

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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| Benjamin R. Pankey, | : | |
| Plaintiff-Appellant, | : | |
| v. | : | No. 11AP-36 (C.C. No. 2010-11498) |
| Ohio Adult Parole Authority, | : | (REGULAR CALENDAR) |
| Defendant-Appellee. | : | |

D E C I S I O N

Rendered on August 23, 2011

Benjamin R. Pankey, pro se.

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

APPEAL from the Ohio Court of Claims.

BROWN, J.

{¶1} Benjamin R. Pankey, plaintiff-appellant, appeals from a judgment of the Ohio Court of Claims, in which the court granted the motion to dismiss filed by the Ohio Adult Parole Authority ("APA"), defendant-appellee.

{¶2} In 1973, appellant was convicted of sexually assaulting an adult female. He was released from prison for the offense in 1993 and placed on parole. In 1998, appellant returned to prison after a parole violation. Appellant alleged in his complaint that he was then paroled in 2000, at which time he was informed he was required to register as a

sexually oriented offender. Appellant claims he was told by various housing entities upon his release from prison that he was unwelcomed because he was a registered sex offender, and he was also unable to spend time alone with his underage female relatives. In 2006, appellant returned to prison after being convicted of cocaine possession and he was paroled in March 2010, at which time he was again informed he was still required to register as a sexually oriented offender.

{¶3} On October 27, 2010, appellant filed a complaint in the Court of Claims, alleging that the APA unlawfully forced him to register as a sexually oriented offender due to the 1973 rape, even though his conviction had completely "expired" in 1993 when he was released. On November 10, 2010, the APA filed a motion to dismiss appellant's complaint for lack of jurisdiction, pursuant to Civ.R. 12(B)(1), and for failure to state a claim for relief pursuant to Civ.R. 12(B)(6). On December 17, 2010, the trial court issued an entry of dismissal, dismissing appellant's complaint pursuant to Civ.R. 12(B)(1) and (6). The trial court found it did not have jurisdiction because appellant's claims were based upon criminal proceedings over which the Court of Claims does not have jurisdiction. The trial court also found appellant was prohibited from substituting an action in the Court of Claims for a right of appeal in a different court. Furthermore, the trial court found that, even if it had jurisdiction, appellant's complaint was filed after the general two-year statute of limitations for civil actions filed against the state pursuant to R.C. 2743.16(A). The court also found that, insofar as appellant may have raised a defamation claim, appellant's claim was subject to the same one-year statute of limitations applicable to claims between private parties pursuant to R.C. 2305.11(A) and 2743.16(A). Appellant appeals the judgment of the trial court.

{¶4} We first note that appellant fails to specifically set forth any assignments of error, as required by App.R. 16(A)(3), and this court has discretion to disregard appellant's arguments under App.R. 12(A)(2). Notwithstanding, we will, in the interest of justice, briefly address the following "Issue Presented for Review" and construe it as an assignment of error:

The Ohio Court of Claims erred [when it] dismiss[ed] plaintiff's case because the Statute of Limitations tolled during [the] time plaintiff was in custody pursuant to ORC 2305.16, saving clause: time tolled during imprisonment and the Ohio Supreme Court holds a parolee remains in custody, "on parole."

{¶5} The Court of Claims found that it did not have jurisdiction to determine appellant's action. Appellant's brief addresses only the trial court's statute of limitations determinations and does not address the court's jurisdiction. Nonetheless, we find the Court of Claims did not have jurisdiction over the present matter. The Court of Claims has only that jurisdiction that is specifically conferred upon it by the General Assembly. *Wirick v. Transport Am.*, 10th Dist. No. 01AP-1268, 2002-Ohio-3619, ¶11. The Court of Claims has exclusive jurisdiction over civil actions against the state for money damages that sound in law. R.C. 2743.02 and 2743.03. In the present case, although appellant seeks money damages in his complaint for being wrongly required to register as a sexually oriented offender, no court has ever found appellant was, in fact, wrongly required to register. Such a determination is not within the jurisdiction of the Court of Claims. Appellant must seek this determination in another venue. See, e.g., *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169 (for those classified a sexually oriented offender by operation of law, if any error in requiring the offender to register arises, legal remedies,

such as mandamus, are available to correct such an error). For these reasons, we find the Court of Claims did not have jurisdiction in this matter.

{¶6} However, even if, assuming arguendo, the trial court had jurisdiction to entertain appellant's action, we find that the trial court was correct that appellant's claims were barred by the applicable statutes of limitations. In deciding whether to dismiss a complaint, pursuant to Civ.R. 12(B)(6), for failure to state a claim upon which relief can be granted, 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.* (1988), 40 Ohio St.3d 190, 192. Before the court may dismiss the complaint, 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.* (1975), 42 Ohio St.2d 242, syllabus. We review de novo the dismissal of a complaint pursuant to Civ.R. 12(B)(6). *Shockey v. Wilkinson* (1994), 96 Ohio App.3d 91, 94.

{¶7} In this case, the trial court determined the applicable statute of limitations bars appellant's complaint. A complaint may be dismissed, pursuant to Civ.R. 12(B)(6), as failing to comply with the statute of limitations if the face of the complaint makes clear that the action is time barred. *Steiner v. Steiner* (1993), 85 Ohio App.3d 513, 518-19. 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. *Jackson v. Sunnyside Toyota, Inc.*, 175 Ohio App.3d 370, 2008-Ohio-687, ¶15.

{¶8} 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." In his complaint, appellant asserts that the APA wrongfully compelled him to register as a sex offender. In this regard, appellant asserts in his complaint, "In 1998 the APA returned [appellant] to prison for a 'technical violation' and in the year 2000 for the first time he was compelled to register, etc., under ORC 2950." (Emphasis sic.) Therefore, appellant's claim arose sometime in 2000, and the statute of limitations expired two years later in 2002. Because appellant did not file the present action until 2010, appellant's claim was barred by the two-year statute of limitations contained in R.C. 2743.16(A).

{¶9} The Court of Claims also construed appellant's complaint as also raising a possible defamation claim based upon the APA's publication of his sex offender status, which appellant contends contained false or incomplete information. Although reading a defamation claim into appellant's allegations is somewhat difficult, even if his complaint did raise a defamation claim, we agree with the Court of Claims that such a claim would also be time barred. Because defamation claims between private parties are subject to a one-year limitation period, as set forth in R.C. 2305.11(A), appellant's defamation claim in the Court of Claims is likewise subject to the shorter limitations period. See *Sabouri v. Ohio Dept. of Job & Family Servs.* (2001), 145 Ohio App.3d 651, 654. A cause of action for defamation accrues on the date of publication of the alleged defamatory matter. *Fleming v. Ohio Atty. Gen.*, 10th Dist. No. 02AP-240, 2002-Ohio-7352. Based upon appellant's complaint, his claim for defamation likewise arose in 2000, when the APA first informed him he was required to register as a sex offender. Because appellant did not file his present complaint until 2010, his defamation claim was time-barred.

{¶10} In his brief, appellant argues that, because he was in the custody of the APA continuously from 1966 to date, either in jail or on parole, the statute of limitations for filing an action was tolled during this period. Prior to 1991, R.C. 2305.16 and 2743.16 provided that imprisonment of the plaintiff at the time the cause of action accrued tolled the statute of limitations applicable to the action during the party's imprisonment. In 1991, however, S.B. No. 125 changed R.C. 2305.16 and 2743.16 to eliminate imprisonment as a disability for the tolling of the statute of limitations. See *Kucharski v. Kucharski* (Nov. 4, 1999), 8th Dist. No. 75049. Therefore, appellant's contention that the statute of limitations for his claims were tolled during his incarceration is without merit.

{¶11} Appellant also claims in his appellate brief that his cause of action accrued in 2010, because he was compelled to register again as a sexually oriented offender by the Trumbull County Sheriff upon his latest release on parole in March 2010. Appellant attached to his complaint a September 29, 2010 notice of registration duties completed by the Trumbull County Sheriff. When ruling upon a Civ.R. 12(B)(6) dismissal motion, a trial court's review is limited to the factual allegations contained in the complaint and any attachments, and the trial court may not consider any outside evidentiary materials. *Temple v. Ohio Atty. Gen.*, 10th Dist. No. 06AP-988, 2007-Ohio-1471, ¶13, citing *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 1992-Ohio-73. However, nowhere in appellant's complaint does appellant raise any factual allegations related to 2010, and we cannot reasonably infer such from any of the allegations in the complaint. Importantly, appellant knew in 2000 how many years he would be required to register annually under the law in existence at that time. It was at that time that appellant should have challenged his duty to register, not ten years later, as he attempts to do in

the present action. Thus, we find this argument without merit. For all the foregoing reasons, even if, assuming *arguendo*, the trial court had jurisdiction to address appellant's complaint, appellant's action was barred by the statute of limitations. Therefore, appellant's assignment of error is overruled.

{¶12} Accordingly, appellant's assignment of error is overruled, and the judgment of the Ohio Court of Claims is affirmed.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.
