

FILED
COURT OF CLAIMS
OF OHIO
2010 MAR -4 PM 4:01

IN THE COURT OF CLAIMS OF OHIO

Eugene Wrinn, Jr.,

Plaintiff,

v.

Ohio State Highway Patrol,

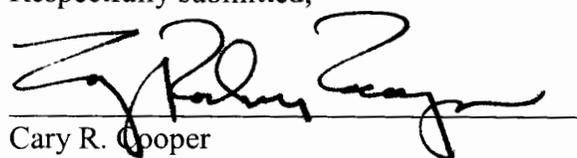
Defendant.

) Case No. 2006-05934
)
) Judge Alan C. Travis
)
) **MOTION FOR LEAVE TO FILE FIRST**
) **AMENDED COMPLAINT**
)
) Cary R. Cooper (0013062)
) Sarah K. Skow (0081468)
) COOPER & WALINSKI, L.P.A.
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)
) *Counsel for Plaintiff*

Plaintiff Eugene Wrinn, Jr. ("Wrinn") moves the Court under Civil Rule 15 for leave to amend his Complaint against the Ohio State Highway Patrol ("OSHP") to add claims based on the OSHP's conduct in negligently training, supervising, disciplining, and retaining OSHP Sergeant Daren Johnson; and a claim based on the OSHP employees' reckless conduct. The reasons and authorities in support of this Motion are set forth in the attached Memorandum.

Dated: March 2, 2010

Respectfully submitted,


Cary R. Cooper
Counsel for Plaintiff

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MEMORANDUM IN SUPPORT

Recent discovery responses and depositions have established that Wrinn has claims against the OSHP involving its negligent conduct as the employer of OSHP Sergeant Daren Johnson; and that the OSHP, OSHP Lieutenant K. J. Koverman, OSHP Sergeant Daren Johnson, and OSHP Trooper T. K. Manley's individual and collective reckless conduct resulted in Wrinn's injuries from the incident on September 16, 2005.

Except for discovery, this case has been stayed since Wrinn's federal complaint in September 2006 involving the individual OSHP officers. There are no current deadlines before this Court related to dispositive motions or a trial date. In November 2009, the United States Supreme Court denied Wrinn's Petition for Writ of Certiorari as it pertained to the individually-named OSHP officers in the federal action.

Wrinn was finally able to obtain the discovery deposition of witness Jennifer Mengerink on January 7, 2010 and OSHP Lieutenant K. J. Koverman on February 3, 2010. After taking Ms. Mengerink's and Lieutenant Koverman's depositions, it became clear that Wrinn has claims against the OSHP and the officers for reckless conduct in dealing with Wrinn and for the OSHP's negligent training, supervising, disciplining, and retaining of Sergeant Daren Johnson, all of which proximately and directly caused Wrinn's injuries and damages.

"A party may amend its pleading by leave of court and [] such leave 'shall be freely granted when justice so requires.' The decision of whether to grant a motion for leave to amend a pleading is within the discretion of the trial court."¹ Civil Rule 15 provides for liberal amendment of complaints so long as there is no showing of undue prejudice, undue delay, or bad faith on the part of the party seeking the amendment.²

¹ *Turner v. Central Local School District* (1999), 85 Ohio St.3d 95,100.

² *Id.*

In considering a plaintiff's request for leave to amend, a court should look to see if the plaintiff has made a prima facie showing of support for the new matters sought to be pleaded to determine "whether amendment is simply a delaying tactic, or one which would cause prejudice to the defendant."³ Where a plaintiff has prima facie support for the proposed additional claims a trial court should grant a plaintiff leave to amend the complaint.⁴ Here, Wrinn seeks leave to file his First Amended Complaint in good faith, within weeks of learning of the facts to support his claims from the recent depositions of Jennifer Mengerink and Lieutenant Koverman. The delay in filing these claims will not prejudice the OSHP, as evidenced by Wrinn's prima facie support for the claims he seeks leave to add to his complaint.

A plaintiff has a claim for reckless conduct where the defendant perversely disregarded a known risk or where "[the defendant] does an act or intentionally fails to do an act which it is his duty to the other to do, [which he knows or has] reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent."⁵ Here, Wrinn alleges that the OSHP, Lieutenant Koverman, Sergeant Johnson, and Trooper Manley acted recklessly by acting or failing to act reasonably in the circumstances and that their conduct created an unnecessary risk of harm to Wrinn.

A plaintiff's claims for negligent supervision and training stand where the plaintiff alleges: (1) the existence of an employment relationship; (2) the employee's incompetence; (3) the employer's actual or constructive knowledge of the employee's incompetence; (4) an act or omission by the employee caused the plaintiff's damages; and (5) the employer's negligent

³ *Mitchell v. Lemmie*, 2d Dist. No. 21511, 2007-Ohio-5757, ¶ 81.

⁴ *Id.* at ¶¶ 81-85 (holding that trial court abused its discretion in refusing to allow plaintiff to amend the complaint).

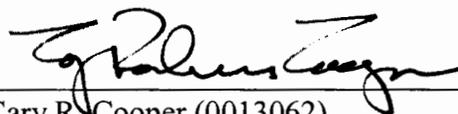
⁵ *Jackson v. Butler County Bd. of County Commissioners*, 76 Ohio App.3d 448, 454.

retention or training of the employee proximately caused the plaintiff's injuries or damages.⁶ And "liability for negligent retention arises where an employer chooses to employ an individual who had a past history of criminal, tortious, or otherwise dangerous conduct about which the employer knew or could have discovered through reasonable investigation."⁷ Wrinn's proposed First Amended Complaint alleges that at the time Wrinn was injured, Sergeant Johnson was incompetent due in part to his anger issues and failure to follow OSHP policies; and further that the OSHP knew of Johnson's incompetence, and yet did not properly train, supervise, or discipline Johnson for his behavior, which directly and proximately caused Wrinn's injuries and damages.

Based on information obtained in discovery, Wrinn seeks, in good faith, leave of the Court to file his First Amended Complaint. Justice demands that Wrinn be permitted to file his First Amended Complaint, and the OSHP will not be prejudiced by the amendment. Wrinn's First Amended Complaint is submitted herewith.

Dated: March 2, 2010

Respectfully submitted,



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⁶ *Jordan v. Department of Rehabilitation and Correction*, Court of Claims Case No. 2007-08333, 2009-Ohio-2830, ¶ 26. (internal citations omitted).

⁷ *Wilhelm v. Ohio Department of Natural Resources*, Court of Claims Case No. 2006-07902, 2009-Ohio-7061, ¶ 31. (internal citations omitted).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 2nd day of March, 2010 by ordinary U.S. mail, postage prepaid, upon: **James P. Dinsmore**, Assistant Attorney General, Court of Claims Defense Section, 150 East Gay St., 18th Floor, Columbus, Ohio 43215-3130; **Anthony Geiger**, Law Director, CITY OF LIMA, 209 N. Main St., 6th Floor, Lima, Ohio 45901; upon **Todd M. Raskin** and **Carl E. Cormany**, MAZANEC, RASKIN, RYDER & KELLER CO., L.P.A., 100 Franklin's Row, 34305 Solon Road, Cleveland, Ohio 44139; upon **Michael S. Loughry**, MAZANEC, RASKIN, RYDER & KELLER CO., L.P.A., 250 Civic Center Drive, Suite 400, Columbus, Ohio 43215; and upon **Jane M. Lynch** and **Jared A. Wagner**, GREEN & GREEN, LAWYERS, 800 Performance Place, 109 North Main Street, Dayton, Ohio 45402-1290.



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March 2, 2010

Miles C. Durfey, Clerk
COURT OF CLAIMS OF OHIO
The Ohio Judicial Center
65 S. Front Street, 3rd Floor
Columbus, Ohio 43215

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RE: *Eugene Wrinn, Jr. v. Ohio State Highway Patrol*
Court of Claims of Ohio Case No. 2006-05934

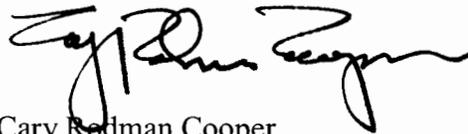
Dear Mr. Durfey:

I enclose an original and two copies of the following items:

1. Motion for Leave to File First Amended Complaint; and
2. First Amended Complaint.

Please file these items with the Court and return at least one, file-stamped copy of each to our office in the enclosed, self-addressed, stamped envelope. Thank your for your assistance in this matter.

Sincerely,



Cary Rodman Cooper

CRC/lmk
Enclosures

cc: James P. Dinsmore, Esq. w/encl.
Anthony L. Geiger, Esq. w/encl.
Carl E. Cormany, Esq. w/encl.
Todd M. Raskin, Esq. w/encl.
Michael S. Loughry, Esq. w/encl.
Jane M. Lynch, Esq. w/encl.
Jared A. Wagner, Esq. w/encl.
Eugene M. Wrinn, Sr. w/encl.