

FILED  
COURT OF CLAIMS  
OF OHIO

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**IN THE COURT OF CLAIMS OF OHIO**

JAMES M. FLEMING,

**Plaintiff,**

-vs-

KENT STATE UNIVERSITY,

**Defendant.**

Case No. 2011-09365

Judge Joseph T. Clark)

**Kent State University's  
Post-Trial Reply Brief**

**ORIGINAL**

James Fleming's argument reduces to this: his employment contract's liquidated damages provision, which plainly applies only if Kent State University "terminates [the] Agreement," should also apply if the University changes his duties in any way. See Plaintiff's Ex. c at ¶6. But the contract is completely silent as to Mr. Fleming's duties; and, even if it were not, a change of duties is not a "termination" unless it rises to the level of a constructive discharge. Proving a constructive discharge is no small feat. Unless the change makes the employee's job "so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign," there can be no constructive discharge. *Crawley v. State of Ohio, Dep't of Transportation*, Case No. C-2-02-1069, 2006 U.S. Dist. LEXIS 80919 at \*56-\*57 (S.D. Ohio) (citations omitted). Mr. Fleming and his attorney brother, who represented him, were willing to accept no change in duties whatsoever, and Mr. Fleming can establish no constructive discharge. As a result, Mr. Fleming simply cannot prevail.

**ON COMPUTER**

Respectfully submitted,

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**Certificate of Service**

I certify that on ~~July 31~~<sup>August 1</sup>, 2012, I mailed a copy of this document to:

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