts that would entitle him to relief due to the Court of Claims' lack of jurisdiction and the doctrine of judicial immunity, the Court of Claims was not required to hold a hearing.

{¶24} Based on the foregoing, plaintiff's single assignment of error is overruled, the Supreme Court's cross-assignment of error is sustained, and the judgment of the Ohio Court of Claims is affirmed, as modified to specifically include dismissal of the Lucas County Court of Common Pleas.

*Judgment affirmed as modified.*

BROWN, P.J., and PETREE, J., concur.

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THE STATE OF OHIO
Franklin County, ss
I, JOHN O'GRADY, Clerk OF THE COURT OF APPEALS WITHIN AND FOR SAID COUNTY, HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL OPINION NOW ON FILE IN MY OFFICE. WITNESS MY HAND AND SEAL OF SAID COUNTY THIS 4 DAY OF MAY, A.D. 2005
JOHN O'GRADY, Clerk
By ..... Deputy

# 2921.45 Interfering with civil rights.

(A) No public servant, under color of his office, employment, or authority, shall knowingly deprive, or conspire or attempt to deprive any person of a constitutional or statutory right.

(B) Whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree.

Effective Date: 01-01-1974

# U.S. Constitution - Amendment 14

## Amendment 14 - Citizenship Rights

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1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Notes for this amendment:
Proposed 6/13/1866
Ratified 7/9/1868
Note
History
Article 1, Section 2

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