

[Cite as *Hughley v. Southeastern Corr. Inst.*, 2010-Ohio-793.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Kevin Hughley,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 09AP-739
v.	:	(C.C. No. 2009-05439)
	:	
Southeastern Correctional Institution,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on March 4, 2010

Kevin Hughley, pro se.

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

APPEAL from the Court of Claims of Ohio.

FRENCH, J.

{¶1} Plaintiff-appellant, Kevin Hughley ("appellant"), an inmate, appeals the judgment of the Court of Claims of Ohio, which denied his motion for change of venue and dismissed his complaint against defendant-appellee, Southeastern Correctional Institution ("SCI"), for lack of subject-matter jurisdiction. For the following reasons, we affirm.

{¶2} Appellant filed a complaint against SCI, alleging that prison officials retaliated against him for exercising his constitutional right to access the courts. In particular, appellant alleged the following. He went to the prison law library to copy legal documents for another case, but a corrections officer told him to leave. He refused and was placed in segregation where he suffered emotional distress and was denied a towel, medical treatment, and legal material.

{¶3} Appellant filed a motion to change venue to the Fairfield County Court of Common Pleas, but the Court of Claims denied the motion. SCI filed a motion to dismiss appellant's complaint, pursuant to Civ.R. 12(B)(6), for his failure to state a claim upon which relief can be granted and, pursuant to Civ.R. 12(B)(1), for lack of subject-matter jurisdiction. Appellant claimed he was not served with this motion and asked for an extension of the deadline to reply. The court did not rule on this request and, with appellant filing no reply to SCI's motion, the court granted the motion and dismissed the complaint for lack of subject-matter jurisdiction.

{¶4} Appellant appeals, raising two assignments of error:

- 1) Trial court erred by holding [the] court lacked subject matter jurisdiction over appellant's torts of negligence & emotional distress.
- 2) Trial court erred by denying motion to change venue & considering appellant's motion for extension of time as moot is an abuse of discretion.

{¶5} In his first assignment of error, appellant argues that the Court of Claims erred by dismissing his complaint, pursuant to Civ.R. 12(B)(1), for lack of subject-matter jurisdiction. We disagree.

{¶6} A court considering a Civ.R. 12(B)(1) motion to dismiss determines whether the complaint raises a cause of action cognizable by the forum. *Guillory v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 07AP-861, 2008-Ohio-2299, ¶6. This court applies de novo review to an appeal of a dismissal for lack of subject-matter jurisdiction. *Id.* Appellant argues that his complaint alleged medical negligence and tortious infliction of emotional distress and that the Court of Claims had jurisdiction over these torts. To be sure, appellant states in his complaint that SCI prison officials denied him medical treatment and that he suffered emotional distress when he was placed in segregation. We do not focus on isolated words of his complaint, however, and instead examine the underlying nature of the complaint. See *Guillory* at ¶11. It is clear from the body of appellant's complaint that he is not raising medical negligence and tortious infliction of emotional distress claims. Rather, the underlying contention in his complaint is that prison officials retaliated against him for exercising his constitutional right to access the courts, and this constitutes a cause of action under 42 U.S.C. 1983. See *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), 10th Dist. No. 98AP-1105. See also *Guillory* at ¶12, citing *Deavors* (recognizing that "an inmate's claims regarding retaliatory conduct are properly classified as constitutional claims actionable under § 1983"). It is well-established that the Court of Claims lacks subject-matter jurisdiction over Section 1983 claims. *Guillory* at ¶12. Therefore, the Court of Claims did not err by dismissing appellant's complaint, pursuant to Civ.R. 12(B)(1), for lack of subject-matter jurisdiction, and we overrule his first assignment of error.

{¶7} In his second assignment of error, appellant argues that the Court of Claims erred by denying his motion to change venue. We disagree.

{¶8} In general, an order from a court lacking subject-matter jurisdiction is void. See *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶11. Therefore, we agree with other appellate districts in this state holding that a court has no power to order a change of venue without the requisite jurisdiction over a case. See *Certain v. Hurst* (July 3, 1991), 4th Dist. No. 90CA5, and *State ex rel. Frinzi v. Ohio Dept. of Transp.* (Feb. 11, 1999), 8th Dist. No. 75347. Because the Court of Claims lacked subject-matter jurisdiction over appellant's case, it did not err by denying his motion to change venue.

{¶9} Appellant also argues in his second assignment of error that we must reverse the Court of Claims' decision to grant SCI's motion to dismiss because it did not first grant his requested extension of the deadline to respond to the motion. We disagree.

{¶10} A party in the Court of Claims may request an extension of a filing deadline. See L.C.C.R. 4(B). Regardless of whether the Court of Claims abused its discretion by not granting appellant's requested extension of time to respond to SCI's motion, he suffered no prejudice because it was obvious from his complaint that the court lacked subject-matter jurisdiction. See *Lewis v. Hayes*, 10th Dist. No. 08AP-574, 2009-Ohio-640, ¶23 (concluding that a plaintiff was not prejudiced from a lack of opportunity to respond to a court's notice of intention to dismiss his complaint because it was obvious from the complaint that he could not prevail). Therefore, we need not

disturb the Court of Claims' decision to grant SCI's motion to dismiss without first having granted appellant's requested extension of time to respond to the motion. See *Theobald v. Univ. of Cincinnati*, 160 Ohio App.3d 342, 2005-Ohio-1510, ¶17 (noting that this court will not disturb a judgment unless a party suffered material prejudice from the trial court's challenged conduct). Accordingly, we overrule appellant's second assignment of error.

{¶11} In summary, we overrule appellant's two assignments of error. Thus, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

KLATT and CONNOR, JJ., concur.
