

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
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RUSSELL E. APPENZELLER

Case No. 2007-04591

Plaintiff

Judge J. Craig Wright
Magistrate Matthew C. Rambo

v.

MAGISTRATE DECISION

OFFICE OF ATTORNEY GENERAL

Defendant

{¶1} On May 29, 2007, defendant filed a motion to dismiss plaintiff’s complaint pursuant to Civ.R. 12(B)(1) and (6). Plaintiff did not file a response. On July 26, 2007, an oral hearing was held at the Belmont Correctional Institution on defendant’s motion.

{¶2} “The standard of review for a dismissal pursuant to Civ.R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint.” *State ex rel. Bush v. Spurlock* (1989), 42 Ohio St.3d 77, 80. In construing a motion to dismiss pursuant to Civ.R. 12(B)(6), the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190. Then, before the court may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts entitling him to recovery. *O’Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242.

{¶3} Plaintiff filed this case alleging that his property was confiscated following his arrest in Lake County, Ohio, by the Willowick Police Department (WPD), for receiving stolen property. Plaintiff claims that the property should have been returned to him after the grand jury returned a “no true bill” on that charge.

{¶4} Paragraph nine of plaintiff’s complaint states that the Lake County prosecuting attorney, Lake County sheriff, and the WPD acted as defendant’s agents in this matter. Plaintiff’s complaint further states that officers of the WPD inventoried his

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property, stored it pending his indictment, and ultimately returned it to a party they considered “the rightful owner” of the property. Defendant argues that it is not the proper defendant in this case. Based upon the allegations in plaintiff’s complaint, the court finds that the Ohio Attorney General is not a proper defendant in this case. Plaintiff has cited no statute, rule, or case law that would impose civil liability upon the Ohio Attorney General for the actions taken by the Lake County prosecuting attorney, the Lake County sheriff, or the WPD. Accordingly, it is recommended that defendant’s motion for summary judgment be granted and that judgment be rendered in favor of defendant.

A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

MATTHEW C. RAMBO
Magistrate

cc:

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Filed August 22, 2007
To S.C. reporter September 27, 2007