

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FRANK LOUIS ZAMFINO,)	
)	DIVISION ONE
Appellant/Cross-Respondent,)	
)	No. 67450-1-I
v.)	
)	UNPUBLISHED OPINION
WASHINGTON STATE)	
DEPARTMENT OF CORRECTIONS,)	
)	
Respondent/Cross-Appellant,)	
)	
KING COUNTY DEPARTMENT OF)	
ADULT AND JUVENILE DETENTION,)	
)	
Defendant.)	FILED: January 22, 2013
_____)	

Dwyer, J. — Frank Louis Zamfino sued the Washington State Department of Corrections (DOC), alleging that he was incarcerated beyond his lawful release date. Zamfino asserted both a federal civil rights claim, pursuant to 42 U.S.C. § 1983, and a state tort claim, characterized in his complaint as a negligence claim. The trial court dismissed on summary judgment Zamfino’s claims. However, the court granted to Zamfino an award of nominal damages based upon his state tort claim. Zamfino appeals from the trial court’s dismissal of his claims. DOC cross-appeals, challenging the award of nominal damages.

Because the State is not a “person” against whom a § 1983 claim for

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damages may be asserted, the trial court correctly dismissed Zamfino's federal civil rights claim. Moreover, notwithstanding Zamfino's characterization of his state tort claim as one sounding in negligence, the factual allegations in his complaint constitute a claim for false imprisonment. Zamfino did not file his complaint within the two-year statutory limitation period applicable to such a claim, and, thus, his state tort claim was also properly dismissed. Finally, because Zamfino did not assert a viable state tort claim, the trial court erred by granting an award of nominal damages.

I

On February 19, 2009, Zamfino filed a complaint against DOC, asserting that DOC, "[d]espite being notified on numerous occasions by [Zamfino] that his date of release had passed," released Zamfino from incarceration at least 185 days beyond the correct release date.¹ According to the complaint, Zamfino was released on October 11, 2006. Zamfino sought "damages and other appropriate relief under 42 USC Section 1983 for violation of [his] civil rights under color of law and negligence under state law," alleging that DOC had "negligently failed to accurately calculate" the number of days for which he was entitled to credit for time served prior to sentencing.

DOC thereafter moved for summary judgment dismissal of Zamfino's claims. DOC asserted that it is not a "person" from whom Zamfino could recover

¹ King County Department of Adult and Juvenile Detention was also named as a defendant in Zamfino's complaint but is not a party to this appeal.

damages pursuant to § 1983. In addition, DOC contended that Zamfino's state tort claim constituted a "claim for false imprisonment stated as a negligence claim" and, thus, was barred by the two-year statutory limitation period applicable to false imprisonment claims.

The trial court granted DOC's motion for summary judgment "with respect to [Zamfino's] claims for false imprisonment and 42 U.S.C. 1983 damages." The court further granted DOC's motion for summary judgment "as to [Zamfino's] claim for negligence, except for a claim for nominal damages proximately caused by the negligence of Defendant Department of Corrections." The trial court denied DOC's motion for reconsideration regarding the award of nominal damages.

Although it continued to deny liability, DOC then filed a motion requesting that the trial court set the amount of nominal damages to be awarded to Zamfino. The trial court granted DOC's motion, setting nominal damages in the amount of \$1,000. The court thereafter entered judgment on the state tort claim, awarding to Zamfino \$1,000 in nominal damages.

Zamfino appeals from the trial court's judgment. DOC cross-appeals from the trial court's order granting in part and denying in part its motion for summary judgment and the trial court's denial of its motion for reconsideration.

II

Zamfino first contends that the trial court erroneously dismissed his

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federal civil rights claim for damages pursuant to § 1983, which provides a civil cause of action against any “person” who deprives another of “any rights, privileges, or immunities secured by” the United States Constitution. 42 U.S.C. § 1983. However, a state is not a “person” within the meaning of § 1983; accordingly, the statute does not provide for such a cause of action against a state. Lapides v. Bd. of Regents of Univ. Sys. of Ga., 535 U.S. 613, 617, 122 S. Ct. 1640, 152 L. Ed. 2d 806 (2002); Will v. Mich. Dep’t of State Police, 491 U.S. 58, 64, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989); Wash. State Republican Party v. Wash. State Pub. Disclosure Comm’n, 141 Wn.2d 245, 285-86, 4 P.3d 808 (2000); Smith v. State, 135 Wn. App. 259, 270, 144 P.3d 331 (2006). The trial court correctly followed controlling authority in dismissing Zamfino’s § 1983 claim.

III

Zamfino additionally alleges that the trial court erred by dismissing his state tort claim. However, it is the allegations in Zamfino’s complaint, not his characterization of the claim, which dictate the applicable statute of limitations. Our legislature has determined that a claim arising from factual circumstances such as those pleaded herein is barred when asserted more than two years after the claim accrued. Accordingly, Zamfino’s state tort claim is barred by the applicable two-year statutory limitation period.

Zamfino alleged in his complaint that he was confined by DOC beyond his

lawful release date. Our Supreme Court has held that such factual allegations give rise to a claim for false imprisonment. Stalter v. State, 151 Wn.2d 148, 155, 86 P.3d 1159 (2004) (holding that “a jail is liable for false imprisonment if it holds an individual for an unreasonable time after it is under a duty to release the individual”). See also Housman v. Byrne, 9 Wn.2d 560, 561-62, 115 P.2d 673 (1941) (holding that a person detained without authority has a cause of action for false imprisonment against the detaining officer). “Unlawful imprisonment is the intentional confinement of another’s person, unjustified under the circumstances.” Kellogg v. State, 94 Wn.2d 851, 856, 621 P.2d 133 (1980). The “gist” of an action for this intentional tort “is the unlawful violation of a person’s right of personal liberty or the restraint of that person without legal authority.” Bender v. City of Seattle, 99 Wn.2d 582, 591, 664 P.2d 492 (1983).

Zamfino did not, however, assert a cause of action for false imprisonment. Indeed, because the statutory limitation period applicable to false imprisonment claims is two years, RCW 4.16.100(1), such a claim, had it been asserted, would have been time barred.² Zamfino instead characterized his state law claim as one sounding in negligence, alleging that DOC had “negligently failed to accurately calculate” his time served, thus resulting in his confinement beyond his lawful release date. Because the statutory limitation period for negligence claims is three years, RCW 4.16.080(2), Zamfino argues, his claim should not

² Zamfino’s complaint alleges that he was released on October 11, 2006. He did not file his complaint until February 19, 2009, well over two years later.

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have been dismissed.

Regardless of Zamfino's characterization of his state tort claim, however, it is the factual allegations in his complaint that determine the applicable limitation period. See Boyles v. City of Kennewick, 62 Wn. App. 174, 177, 813 P.2d 178 (1991). Our Supreme Court has held that "[w]here a given set of facts gives rise" to a particular cause of action, "it cannot be recharacterized as a [different] cause of action for statute of limitations purposes." Eastwood v. Cascade Broad. Co., 106 Wn.2d 466, 469, 722 P.2d 1295 (1986) (holding that plaintiff could not recharacterize a defamation cause of action as a false light invasion of privacy cause of action in order to avoid statute of limitations); see also Seely v. Gilbert, 16 Wn.2d 611, 615, 134 P.2d 710 (1943) ("In drafting the second amended complaint, we note appellant endeavored to conceal the real cause of action and make it one for conspiracy. Appellant cannot evade the statute of limitations by disguising her real cause of action by the form of her complaint.").

Indeed, other courts have rejected similar attempts to recharacterize false imprisonment claims as negligence claims. Snow-Erlin v. United States, 470 F.3d 804, 808-09 (9th Cir. 2006) (affirming the district court's dismissal of plaintiff's action, which alleged that her late husband was wrongly incarcerated due to "negligent miscalculation" of his release date, and holding that the plaintiff could not evade the Federal Tort Claims Act's exclusion of false imprisonment

claims “by suing for the damage of false imprisonment under the label of negligence”); Cline v. City of Seattle, No. C06-1369MJP, 2007 WL 2671019, at *5 (W.D.Wash. Sept. 7, 2007) (holding that, “to the extent Plaintiff’s complaint can be construed as asserting state-law negligence claims, such claims would appear to be false arrest claims couched in negligence terms and would be subject to the two-year statute of limitations for a false arrest claim”); Kinegak v. State of Alaska, Dep’t of Corrs., 129 P.3d 887, 888 (Alaska 2006) (holding that prisoner could not overcome state’s immunity from false imprisonment claim by pleading that state department of corrections had “negligently failed to correctly compute plaintiff’s release date”).

Here, the factual allegations set forth in Zamfino’s complaint constitute a claim for false imprisonment, notwithstanding his attempt to characterize it as one for negligence.³ Zamfino’s complaint alleges that he continued to be incarcerated beyond his lawful release date. His alleged damages derive not from the purported negligence of DOC staff but, rather, from Zamfino’s incarceration during a time in which, he asserts, he could not be legally

³ In an apparent attempt to argue that his state law claim is not a claim for false imprisonment, Zamfino asserts that he was not unlawfully imprisoned because “he was imprisoned pursuant to a lawfully obtained judgment.” Reply Br. of Appellant-Cross-Resp’t at 3. However, an initially lawful imprisonment “may under some circumstances become unlawful.” Tufte v. City of Tacoma, 71 Wn.2d 866, 870, 431 P.2d 183 (1967). Our Supreme Court has determined that such occurs when a jail “holds an individual for an unreasonable time after it is under a duty to release the individual.” Stalter, 151 Wn.2d at 155.

Zamfino also asserts that DOC “never alleged that their actions in doing this were intentional, in that they deliberately held him in prison after he served his time as a malicious action.” Reply Br. of Appellant-Cross-Resp’t at 3. No such allegation is necessary. “[T]he plaintiff in a false imprisonment claim must show merely that the defendant intended to confine the plaintiff, not that the defendant intended to do so without legal authority.” Stalter v. State, 113 Wn. App. 1, 15, 51 P.3d 837 (2002), overruled on other grounds, 151 Wn.2d 148 (2004).

detained. See Kinegak, 129 P.3d at 888.

Our legislature has determined that a cause of action arising from such factual allegations must be filed within two years after the claim accrues. RCW 4.16.100(1). Accordingly, allowing Zamfino to proceed with his state tort claim would permit evasion of this legislative determination. See, e.g., Love v. City of Port Clinton, 37 Ohio.St.3d 98, 99, 524 N.E.2d 166 (1988) (“Where the essential character of an alleged tort is an intentional, offensive touching, the statute of limitations for assault and battery governs even if the touching is pled as an act of negligence. To hold otherwise would defeat the assault and battery statute of limitations.”). Because Zamfino did not file his state tort claim within the applicable two-year statutory limitation period, the claim is time barred. Thus, Zamfino’s claim was properly dismissed.

IV

Notwithstanding the trial court’s proper dismissal of Zamfino’s state tort claim, the trial court granted to Zamfino an award of nominal damages premised upon this cause of action. The trial court having already dismissed the state tort claim, there was no basis for such an award. Accordingly, the trial court erred by granting an award of nominal damages premised upon Zamfino’s state tort claim.

The trial court’s dismissal of Zamfino’s claims is affirmed. The case is remanded to the trial court to vacate the nominal damages award and to enter judgment consistent with this opinion.

Demp, J.

We concur:

Jain, J.

Cox, J.