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IN THE COURT OF CLAIMS OF OHIO

ORIGINAL

Eugene Wrinn, Jr.,

Plaintiff

-vs-

Ohio State Highway Patrol,

Defendant

) Case No. 2006-~~0~~5934
)
) JUDGE ALAN C. TRAVIS
)
) **REPLY IN SUPPORT OF MOTION**
) **FOR RECONSIDERATION**
)
) Cary Rodman Cooper (0013062)
) Sarah K. Skow (0081468)
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) Counsel for Plaintiff Eugene Wrinn, Jr.

Wrinn respectfully requests an evidentiary hearing to determine whether the applied waiver under R.C. § 2743.02(A)(1) is void and to determine whether the OSHP officers are entitled to state immunity from Wrinn's state claims. Defendant misconstrues and misapprehends the procedure and purpose of the evidentiary hearing that Wrinn has requested. Defendant's Response to [Wrinn's] Motion for Reconsideration ("Response") ignores that Wrinn has requested the Court to reconsider its June 8, 2010 order and conduct a hearing to determine whether the OSHP officers acted recklessly or wantonly in their conduct with Wrinn because this Court has the jurisdiction to decide: (1) whether the applied waiver of Wrinn's claims against the OSHP officers through R.C. § 2743.02(A)(1) is void, and (2) whether the OSHP officers are entitled to immunity under R.C. § 2743.02(F) from Wrinn's state claims before this Court.

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ON COMPUTER

Defendant cites no authority that would prevent this Court from making a determination about the validity of the applied waiver of Wrinn's individual claims against the OSHP officers or about whether the OSHP officers are entitled to state immunity from Wrinn's state law claims. Contrary to defendant's implication in its Response, Wrinn is *not* seeking a determination by this Court under R.C. § 2743.02(F) regarding any federal claims or potential federal claims against the OSHP officers.

Moreover, the Response ignores that Wrinn's Motion for Reconsideration requests the *very hearing* that defendant has argued that this Court has the jurisdiction to make: whether the waiver applied under R.C. § 2743.02(A)(1) to Wrinn's individual claims against the OSHP officers is void due to the officers' reckless conduct. The OSHP argued in federal court that *only* this Court has jurisdiction to determine the validity of Wrinn's waiver of his federal claims, because *only* this Court can declare whether the OSHP officers were acting in the course and scope of their employment under R.C. 2743.02.¹ The United States District Court for the Northern District of Ohio adopted the OSHP's argument (and followed prior Sixth Circuit case law interpreting R.C. § 2743.02(A)(1)) when it found the waiver in R.C. § 2743.02(A)(1) applied to Wrinn's claims against the individual OSHP officers and consequently dismissed Wrinn's §1983 claims against the OSHP officers.

In its Dismissal Entry, the District Court further relied on defendant's position and declared that if *this Court* holds that the OSHP officers were outside of the scope of employment or acted recklessly or wantonly, then Wrinn's alleged waiver was void, and the federal District Court would reinstate Wrinn's 1983 claims against the OSHP officers.² Defendant has not

¹ *Wrinn v. Johnson*, Case No. 3:06-CV-02188, Northern District of Ohio, Document 2, at 5 (filed Oct. 6, 2006), attached as Exhibit 1 to Wrinn's Motion for Reconsideration.

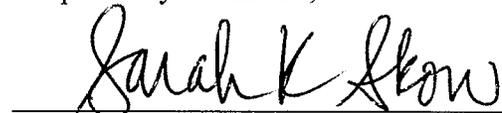
² *Wrinn v. Johnson*, Case No. 3:06-CV-02188, Northern District of Ohio, Documents 33, 34, Memorandum Opinion and Judgment Entry (filed Aug. 13, 2007), attached as composite Exhibit

denied and cannot deny that this Court has jurisdiction to conduct an evidentiary hearing and make both the waiver determination and the state immunity determination. If this Court finds that the OSHP officers were reckless or wanton it will affect both the applied waiver determination under R.C. § 2743.02(A)(1) and whether the OSHP officers are immune under state law from Wrinn's state law claims.

For the above reasons, for his reasons in Wrinn's Motion for Reconsideration, and for the principles of justice, comity, and judicial economy, Wrinn respectfully moves this Court for an evidentiary hearing to determine: 1) whether the OSHP officers are entitled to personal immunity from Wrinn's state claims before this Court under R.C. §§2743.02(F), and 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: July 12, 2010

Respectfully submitted,



Cary R. Cooper
Sarah K. Skow
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 12th day of July, 2010 by e-mail 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

2 to Wrinn's Motion for Reconsideration.

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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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

Dear Mr. Durfey:

I enclose an original and three copies of Plaintiff's *Reply in Support of Motion for Reconsideration* in the above-referenced matter. Please same 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 K. Skow

VDS
07/15/10

SKS/dk
Enc

cc: [Via e-mail]:
James P. Dinsmore, Esq. w/encl.
Anthony L. Geiger, Esq. w/encl.
Carl E. Cormany, Esq. and Todd M. Raskin, Esq. w/encl.
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