

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 06-17-2010  
PHILIP G. URRY, CLERK  
BY: GH

JOEL KENTON BARR, ) 1 CA-CV 09-0211  
)  
Plaintiff-Appellant, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
)  
APACHE COUNTY; BETTY M. MONTOYA; ) (Not for Publication -  
KATHERINE D. ARVISO; CRISS ) Rule 28, Arizona Rules of  
CANDELARIA; EDWARD W. FRANCE, ) Civil Appellate Procedure)  
III, )  
)  
Defendants-Appellees. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CV 2008-010793

The Honorable John C. Rea, Judge

**AFFIRMED**

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Joel Kenton Barr  
Plaintiff-Appellant *In Propria Persona*

Florence

Aspey, Watkins & Diesel, P.L.L.C.  
By Donald H. Bayles, Jr.  
Brian Y. Furuya  
Attorneys for Defendants-Appellees

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Flagstaff

P O R T L E Y, Judge

¶1 Joel Kenton Barr appeals from an order dismissing his complaint. For the reasons that follow, we affirm.

#### FACTS AND PROCEDURAL BACKGROUND

¶2 Barr, an inmate in the custody of the Arizona Department of Corrections, filed a *pro se* complaint on May 8, 2008, alleging that Apache County officials ("Defendants") had unlawfully collected "back taxes" by selling real property owned by a corporation in which he had a controlling interest. Barr alleged that Defendants failed to provide him proper notice of the sale, which occurred sometime in May 2005.<sup>1</sup> He further alleged that he served a letter of "CONSTRUCTIVE NOTICE OF INTENT TO SUE" upon the Apache County Attorney on or about March 3, 2006. In addition to seeking actual monetary damages, Barr sought punitive damages, noting that it was appropriate to do so because "more than a year has passed since the [March 3, 2006] notice."

¶3 Defendants filed a motion to dismiss, arguing, among other things, that Barr's complaint was time-barred.<sup>2</sup> See Ariz. Rev. Stat. ("A.R.S.") § 12-821 (2003) (requiring actions against

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<sup>1</sup> Although the complaint alleges a sale date of May 2005, in their briefs the parties both state that the sale took place in May 2003.

<sup>2</sup> The complaint also named two Apache County Superior Court judges as defendants. The trial court granted the judges' motion to dismiss, and Barr has not appealed that ruling.

public entities or public employees to be brought within one year after the cause of action accrues). The trial court granted the motion to dismiss with prejudice on February 10, 2009, "for the reasons set forth in Defendants' pleadings." This appeal followed,<sup>3</sup> and we have jurisdiction pursuant to A.R.S. § 12-2101(B) (2003).

#### DISCUSSION

¶4 Barr does not contest the applicability of the one-year limitations period in § 12-821. Rather, as he did in the trial court, he contends that the limitations period was tolled by A.R.S. § 12-528(B) (2003),<sup>4</sup> which states:

If a person entitled to commence an action for recovery of real property, or to make any defense founded on the title to real property, is at the time the adverse possession commences or the title first descends imprisoned, the period of such disability shall exist only until such imprisoned person discovers the right to bring the action or make the defense or with

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<sup>3</sup> On February 26, 2009, Barr filed a premature notice of appeal from the unsigned February 10, 2009 minute entry. This court issued an order on May 8, 2009, pursuant to *Eaton Fruit Co. v. Cal. Spray-Chemical Corp.*, 102 Ariz. 129, 130, 426 P.2d 397, 398 (1967), suspending the appeal and revesting jurisdiction in the trial court for the purpose of permitting that court to consider an application for a signed order corresponding to its February 10, 2009 minute entry. The trial court, however, had meanwhile signed an order on April 15, 2009, and filed it on May 7, 2009.

<sup>4</sup> Defendants argue that § 12-528(B) is not applicable because Barr's complaint sought monetary damages and not recovery of real property. We need not address this argument, however, because even assuming the cause of action was for recovery of real property, Barr's complaint was nevertheless not timely filed.

the exercise of reasonable diligence should have discovered the right to bring the action or make the defense, whichever occurs first, and such person shall have the same time after the disability ceases to exist which is allowed to others.

He argues that "shortcomings of the prison library and legal assistance program" where he was housed from January 2003 to July 2007 amounted to a "disability" under § 12-528(B) that prevented him from timely filing his complaint. He contends that he did not "discover[] the right to bring the action" until July 20, 2007, when he was transferred to a different unit that apparently did not suffer from similar shortcomings. Thus, he implies that his complaint was timely filed on May 8, 2008. We disagree.

¶15 The primary goal of statutory interpretation is to find and give effect to legislative intent. *State v. Ross*, 214 Ariz. 280, 283, ¶ 22, 151 P.3d 1261, 1264 (App. 2007). We begin with the plain language of the statutory provision and, if the language is clear and unambiguous, we need not resort to other methods of statutory construction. *Wells Fargo Credit Corp. v. Tolliver*, 183 Ariz. 343, 345, 903 P.3d 1101, 1103 (App. 1995). Indeed, "where the language is plain and unambiguous, courts generally must follow the text as written." *Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 526, 529, 869 P.2d 500, 503 (1994).

¶16 The plain language of § 12-528(B) demonstrates that the legislature intended "disability" to refer to a potential plaintiff's "imprison[ment]," but only until the imprisoned person discovers, or reasonably should have discovered, that he or she has the right to bring legal action. See *Vega v. Morris*, 184 Ariz. 461, 464, 910 P.2d 6, 9 (1996) (interpreting the phrase "discovers the right to bring the action," not as an "awareness of the facts surrounding the conduct or injury," but as an "awareness of the legal right or capacity to assert an enforceable claim that the courts recognize and will aid in enforcing"). There is no legislative indication that the term "disability" encompasses a reference to the quality of legal resources available to an inmate appearing as a *pro se* plaintiff seeking recovery of real property. See *City of Phoenix v. Donofrio*, 99 Ariz. 130, 133, 407 P.2d 91, 93 (1965) ("[C]ourts will not read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself.").

¶17 Here, Barr acknowledged in his complaint that he attempted to settle this matter in March 2006. In the March 3, 2006 letter of "CONSTRUCTIVE NOTICE OF INTENT TO SUE" sent to the Apache County Attorney, Barr stated that the sale of his property was unlawful because "no notice was given," and stated that he "intend[ed] to file a lawsuit to recover . . . damages."

Thus, Barr's disability arising from his status as a prisoner ceased to exist as early as March 2006, when he was aware of his capacity to assert the very claim he ultimately raised in the complaint. Because Barr filed his complaint in 2008, more than two years after he became aware of the cause of action and the one-year limitations period under § 12-821 had long run, the trial court correctly dismissed his case.

**CONCLUSION**

¶18 Based on the foregoing, we affirm the order dismissing the complaint.

/s/

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MAURICE PORTLEY, Judge

CONCURRING:

/s/

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JOHN C. GEMMILL, Presiding Judge

/s/

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PATRICIA K. NORRIS, Judge