# Court of Claims of Ohio

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| JAMES DANIEL HUGHES, et al. | Case No. 2012-09059 |
| Plaintiffs | Judge Patrick M. McGrath |
| v. | ENTRY |
| THE OHIO STATE UNIVERSITY | |
| Defendant | |


2014 FEB -4 PM 1:35
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COURT OF CLAIMS
OF OHIO


On December 9, 2013, plaintiffs filed a motion to order joinder of parties or to consolidate cases for purposes of trial. On December 20, 2013, defendant filed a memorandum contra plaintiffs' motion. On January 6, 2014, plaintiffs filed a motion for leave to file a reply brief instanter to defendant's memorandum contra, and on January 17, 2014, defendant filed a memorandum contra plaintiff's motion for leave. The court GRANTS plaintiffs' motion for leave and considers their reply brief in this entry.

This case involves an accident in which plaintiff James Daniel Hughes (Hughes) was run over by a dump truck near a construction site on The Ohio State University's (OSU) Columbus campus. Hughes was riding a bicycle near the construction of OSU's Chemical and Biomolecular Engineering and Chemistry Building. As a result of the accident, Hughes suffered nerve damage and injuries to his pelvis and spine, which required amputation of his left leg and penis. Plaintiffs have filed a claim for intentional and negligent conduct, negligent planning and design, and loss of consortium for Hughes' parents and siblings. In their motion, plaintiffs assert that the Franklin County Court of Common Pleas case, 13 CV 004435, can be combined with the case pending in this court, either by joinder or consolidation. The court will address these arguments separately.

**Joinder**

Plaintiffs first proffer the notion of joinder pursuant to Civ.R. 20 and 21. Civ.R. 20 states, in part, that:

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> * * *All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or succession or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

FILED
COURT OF CLAIMS
OF OHIO
2014 FEB -4 PM 1:35

Civ.R. 21 states that

> [m]isjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Plaintiffs refer the court to two cases to support their claim that joinder is permissible in this court. In both *State ex rel. Moritz v. Troop*, 44 Ohio St.2d 90, 338 N.E.2d 526 (1975) and *Basham v. Jackson*, 54 Ohio St.2d 366, 377 N.E.2d 491 (1978), the Supreme Court of Ohio held that the Court of Claims had jurisdiction over a non-state defendant. Plaintiffs assert that these cases stand for the idea that this court has jurisdiction over the non-state defendants in this case and can join the defendants to the action against the state.

Defendant argues, however, that the two cases to which plaintiffs cite were decided prior to an amendment to R.C. 2743 in 1978, which limited the jurisdiction of this court to only the state. Currently, R.C. 2743.02(E) reads that "[t]he only defendant in original actions in the court of claims is the state." R.C. 2743.02(E) continues by stating that this court has jurisdiction over non-original claims when the state files a third-party complaint, cross-claim, or counterclaim in an original case in this court. Furthermore, an action in which a defendant in a court of common pleas who files a counterclaim against the state or names the state as a third-party defendant can be removed to this court. Defendant also states that since the 1978 amendment, there have been many cases holding that the state must be a party before this court can exercise jurisdiction. *See Dalton v. Bureau of*

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COURT OF CLAIMS
OF OHIO

2014 FEB -4 PM 1:35



*Criminal Identification and Investigation*, 39 Ohio App.3d 123, 530 N.E.2d 35 (10th Dist.1987) and *Wirick v. Transport America*, 10th Dist. Franklin No. 01AP-1268, 2002-Ohio-3619.

R.C. 2743.02(E) is clear with regard to this court's jurisdiction. Pursuant to the statutory language, two situations must have occurred for this court to have jurisdiction over the non-state entities. First, the defendants in the common pleas matter could have brought in OSU by filing a third-party claim. Alternatively, OSU could have brought in the non-state entities by filing a third-party claim against them. Neither of these situations have occurred and thus, the common pleas case is still out of the jurisdictional reach of the court of claims. Therefore, plaintiffs' motion for joinder of non-state defendants is DENIED.

**Consolidation**

Plaintiffs alternatively request consolidation of the two cases. Plaintiffs state that in the spirit of judicial fairness and efficiency, consolidation is necessary. Furthermore, plaintiffs argue that Civ.R. 42 does not conflict with R.C. 2743.

Civ.R. 42(A)(1) states that consolidation is warranted

> [w]hen actions involving a common question of law or fact are pending before a court, that court after a hearing may order a joint hearing or trial of any or all the matters in issue in the actions; it may order some or all of the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

In support of its motion, plaintiffs cite to *Clark v. McCauley*, 5th Dist. Stark No. 2010CA00131, 2010-Ohio-5137, which allowed the consolidation of a declaratory judgment action in the court of common pleas with an action in the probate division. Plaintiffs argue that *Clark* permits consolidation of matters from two separate courts. Defendant distinguishes *Clark* from this case by noting that the probate division matter in *Clark* was still part of the common pleas court rather than two separate and distinct courts like the case at hand. Defendant argues that the consolidation in *Clark* was permitted because

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COURT OF CLAIMS
OF OHIO

2014 FEB -4 PM 1:35



both matters were still essentially in the same court, just different divisions. Moreover, defendant points to *Kocinski v. Reynolds*, 6th Dist. Lucas No. L-99-1318, 2000 Ohio App. LEXIS 3595 (August 11, 2000), which held that consolidation of cases from two different courts is not provided for under Civ.R. 42. Moreover, where one case is outside the jurisdiction of the court, cases cannot be consolidated. *See Third National Bank of Circleville v. Speakman, et al.*, 4th Dist. Pickaway No. 83 CA 9 & 83 CA 24, 1984 WL 3532 (July 11, 1984).

Considering the foregoing, the court is not persuaded that it has proper jurisdiction to consolidate the common pleas case with the court of claims case. Plaintiffs have failed to present any cases that allowed for the consolidation of cases from two separate and distinct courts. Furthermore, by consolidating the two cases, this court would be overreaching its jurisdiction, which it declines to do. Accordingly, plaintiffs' motion to consolidate is DENIED.

PATRICK M. MCGRATH
Judge

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