

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Stephen Holman,	:	
Plaintiff-Appellant,	:	
v.	:	No. 12AP-983 (Ct. of Cl. No. 2012-06378)
Department of Commerce,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on August 13, 2013

Stephen Holman, pro se.

Michael DeWine, Attorney General, and *Kristin S. Boggs*, for appellee.

APPEAL from the Court of Claims of Ohio.

SADLER, J.

{¶ 1} Plaintiff-appellant, Stephen Holman, appeals from the judgment of the Court of Claims of Ohio granting the motion to dismiss filed by defendant-appellee, the Department of Commerce. For the reasons that follow, we affirm the judgment of the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} Appellant filed this action on August 22, 2012. According to his complaint, on or about July 2 and 27, 2009, Leigh Willis, Deputy Superintendent of Consumer Finance, Division of Financial Institutions, knowingly with malicious intent altered, destroyed, concealed, and removed documents to impair their availability as evidence in appellant's related court proceedings. Specifically, the complaint alleged Willis falsified

dates to make it appear as if appellant was working at the time of alleged crimes when he actually was not. Because of Willis's alleged actions, appellant's complaint seeks damages for his mental anguish and present incarceration.

{¶ 3} Appellee filed a motion to dismiss, pursuant to Civ.R. 12(B)(6) and (B)(1), asserting that appellant's claims were barred by the applicable statute of limitations, and appellant failed to articulate any claims against the state over which the Court of Claims would have jurisdiction. In response, appellant argued his claims were not time-barred because the discovery rule applied to extend the statute of limitations.

{¶ 4} The trial court concluded that, to the extent appellant was raising claims asserting a violation of his civil rights, the court was without subject-matter jurisdiction to hear such claims. The trial court also concluded that appellant's claims accrued, at the latest, on July 27, 2009; therefore, his August 22, 2012 complaint was untimely. Consequently, the trial court granted appellee's motion to dismiss.

II. ASSIGNMENTS OF ERROR

{¶ 5} This appeal followed, and appellant brings the following two assignments of error for our review:

[I.] The court erred in its premature decision and the plaintiff was prejudice. When the court fail to acknowledge the plaintiff's state law claims in this court.

[II.] The court abused its discretion and the plaintiff was prejudice. When the court denied the plaintiff's claims that he preserves his rights to be heard in the court of common pleas/federal courts on his constitutional/federal law claims.

(Sic passim.)

III. DISCUSSION

A. Appellant's Motion to Supplement the Record

{¶ 6} Prior to addressing the merits of appellant's appeal, we address appellant's request for leave to amend and supplement the record with his reply brief filed on January 2, 2013. According to appellant, he seeks leave to amend because he believes his reply is untimely. By this court's calculations, the reply is not untimely, thus rendering appellant's motion to amend and supplement unnecessary. Accordingly, the motion is denied.

B. Assigned Errors

{¶ 7} Because they are interrelated and both challenge the trial court's judgment dismissing appellant's claims for being barred by the applicable statute of limitations, appellant's two assignments of error will be addressed together. In these assigned errors, appellant argues the trial court erred in failing to apply the discovery rule so as to render his claims timely.

{¶ 8} Before the court may dismiss a complaint, pursuant to Civ.R. 12(B)(6), for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling the plaintiff to recovery. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus. In construing a complaint on a motion to dismiss, pursuant to Civ.R. 12(B)(6), the trial court must presume all factual allegations in the complaint are true and construe the complaint in the light most favorable to the plaintiff, drawing all reasonable inferences in favor of the plaintiff. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988).

{¶ 9} In ruling on a Civ.R. 12(B)(6) motion, a trial court " 'cannot resort to evidence outside the complaint to support dismissal [except] where certain written instruments are attached to the complaint.' " *Brisk v. Draf Industries, Inc.*, 10th Dist. No. 11AP-233, 2012-Ohio-1311, ¶ 10, quoting *Park v. Acierno*, 160 Ohio App.3d 117, 2005-Ohio-1332, ¶ 29 (7th Dist.). A complaint may be dismissed, pursuant to Civ.R. 12(B)(6), as failing to comply with the applicable statute of limitations if the face of the complaint makes clear that the action is time-barred. *Steiner v. Steiner*, 85 Ohio App.3d 513, 518-19 (4th Dist.1993); *Swanson v. Boy Scouts of Am.*, 4th Dist. No. 07CA663, 2008-Ohio-1692, ¶ 6, citing *Doe v. Robinson*, 6th Dist. No. L-07-1051, 2007-Ohio-5746, ¶ 17, citing *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, ¶ 11. Only where the complaint shows conclusively on its face that the action is time-barred should a Civ.R. 12(B)(6) motion to dismiss based upon the statute of limitations be granted. *Swanson* at ¶ 6, citing *Jackson v. Sunnyside Toyota, Inc.*, 175 Ohio App.3d 370, 2008-Ohio-687, ¶ 15 (8th Dist.).

{¶ 10} When reviewing a judgment granting a Civ.R. 12(B)(6) motion, an appellate court must independently review the complaint to determine if dismissal was appropriate. *Welfley v. Vrandenburg*, 10th Dist. No. 95APE11-1409 (Mar. 29, 1996); *Greeley v. Miami*

Valley Maintenance Contrs., Inc., 49 Ohio St.3d 228 (1990). Our review must focus solely on appellant's complaint, and we may not look to statements contained elsewhere in the record. *Welfley; McGlone v. Grimshaw*, 86 Ohio App.3d 279, 286 (4th Dist.1993).

{¶ 11} It is not contested that the applicable statute of limitations is found in R.C. 2743.16(A), which provides, in relevant part, "civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code 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."

{¶ 12} Though acknowledging he alleged the wrongful acts occurred on July 2 and 27, 2009, appellant argues he did not become aware of the wrongful acts until January 18, 2012; therefore, the trial court erred in failing to apply the discovery rule so as to render his claims timely. The "discovery rule," applicable in certain circumstances, generally provides that a cause of action accrues for purposes of the governing statute of limitations at the time when the plaintiff discovers or, in the exercise of reasonable care, should have discovered the complained of injury. *See Oliver v. Kaiser Community Health Found.*, 5 Ohio St.3d 111 (1983); *Skidmore & Hall v. Rottman*, 5 Ohio St.3d 210 (1983).

{¶ 13} In the case before us, a careful reading of the complaint shows that appellant did not mention a statute of limitations, tolling or any dates other than the July 2 and 27, 2009 dates pertaining to the alleged actions of Willis. Also absent from appellant's complaint is any reference to the discovery rule or the January 18, 2012 date that he now argues applies to this matter. These allegations do not appear in the complaint, nor are they inferable from the allegations that are contained in the complaint. *Welfley* (factual allegations neither asserted in nor inferable from the complaint cannot be considered in appellate assessment of complaint for purposes of Civ.R. 12(B)(6)).

{¶ 14} We conclude appellant did not include any allegations in his complaint from which the trial court could infer that the statute of limitations should be extended upon any basis. Therefore, based on the allegations in his complaint, appellant had two years from, at the latest, July 27, 2009 during which to file his claims. Because he did not file his complaint until August 22, 2012, the trial court did not err in dismissing appellant's complaint based upon the expiration of the statute of limitations. *Id.*; *Sheets v. Amcast*

Indus., Inc., 4th Dist. No. 00CA005 (May 7, 2001); *Kozelka v. Garfield Hts.*, 8th Dist. No. 92511, 2009-Ohio-5009.

{¶ 15} Accordingly, we overrule appellant's two assignments of error.

IV. CONCLUSION

{¶ 16} Having overruled both of appellant's assignments of error, the judgment of the Court of Claims of Ohio is hereby affirmed.

*Motion denied;
judgment affirmed.*

TYACK and O'GRADY, JJ., concur.
