

COMMON PLEAS COURT
DELAWARE COUNTY OHIO
FILED

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JAN ANTONOPLOS
CLERK

IN THE COURT OF COMMON PLEAS, DELAWARE COUNTY, OHIO

DAVID CHAPMAN,
Plaintiff,

VS.

MICHAEL HIGGINS, et al.,
Defendant.

Case No. 06 CV C 07 0612

JUDGE EVERETT H. KRUEGER

Attorney General
Environmental Enforcement

**JUDGMENT ENTRY GRANTING DEFENDANT MICHAEL HIGGINS' MOTION TO
DISMISS FOR LACK OF JURISDICTION AND DENYING THE PLAINTIFF'S MOTION
TO STAY PROCEEDINGS**

This matter is before the Court on Defendant Michael Higgins' (Higgins) Motion to Dismiss Plaintiff's Complaint for Lack of Jurisdiction, filed August 11, 2006. The Plaintiff filed a Motion to Stay Proceedings Pending Determination by the Court of Claims on August 18, 2006, in response to Higgins' Motion to Dismiss. Defendant Alum Creek Sailing Association, Inc. filed a Memorandum Contra to Defendant Higgins' Motion to Dismiss for Lack of Jurisdiction on August 24, 2006, asserting that this Court should stay these proceedings pending determination by the Court of Claims. For the reasons that follow, the Court grants Defendant Higgins' Motion to Dismiss for Lack of Jurisdiction and denies the Plaintiff's Motion to Stay Proceedings.

I. STANDARD OF REVIEW

The standard of review for a dismissal for want of subject matter jurisdiction, Civ.R. 12(B)(1), is whether any cause of action cognizable by the forum has been raised in the complaint. *Kellon v. Cleveland Marshall College of Law* (1995), 102 Ohio App.3d 684, 686, 657 N.E.2d 835. This court must, as a matter of law, accept all the allegations of the Plaintiff's complaint to be true, and must bear in mind that the Civil

Rules require only notice pleading. *York v. Ohio State Highway Patrol* (1991), 60 Ohio St.3d 143, 573 N.E.2d 1063. The trial court has authority to consider any pertinent evidentiary materials and is not confined to the allegations of the complaint when determining its own jurisdiction pursuant to a motion to dismiss for lack of jurisdiction over the subject matter. *McGuffey v. LensCrafters, Inc.* (2001), 141 Ohio App.3d 44, 50, 749 N.E.2d 825.

II. FACTS

On or about June 5, 2006, the Plaintiff had his RV hooked up to an electrical source at Alum Creek State Park reserved for members of Alum Creek Sailing Association, Inc., a nonprofit organization. Defendant Spurgeon, a volunteer of Alum Creek Sailing Association, Inc., reported to Park Officer Adam Martin that the Plaintiff did not have permission to hook his RV up to the electricity. Officer Martin requested the assistance of Officer Michael Higgins, who issued the Plaintiff a citation and arrested him for theft. A criminal prosecution was commenced against the Plaintiff in the Delaware County Municipal Court, although the case was dismissed without prejudice pursuant to presentation to the grand jury. The Plaintiff then filed this complaint alleging causes of action for malicious prosecution, false arrest and negligence arising from the incident.

III. ANALYSIS

The second cause of action in the Plaintiff's complaint asserts a claim of false arrest against Defendant Higgins. (Pl.'s Compl. ¶¶ 9-11.) The Plaintiff's complaint states that Defendant Higgins is an officer with the Ohio Department of Natural Resources. (*Id.* ¶ 2.) Defendant Higgins argues in his Motion to Dismiss that he is

immune from personal liability for the tort of false arrest asserted by the Plaintiff by virtue of his classification as an employee of the State of Ohio.

R.C. 9.86 provides state employees with immunity from personal liability for tort claims arising out of the employee's employment with the state. R.C. 9.86 provides, in pertinent part, that:

no officer or employee shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

The parties do not dispute that Defendant Higgins is an "officer or employee" of the state in his capacity as a park officer, as described in R.C. 1541.10. Therefore, Defendant Higgins' employment as a park officer entitles him to the immunity provided by R.C. 9.86.

The Plaintiff alleges in his Complaint that "[a]t the County Jail defendant Michael Higgins maliciously, wrongfully and unlawfully caused and had plaintiff entered under the charge of felony theft" (Pl.'s Compl. ¶ 10.) If it is proven that Defendant Higgins acted with malicious purpose, his actions would fall under the exception provided in R.C. 9.86 and he would not be entitled to immunity. However, the determination as to whether Defendant Higgins acted within the scope of his employment or with malicious purpose, and therefore outside the scope of his employment, must be made by the Court of Claims.

R.C. 2743.02(F) vests exclusive jurisdiction in the Court of Claims "to determine whether a state employee's conduct is within the scope of his or her employment and, hence, whether the employee is entitled to immunity pursuant to R.C. 9.86." *Tschantz*

v. Ferguson (1991), 57 Ohio St.3d 131, 132, 566 N.E.2d 655. The courts of common pleas do not have jurisdiction to make immunity determinations under R.C. 9.86. *Johns v. Univ. of Cincinnati Medical Assoc., Inc.*, 101 Ohio St.3d 234, 242, 2004 Ohio 824, 804 N.E.2d 19. Therefore, until the Court of Claims determines whether Defendant Higgins is immune from suit, this Court is without jurisdiction over the litigation against him. *State ex rel. Sanquily v. Court of Common Pleas of Lucas County* (1991), 60 Ohio St.3d 78, 79, 573 N.E.2d 606.

Having established that this Court does not have jurisdiction over the claim against Defendant Higgins, this case should be dismissed pending an immunity determination by the Court of Claims. The Plaintiff and Defendant Alum Creek Sailing Association, Inc. argue that this case should be stayed pending the immunity determination of the Court of Claims; however, the Court does not agree that a stay is the best course of action. If the Court of Claims determines that Defendant Higgins was acting within the scope of his employment, the state has agreed to accept responsibility for Defendant Higgins' actions pursuant to R.C. 9.86 and 2743.02(A). In that event, only the state is subject to suit, and the litigation must be pursued in the Court of Claims and this Court would have to dismiss the case. Only if the Court of Claims determines that Defendant Higgins was acting outside the scope of his employment, maliciously, in bad faith, or in a wanton or reckless manner, acts for which the state has not agreed to accept responsibility, will Defendant Higgins be required to answer personally for his acts in the court of common pleas. See *Conley v. Shearer* (1992), 64 Ohio St.3d 284, 287, 595 N.E.2d 862. "Whether dismissed by the common pleas court or stayed


therein, that a case of this nature proceed to the Court of Claims is of paramount importance." *Tschantz*, 57 Ohio St.3d at 133.

IV. CONCLUSION

Based on the parties' arguments and applicable law, this Court hereby GRANTS Defendant Higgins' Motion to Dismiss for Lack of Jurisdiction and DENIES the Plaintiff's Motion to Stay Proceedings. The Plaintiff's claim of false arrest against Defendant Higgins is hereby DISMISSED.

IT IS SO ORDERED.

Dated: January 4, 2007


EVERETT H. KRUEGER, JUDGE

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon the following by ☒ Regular Mail, ☐ Mailbox at the Delaware County Courthouse, ☐ Facsimile transmission

cc: DAVID H. BIRCH, 2 WEST WINTER STREET, DELAWARE, OH 43015
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