

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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COLLETTE C. RUSSELL, ) Case No. 2:16-cv-00273-DS

Plaintiff, )

vs. )

MEMORANDUM DECISION  
AND ORDER

NEBO SCHOOL DISTRICT, )  
BRUCE MOON, ANGIE KILLIAN, )

Defendants.

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Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Bruce Moon has filed a Motion to Dismiss (Doc. #20) asserting that Plaintiff’s claims against him are untimely under the two year statute of limitations provided in Utah Code Ann. § 78B-2-304. Plaintiff Collette Russell counters that her claims against Mr. Moon for assault and battery and for intentional infliction of emotional distress are governed by the four year statute of limitations set forth in Utah Code Ann. § 78B-2-307(3).

Courts in this District considering Section 78B-2-304(3) (previously numbered 78-12-28(3)) have concluded that the Utah legislature intended the statute to apply to section 1983 actions exclusively. *Larson v. Snow College*, 189 F. Supp. 2d 1286, 1292-98 (D. Utah 2000); *Whitehat v. College of Eastern Utah*, 111 F. Supp. 2d 1161 (D. Utah 2000). The Court is not persuaded by Mr. Moon’s argument to the contrary.

Moreover, case authority supports Ms. Russell’s assertion that her claims against Mr. Moon are subject to Utah’s four year catchall limitations period set forth in Utah Code

Ann. § 78B-2-307(3). See, e.g., *Cabaness v. Thomas*, 232 P. 3d 486, 496 (Utah 2010) (“Claims for intentional infliction of emotional distress are subject to a four-year statute of limitations. See Utah Code Ann. § 78-12-25(3) [re-codified at § 78B-2-307]”); *Bloomquist v. Utah*, No. 2:16-cv-00034 DN-PMW, 2016 WL 5922504 (D. Utah Sept. 16, 2016), Report & Recommendation adopted, 2016 WL 5922397 (D. Utah Oct. 11, 2016) (noting that Utah’s statute of limitations for personal injury claims is four years pursuant to Utah Code Ann. § 78B-2-307(3)).

Having Failed in his burden of persuasion as the moving party, Mr. Moon’s Motion to Dismiss (Doc. #20) is denied.

IT IS SO ORDERED.

Dated this 21<sup>st</sup> day of December, 2016

BY THE COURT:



DAVID SAM  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT