

FILED
COURT OF CLAIMS
OF OHIO

2010 JUN 30 PM 3:27

IN THE COURT OF CLAIMS OF OHIO

ORIGINAL

Eugene Wrinn, Jr.,

Plaintiff,

v.

Ohio State Highway Patrol,

Defendant.

) Case No. 2006-05934
)
) Judge Alan C. Travis
)
) **MOTION FOR RECONSIDERATION**
)
) Cary Rodman Cooper (0013062)
) Sarah K. Skow (0081468)
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) *Counsel for Plaintiff*

Plaintiff Eugene Wrinn, Jr. ("Wrinn") moves the Court to reconsider its June 8, 2010 Entry denying Wrinn's motion for an immunity hearing under R.C. § 2743.02(F).

Wrinn's motion was styled as a request for an immunity hearing under R.C. § 2743.02(F) and §9.86. Wrinn seeks both a determination permitted by Local Rule 4.1 regarding whether the Ohio State Highway Patrol ("OSHP") officers are entitled to personal immunity from his state claims before this Court, and a determination under R.C. § 2743.02(A)(1) that the presumptive statutory waiver of claims against an employee that arises from Wrinn's civil action against the State of Ohio in the Court of Claims is void because the OSHP officers acted in a wanton or reckless manner. Wrinn respectfully submits that it is not a vain act for this Court to determine whether the OSHP officers are

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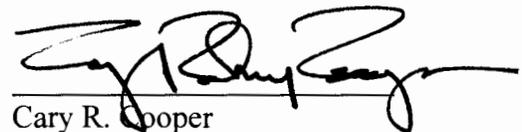
entitled to personal immunity under state law from Wrinn's state law claims, and whether they acted in a wanton or reckless manner during the incidents complained of in Wrinn's First Amended Complaint.

Wrinn seeks these determinations from this Court because it has the power to determine if the officers are immune for state law claims under state law and because the Ohio Attorney General has persuaded the United States District Court for the Northern District of Ohio and the United States Court of Appeals for the Sixth Circuit that this Court is the only court with the power to determine if the acts of the OSHP officers void the waiver otherwise provided by §2743.02(A)(1). Further, the Ohio Supreme Court has also held that the waiver determination under §2743.02(A) is to be made by the Court of Claim.¹ Accordingly, if this Court finds that Sergeant Daren Johnson, Trooper T. K. Manley, and Lieutenant K. J. Koverman (collectively "OSHP officers"), or any of them, acted in a wanton or reckless manner, it will affect Wrinn's state law claims, and the United States District Court for the Northern District of Ohio has held that it will reinstate Wrinn's federal claims against the OSHP officers in federal court.

The reasons and authorities supporting this Motion are set forth in the attached Memorandum.

Dated: June 24, 2010

Respectfully submitted,



Cary R. Cooper
Sarah K. Skow
Counsel for Plaintiff

¹ *Nemazee v. Mt. Sinai Medical Center* (1990), 156 Ohio St. 3d 109, 115, 564 N.E.2d 477.

MEMORANDUM IN SUPPORT

On September 11, 2006, Eugene Wrinn, Jr. sued officers of the Ohio State Highway Patrol in their individual capacities, individual Lima, Ohio police officers, and individual Allen County, Ohio sheriff's deputies, in the District Court for the Northern District of Ohio for false arrest, excessive force, and other civil-rights claims under 42 U.S.C. §1983. On September 13, 2006, Wrinn sued the State of Ohio in this Court under the Ohio Court of Claims Act ("OCCA"), R.C. §2743.02(A)(2), for state-law tort claims.² Wrinn's state claims before this Court include a claim that the OSHP officers engaged in reckless conduct in their dealings with Wrinn.³

On October 6, 2006, the Ohio State Highway Patrol ("OSHP"), a non-party to Wrinn's federal action, moved the District Court for the Northern District of Ohio under FRCP 12(b)(6) to dismiss the Complaint against the OSHP officers.⁴ In its Motion to Dismiss, the OSHP, represented by the Ohio Attorney General, argued that "under the plain language of R.C. §2743.02(A)," Wrinn's filing in the Court of Claims resulted in a waiver of all claims, including Wrinn's federal claims, against the individual state employees based upon the same acts or omissions. And the Ohio Attorney General further argued that *only* this Court could determine the validity of Wrinn's waiver of his claims against the OSHP officers.⁵ Specifically, the Ohio Attorney General asserted: "By its express terms O.R.C. § 2743.02(A)(1) makes no provision for 'undoing' the waiver that results from the filing of

² Wrinn filed his First Amended Complaint with this Court on March 4, 2010.

³ *Id.*

⁴ See *Wrinn v. Johnson*, Case No. 3:06-CV-02188, Northern District of Ohio, Document 2 (filed Oct. 6, 2006), attached hereto as Exhibit 1.

⁵ Exhibit 1, p. 5.

the action, aside from a finding *by the Ohio Court of Claims* that the employee in question actions were ultra vires, malicious, or outside the scope of his or her employment. Only then is the waiver void and the lawsuit in federal court may be reinstated.”⁶ (Emphasis added).

On August 13, 2007, the District Court adopted the Ohio Attorney General’s position and granted the OSHP’s Motion to Dismiss, holding that because Wrinn sued the State in this Court, the OCCA’s waiver clause precluded Wrinn from pursuing his §1983 claims against the OSHP officers in federal court.⁷ In its Dismissal Entry, the District Court declared that if *this Court* (Court of Claims) determines that the OSHP officers acted outside of the scope of employment, wantonly, or recklessly, then the District Court would be bound to grant reinstatement of Wrinn’s claims against the OSHP officers under the authority of the Sixth Circuit Court of Appeals’s decision in *Turker v. Department of Rehabilitation and Correction* (6th Cir. 1998), 157 F.3d 453, 458.⁸

In *Turker*, the Sixth Circuit held that the determination of whether the state employee’s conduct satisfies the statutory criteria to void the waiver “is to be made exclusively by the Ohio Court of Claims.”⁹ *Turker* further held that if this Court finds that the state employees are not entitled to immunity, then the district court “must reinstate [the federal] claim as if no waiver had ever occurred,” i.e., the waiver is void.¹⁰

Rose v. Ohio Department of Rehabilitation and Correction (2007), 173 Ohio App. 3d

⁶ Exhibit 1, p. 5.

⁷ *Wrinn v. Johnson*, Case No. 3:06-CV-02188, Northern District of Ohio, Documents 33, 34, Memorandum Opinion and Judgment Entry (filed Aug. 13, 2007), attached hereto as composite Exhibit 2.

⁸ Attached as Exhibit 3.

⁹ 157 F.3d at 458.

¹⁰ *Id.*

767, cited in this Court's Entry, did not decide the issue presented in this case. There, the court found that a personal immunity hearing would be a vain act because state immunity is inapplicable to federal claims. *Rose* is further distinguishable from the instant case because it did not involve pending or potentially reinstated individual federal claims in any court. *Rose* had settled his federal case and a waiver determination would have served no purpose.

The hearing Wrinn seeks in this case will not determine if the OSHP officers are immune to federal claims; that issue will be decided in federal court under federal law, if and when, the federal claims are reinstated. Rather, this Motion seeks determinations about whether the OSHP officers are entitled to personal immunity under R.C. §9.86 from Wrinn's state claims, and about the voidability of the waiver the District Court found under §2743.02(A); and for the reasons stated above, that determination will not be a vain act.

The Ohio Supreme Court has stated that a "vain act" "is defined in the context of lack of authority to grant [] relief and not in the sense of lack of probability that the application for [] relief will be granted...The focus is on the power of the [] body to afford the requested relief."¹¹ Under the plain language of R.C. §2743.02(F), this Court has the jurisdiction to determine whether the OSHP officers are immune under R.C. §9.86 from Wrinn's state law claims. And the Ohio Supreme Court has held that the Ohio Court of Claims is the "court" referred to in R.C. §2743.02(A) to make the determination whether the waiver of individual claims provided in R.C. §2743.02(A)(1) is void.¹² The Ohio Attorney General likewise maintains that this Court has the exclusive authority to determine whether a waiver under R.C. §2743.02(A) is void. And the United States Court of Appeals for the

¹¹ *Nemazee*, 156 Ohio St. 3d at 115.

¹² *Nease v. Medical College Hosp.* (1992), 64 Ohio St. 396, 399, 596 N.E.2d 432.

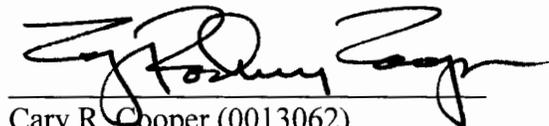
Sixth District and the United States District Court of the Northern District of Ohio have held – at the Ohio Attorney General’s urging – that this Court has the sole authority to determine whether the OSHP officers acted recklessly or wantonly during the incidents in the Complaint, thereby voiding the court-determined waiver of Wrinn’s individual federal claims against the OSHP officers.

Because this Court has the power to determine whether the waiver the District Court found under R.C. §2743.02(A) is void, it is not a vain act for this Court to hold an evidentiary hearing to determine whether the statutory criteria to void the waiver are met. This determination is essential to reinstatement of Wrinn’s federal claims. And Wrinn requests that this Court hold an evidentiary hearing to determine if the Ohio State Highway Patrol officers are entitled to personal immunity under R.C. §9.86 respecting state law claims at the same time because it will involve similar, if not the same, issues and evidence.

Accordingly, in the interests of judicial economy and justice, Wrinn respectfully requests that this Court conduct an evidentiary hearing to determine: 1) whether the Ohio State Highway Patrol officers are entitled to personal immunity from Wrinn’s state claims before this Court under R.C. §§2743.02(F), 9.86, and 2) whether the OSHP officers acted in a reckless or wanton manner in their encounters with Wrinn, thereby voiding the waiver that the District Court applied in dismissing Wrinn’s federal claims.

Dated: June 28, 2010

Respectfully submitted,



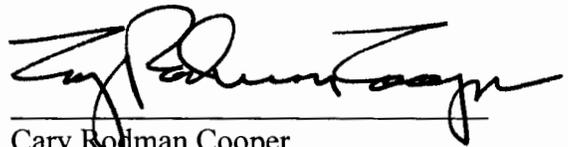
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 28 day of June, 2010 by ordinary U.S. mail, postage prepaid, upon: **James P. Dinsmore, Eric A. Walker**, Assistant Attorneys 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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June 28, 2010

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

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

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Dear Mr. Durfey:

I enclose an original and three copies of a Motion for Reconsideration in the above-referenced matter. Please file the Motion with the Court and return at least one, file-stamped copy to our office in the enclosed, self-addressed, stamped envelope. Thank you for your assistance in this matter.

Sincerely,

Sarah Skow
(dk)

Sarah K. Skow

VS
06/30/10

SKS/dk
Enc

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