[Cite as *Grenga v. Youngstown State Univ.*, 2011-Ohio-5621.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Joseph Robert Grenga,	:	
Plaintiff-Appellant,	:	
		No. 11AP-165
v.	:	(C.C. No. 2010-10033)
Youngstown State University,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on November 1, 2011

Joseph Robert Grenga, pro se.

Michael DeWine, Attorney General, and *Amy S. Brown*, for appellee.

APPEAL from the Court of Claims of Ohio.

FRENCH, J.

{¶1} Plaintiff-appellant, Joseph Robert Grenga ("Grenga"), appeals the judgment of the Court of Claims of Ohio, which granted summary judgment in favor of defendant-appellee, Youngstown State University ("YSU"), on Grenga's claims of trespass and invasion of privacy. For the following reasons, we affirm.

{¶2} In early 2007, Gregory G. Morgione ("Morgione"), YSU's Associate General Counsel, was aware that the city of Youngstown (the "city") wanted to purchase property owned by Grenga, located at 128 West Rayen Avenue (the "property"), for the purpose of constructing a public road through the YSU campus. On or about March 8, 2007, Morgione and YSU employee James Mineo ("Mineo") accompanied city representatives during their inspection of the property. One of Grenga's employees met the city and YSU representatives, unlocked the front entrance to the property, and allowed them to inspect the property. In September 2007, the city adopted a resolution declaring the necessity of and its intention to appropriate the property, and, on January 29, 2008, the city filed a petition in the Mahoning County Court of Common Pleas to appropriate the property.

{¶3} Grenga commenced this action on August 18, 2010, by filing a complaint in the Court of Claims against the following defendants: (1) YSU; (2) Morgione, individually and in his capacity as YSU's General Counsel; (3) Mineo, individually and in his capacity as a YSU employee; (4) the Attorney General of Ohio ("Attorney General"); and (5) various John Does. Grenga alleged that the defendants entered upon his land without privilege or authority, in violation of R.C. 2911.21(A), on March 8 and April 10, 2007, and October 30, 2008, as well as on several other unknown dates. Grenga's complaint purports to allege claims of criminal and civil trespass, invasion of privacy, and illegal search, but also alleges violations of Grenga's rights to due process and equal protection under the Ohio and United States constitutions. In a Pre-Screening Entry, the trial court sua sponte dismissed Grenga's claims against Morgione, Mineo,

and the John Doe defendants pursuant to R.C. 2743.02(E), which states that only the state may be a defendant in an original action in the Court of Claims.

{¶4} On August 31, 2010, YSU and the Attorney General filed a motion to dismiss Grenga's complaint, pursuant to Civ.R. 12(B)(1) and 12(B)(6), for lack of subject-matter jurisdiction and for failure to state a claim upon which relief can be granted. They argued that the Court of Claims lacked jurisdiction to consider Grenga's constitutional and criminal claims, that Grenga's claims that accrued before August 18, 2008, were time-barred by the two-year statute of limitations set forth in R.C. 2743.16(A), and that the complaint set forth no factual allegations against the Attorney General. Grenga agreed to dismiss the Attorney General as a defendant, but otherwise opposed the motion to dismiss.

{¶5} On October 13, 2010, the trial court entered a partial dismissal. The court dismissed Grenga's constitutional and criminal claims for lack of subject-matter jurisdiction and dismissed as time-barred all claims that accrued prior to August 18, 2008, two years before Grenga filed his complaint, pursuant to R.C. 2743.16(A). The trial court concluded, however, that the allegations in Grenga's complaint arguably stated claims for civil trespass and invasion of privacy. Thereafter, YSU filed its answer to Grenga's complaint.

{¶6} After the trial court's partial dismissal, Grenga moved the court for leave to file an amended complaint, although he neither identified the amendments he wished to make nor appended a copy of a proposed amended pleading to his motion. Grenga

stated only that leave would not prejudice YSU and would further the policy of deciding cases on the merits. YSU opposed Grenga's motion for leave to amend his complaint.

{¶7} On November 8, 2010, YSU filed a motion for summary judgment, supported by an affidavit from Morgione. YSU argued that no YSU employees entered Grenga's property after March 8, 2007, more than two years before Grenga filed this action. In his affidavit, Morgione stated that he did not enter the property after March 8, 2007, while Grenga remained the owner, and he was unaware of any other YSU employee who subsequently entered onto the property on behalf of YSU while Grenga remained the owner. Accordingly, YSU argued that, as a matter of law, Grenga's claims arising from YSU employees entering upon his property were time-barred by the two-year statute of limitations applicable to claims in the Court of Claims.

{¶8} Grenga opposed YSU's motion for summary judgment and, on December 2, 2010, filed his own motion for summary judgment. In opposition to YSU's motion, Grenga submitted his own affidavit, an affidavit of Fredrick Joseph Cannell, and a letter addressed to Grenga from the city's Deputy Law Director. The letter, dated January 14, 2009, informed Grenga that the city's appraiser, the County Auditor's appraiser, and their authorized representatives intended to enter the property for the purpose of appraising and documenting the property on January 19, 2009. In his affidavit, Grenga states that he believes Morgione and Mineo entered the property in January 2009, according to the January 14, 2009 letter. Grenga argued that Morgione's statement that he and Mineo accompanied city representatives during their inspection of the property demonstrates that they entered the building on or about January 19, 2009.

{¶9} On November 17, 2010, Grenga filed a Notice of Deemed Admissions and Motion for Default Judgment. Grenga argued that YSU failed to respond timely to requests for admissions and that the matters upon which he requested admissions were, therefore, deemed admitted pursuant to Civ.R. 36(A). Grenga also claimed that he was entitled to default judgment as a result of YSU's alleged failure to respond properly to his requests. YSU responded that it timely and appropriately answered Grenga's discovery requests when it mailed those answers on November 8, 2010, as evidenced by a notice of service filed with the court.

{¶10} On December 9, 2010, the trial court stayed this action, pending final disposition of a connected action in the Mahoning County Court of Common Pleas, but ordered that discovery was to continue during the stay.

{¶11} The Court of Claims granted YSU's motion for summary judgment and denied Grenga's motion for summary judgment on January 18, 2011. The court found that neither Grenga's affidavit nor the January 14, 2009 letter contradicted Morgione's affidavit, which provided evidence that Grenga's remaining claims were based on occurrences that predated August 18, 2008. The court stated that the only reasonable conclusion to be drawn from the undisputed evidence is that Grenga's claims are based upon occurrences that predate August 18, 2008, and that those claims are time-barred. The trial court denied as moot all other pending motions, including Grenga's motion for leave to file an amended complaint and Grenga's motion for default judgment.

{¶12} Grenga filed a timely notice of appeal, and he now asserts the following assignments of error:

> [I.] The Trial Court erred by not granting [Grenga] leave to amend [his] Complaint where all conditions of [Civ.R. 15] had been satisfied.
>
> [II.] The Trial Court erred when it granted [YSU] Summary Judgment based on [the] two-year statute of limitations under R.C. §2743.16 and not the specific four year statute of limitations under R.C.§ 2305.09.
>
> [III.] The Trial Court erred and committed reversible error by granting [YSU's] motion for Summary Judgment.
>
> [IV.] The Trial Court abused its discretion and committed reversible error when it granted [YSU] Summary Judgment when discovery was still pending pursuant to order of the Trial Court.
>
> [V.] The Trial Court abused its discretion and committed reversible error when [it] failed to grant [Grenga's] Motion for Summary Judgment based on [YSU's] failure to timely respond to admissions pursuant to Civ. R. 36(A).
>
> [VI.] The judgment of the Trial Court was against the manifest weight of the evidence where the evidence relied upon by [YSU] was insufficient to support the Trial Court's judgment.

{¶13} By his first assignment of error, Grenga asserts that the trial court erred by denying his motion for leave to file an amended complaint. Civ.R. 15(A) states that "[a] party may amend his pleading once as a matter of course at any time before a responsive pleading is served * * *. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party." When YSU filed its answer on October 27, 2010, it cut off Grenga's right to file an amended complaint as a matter of course. Therefore, Grenga was required to obtain leave from the trial court to amend his pleading. Because the decision of whether to grant or deny a motion to amend is within the trial court's discretion, an appellate court reviews such a ruling under an

abuse-of-discretion standard. *Turner v. Cent. Local School Dist.*, 85 Ohio St.3d 95, 99, 1999-Ohio-207. An abuse of discretion requires more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Wilmington Steel Prods., Inc. v. Cleveland Elec. Illuminating Co.* (1991), 60 Ohio St.3d 120, 122, quoting *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87.

{¶14} Civ.R. 15(A), which provides that leave to file an amended pleading should "be freely given when justice so requires," favors a liberal policy of granting leave to amend a pleading when the trial court is faced with a motion beyond the time when amendments are automatically allowed. *Wilmington Steel Prods.* at 121-22. Nevertheless, "where a plaintiff fails to make a *prima facie* showing of support for new matters sought to be pleaded, a trial court acts within its discretion to deny a motion to amend the pleading." Id. at 123. This court has relied on *Wilmington Steel Prods.*, to affirm a denial of leave to amend a complaint where the plaintiff failed to present any evidence to support her proposed claim. See *McDermott v. Tweel*, 151 Ohio App.3d 763, 770, 2003-Ohio-885, ¶26-27. There, we noted that the plaintiff's two-sentence memorandum in support of her motion for leave to amend simply stated that newly-received evidence gave rise to a fraud claim, but did not provide factual support for the proposed claim.

{¶15} In his motion for leave to file an amended complaint, Grenga stated only that "[t]he granting of such leave will work no prejudice to Defendants and will further the preference of Ohio Law for resolving cases on their merit." Not only did Grenga not make a prima facie showing of support for new matters sought to be pleaded, he did not

even identify the ways in which he intended to amend his complaint. It is unclear whether he sought to add additional claims, add new parties or correct errors in his original complaint. In his appellate brief, Grenga suggests that he sought to correct the alleged dates of YSU employees' presence on his property and "to change the party against whom the claim was asserted." Grenga did not, however, alert the trial court to this intention in his motion for leave to amend. In light of Grenga's failure to explain the basis for his motion, we conclude that the trial court did not abuse its discretion by denying the motion for leave to file an amended complaint. Accordingly, we overrule Grenga's first assignment of error.

{¶16} By his second assignment of error, Grenga asserts that the trial court erred by applying the two-year statute of limitations set forth in R.C. 2743.16, instead of the four-year statute of limitations set forth in R.C. 2305.09. Pursuant to R.C. 2743.16(A), "civil actions against the state [in the Court of Claims] shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties." R.C. 2305.09, on the other hand, establishes a four-year limitations period for claims of trespass and certain other torts. Grenga contends that his claims of trespass and invasion of privacy are subject to a four-year limitations period under R.C. 2305.09 and that his claims are timely.

{¶17} This court has rejected the assertion that longer, general statutes of limitations for tort claims apply over the R.C. 2743.16(A) two-year statute of limitations in actions against the state in the Court of Claims. See *Windsor House, Inc. v. Ohio*

Dept. of Job & Family Servs., 10th Dist. No. 09AP-584, 2010-Ohio-257; *Simmons v. Ohio Rehab. Servs. Comm.*, 10th Dist. No. 09AP-1034, 2010-Ohio-1590. "R.C. 2743.16(A) 'was clearly intended to take precedence over all other statute of limitations provisions of the Ohio Revised Code in situations where the state was being sued in the Ohio Court of Claims.' " *Windsor House* at ¶20, quoting *Fellman v. Ohio Dept. of Commerce, Div. of Secs.* (Sept. 29, 1992), 10th Dist. No. 92AP-457. In *Simmons* at ¶5, this court explained that the limitation period in R.C. 2743.16(A) is more specific than general limitations periods applicable to specific types of actions between private parties "because [R.C. 2743.16] applies only to the limited number of claims that are filed against the state of Ohio, in the Court of Claims."

{¶18} Although R.C. 2743.16(A) provides that a shorter limitations period applicable to similar suits between private parties may apply to actions against the state in the Court of Claims, all other actions against the state in the Court of Claims are subject to a two-year limitations period. Accordingly, the longest limitations period applicable to actions against the state in the Court of Claims is two years. Because we discern no error in the trial court's application of a two-year statue of limitations, we overrule Grenga's second assignment of error.

{¶19} Also under his second assignment of error, Grenga argues that the trial court failed to conduct a hearing to determine whether political subdivision immunity, under R.C. 2744.02, applies to shield YSU from liability. While the trial court did not address R.C. 2744.02 immunity, the court granted summary judgment in favor of YSU based solely on the statute of limitations. Thus, we do not address the question of

immunity, which was neither considered by the trial court nor relevant to the trial court's judgment.

{¶20} Before turning to Grenga's third assignment of error, which addresses the substance of the trial court's entry of summary judgment, we briefly address Grenga's remaining procedural arguments, raised by his fourth and fifth assignments of error. In his fourth assignment of error, Grenga argues that the trial court erred by granting summary judgment in favor of YSU while discovery remained pending. Grenga argues that, because the trial court's order staying proceedings stated that discovery would continue during the stay, the trial court was not entitled to rule on YSU's motion for summary judgment.

{¶21} We discern no error in the trial court's entry of summary judgment prior to the end of the discovery process. A party need not wait until discovery is complete to move for summary judgment. In fact, Civ.R. 56(B) expressly permits a defending party to move for summary judgment "at any time." Civ.R. 56(F) reinforces the ability to move for summary judgment before the completion of discovery by its establishment of a mechanism by which a non-moving party may request additional time for discovery if necessary to respond to a motion for summary judgment. Civ.R. 56(F) states that, "[s]hould it appear from the affidavits of a party opposing the motion for summary judgment that the party cannot for sufficient reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just." Thus, the remedy for a party that must

respond to a motion for summary judgment prior to the completion of adequate discovery is a Civ.R. 56(F) motion to have the trial court stay its ruling pending the completion of required discovery. *BMI Fed. Credit Union v. Burkitt*, 10th Dist. No. 09AP-1024, 2010-Ohio-3027, ¶17, citing *Morantz v. Ortiz*, 10th Dist. No. 07AP-597, 2008-Ohio-1046.

{¶22} Although Grenga now maintains that YSU's opposition to discovery prevented him from discovering relevant facts, Grenga did not file a motion for additional discovery with the trial court and did not file an affidavit stating that additional discovery was essential to justify his opposition to YSU's motion. Where a party does not file a Civ.R. 56(F) motion, it is not error for the trial court to rule on a motion for summary judgment. *BMI Fed. Credit Union* at ¶17-18 ("since appellant failed to file a Civ.R. 56(F) motion asking the trial court to delay ruling on appellee's motion for summary judgment pending completion of the outstanding discovery requests, appellant cannot argue on appeal that the trial court erred by ruling on the motion for summary judgment"). For this reason, we overrule Grenga's fourth assignment of error.

{¶23} By his fifth assignment of error, Grenga argues that the trial court erred by denying his motion for summary judgment based on YSU's alleged failure to respond to requests for admissions in a timely manner. In support of this assignment of error, Grenga relies on Civ.R. 36, which governs requests for admissions. Civ.R. 36(A)(1) provides, in part, that a matter upon which an admission is requested "is admitted unless, within a period designated in the request, not less than twenty-eight days after service of a printed copy of the request or within such shorter or longer time as the court

may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney."

{¶24} Grenga undisputedly agreed that YSU could respond to his requests for admissions 28 days after the trial court ruled on YSU's motion to dismiss. The trial court issued its ruling on YSU's motion to dismiss on October 13, 2010, which provided YSU until November 10, 2010, to serve written answers or objections to Grenga's requests. Grenga states in his appellate brief that the requests instructed YSU to deliver or mail its responses to Grenga. YSU mailed its responses to the requests for admissions to Grenga, via regular United States mail, on November 8, 2010, and Grenga received those responses on November 13, 2010. Grenga argues that YSU's responses were untimely because he did not receive them by November 10, 2010. Therefore, on November 17, 2010, despite his receipt of YSU's responses, Grenga filed a Notice of Deemed Admissions and a motion for default judgment.

{¶25} Civ.R. 5 governs service of pleadings and other papers subsequent to an original complaint and provides that service upon an attorney of record or upon a pro se party "shall be made by delivering a copy to the person to be served, transmitting it to the office of the person to be served by facsimile transmission, mailing it to the last known address of the person to be served or, if no address is known, leaving it with the clerk of the court." Civ.R. 5(B). The rule explains that "[s]ervice by mail is complete upon mailing." Civ.R. 5(B). Thus, under both Civ.R. 5(B) and the admitted terms of Grenga's requests for admissions, YSU was entitled to serve its responses to Grenga's

requests by mail. YSU's service of its responses was complete when YSU mailed them on November 8, 2010, and not when Grenga received them five days later. Therefore, the record establishes that YSU served its responses to Grenga's requests for admissions within the time agreed to by the parties, and the requests were not deemed admitted under Civ.R. 36(A). Accordingly, the trial court did not err by denying Grenga's request for judgment in his favor based on his contention that YSU failed to serve timely responses to his requests for admissions. For these reasons, we overrule Grenga's fifth assignment of error.

{¶26} Grenga's remaining assignments of error, his third and his sixth, assert that the trial court erred by granting YSU's motion for summary judgment. We review a summary judgment de novo and must affirm the trial court's judgment if any grounds the movant raised in the trial court support it. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711; *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶27} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable

minds can come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

{¶28} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996-Ohio-107. Once the moving party meets its initial burden, the non-movant must set forth specific facts demonstrating a genuine issue for trial. Id. at 293.

{¶29} Grenga's sixth assignment of error asserts that the entry of summary judgment was against the manifest weight of the evidence. This court reviews a summary judgment, not under a manifest-weight standard, but pursuant to the standard set forth in Civ.R. 56. *White v. Westfall*, 183 Ohio App.3d 807, 2009-Ohio-4490, ¶9. Indeed, a manifest-weight challenge to summary judgment "is a non sequitur because, on summary judgment, a court may not weigh the evidence." Id. An appellate court may summarily overrule assignments of error challenging summary judgment based on the manifest weight of the evidence. Id. Therefore, we overrule Grenga's sixth assignment of error.

{¶30} Grenga's third assignment of error states, generally, that the trial court erred by granting YSU's motion for summary judgment. In support of its motion for summary judgment, YSU submitted Morgione's affidavit as evidence that no YSU employees entered upon Grenga's property between March 8, 2007, and the termination of Grenga's ownership. In pertinent part, Morgione stated, "[o]n or about

March 8, 2007, Mr. Mineo and I accompanied representatives from the [c]ity during their inspection of the [p]roperty." (Morgione Affidavit, Nov. 4, 2010, ¶5.) Morgione went on to state that he "did not enter the [p]roperty again during the remaining time that Mr. Grenga owned the [p]roperty, nor am I aware that any other YSU employee entered the [p]roperty after March 8, 2007 on behalf of YSU during the remaining time that Mr. Grenga owned the [p]roperty." Morgione also stated that Mineo retired from his employment in October 2007. Contrary to Grenga's assertion, Morgione's affidavit is sufficient evidence to meet YSU's initial burden on summary judgment. Specifically, Morgione's affidavit constitutes evidence that Grenga's claims, which are based on YSU employees' presence on the property, accrued more than two years before Grenga commenced this action.

{¶31} Where, as here, YSU met its initial burden on summary judgment, Grenga was required to set forth specific facts to demonstrate a genuine issue for trial. See *Dresher* at 293. In response to YSU's motion for summary judgment, Grenga submitted his own affidavit, the affidavit of Fredrick Joseph Cannell, and a letter from the city's Deputy Law Director. In his affidavit, Grenga states that Morgione and Mineo entered onto the property, a fact Morgione admits in his own affidavit. Grenga, however, states that, "according to the January 14, 2009 * * * letter," he believes Morgione and Mineo entered the building in January 2009. (Grenga Affidavit, ¶8.) Cannell states that he was present on the property when representatives of the city and YSU visited, but he does not assign a date to that visit. Grenga contends that the submitted evidence

contradicts Morgione's affidavit and demonstrates genuine issues of material fact as to when his claims against YSU accrued. We disagree.

{¶32} The January 14, 2009 letter submitted by Grenga states that "the [city's] appraiser, the County Auditor's appraiser and their authorized representatives intend to enter" the property on January 19, 2009, to appraise and document the property. Grenga argues that, if the appraisers entered the property on January 19, 2009, then Morgione must have entered the property on January 19, 2009, because Morgione stated that he and Mineo accompanied representatives from the city during their inspection of the property. Grenga's reasoning is flawed. The letter does not mention YSU, Morgione or Mineo, and Grenga admits that neither Morgione nor Mineo was an authorized representative of the city's appraiser or the County Auditor's appraiser. Thus, the letter does not suggest that Morgione, Mineo or any other YSU representative entered Grenga's property on January 19, 2009. Although Morgione stated that he and Mineo accompanied representatives of the city during an inspection of the property, he stated that they did so on March 8, 2007. The January 14, 2009 letter in no way contradicts Morgione's affidavit testimony. It cannot be inferred from the letter that representatives from the city had not inspected the property prior to January 2009 with Morgione and Mineo. In fact, Grenga alleged in his complaint that YSU employees entered onto the property on March 8, 2007, exactly as set forth in Morgione's affidavit. Accordingly, we reject Grenga's contention that Morgione's affidavit is in conflict with other facts in his record.

{¶33} The record contains no evidence that YSU employees participated in the January 19, 2009 appraisal and inspection of the property. Nor does the record contain any evidence to contradict Morgione's statement that he did not enter upon the property between March 8, 2007, and the termination of Grenga's ownership. In the absence of contrary evidence, there is no genuine issue of material fact as to whether Grenga filed a timely claim against YSU based on Morgione's presence on the property. Any claim as a result of Morgione's presence would have accrued more than two years before Grenga filed his complaint in this action. Additionally, Morgione's uncontested testimony that Mineo retired from his employment on October 31, 2007, over two years before Grenga filed his complaint, establishes that any claim against YSU as a result of Mineo's presence on the property was time-barred. Lastly, there is no evidence that any other YSU employee was present on the property, while Grenga owned it, within the two years immediately preceding Grenga's filing of this action. Accordingly, we conclude that the trial court did not err in granting summary judgment in favor of YSU pursuant to the two-year statute of limitations set forth in R.C. 2743.16(A). For this reason, we overrule Grenga's third assignment of error.

{¶34} Having overruled each of Grenga's assignments of error, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

BROWN and DORRIAN, JJ., concur.