

RENDERED: AUGUST 23, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2012-CA-001265-MR

BILLY D. WADE

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 10-CI-00615

COMMONWEALTH OF KENTUCKY,  
JUSTICE AND PUBLIC SAFETY CABINET;  
KENTUCKY DEPARTMENT OF CORRECTIONS;  
LADONNA THOMPSON, COMMISSIONER

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; STUMBO AND VANMETER, JUDGES.

VANMETER, JUDGE: Billy D. Wade appeals from an order dismissing his complaint against the Kentucky Department of Corrections (DOC) for allegedly denying him proper medical treatment while he was incarcerated. Wade argues that the trial court erred by applying a one-year statute of limitations and argues

that his claims are subject to the five-year statute of limitation contained in Kentucky Revised Statutes (KRS) 413.120. We affirm.

Wade was incarcerated from April 2, 2005, until September 29, 2006. During that time, Wade alleges that he was diagnosed with cancer and that DOC intentionally neglected his medical needs. On December 3, 2008, Wade filed a complaint against DOC in Franklin Circuit Court alleging that he suffered “serious physical, mental, and emotional suffering to his body and his mind” as a result of DOC’s acts and omissions. He further alleged that he underwent radical surgery at his own expense, which could have been avoided had DOC provided appropriate treatment. On June 29, 2012, the trial court entered an order dismissing the complaint as time-barred pursuant to the one-year statute of limitation contained in KRS 413.140(1)(a). This appeal followed.

Wade argues that the trial court erred by applying KRS 413.140(1)(a) and argues that his claims are subject to the five-year statute of limitation contained in 413.120. We disagree.

KRS 413.140(1)(a) provides that actions for injury to the person shall be commenced within one year after the cause of action accrued. Wade argues that 413.140(1)(a) requires that the physical injury be caused by the acts of another and he now argues that the personal injury statute of limitation should not apply because DOC did not cause his cancer. However, this argument is refuted by his complaint, which states:

7. That as a direct and proximate result of the intentional neglect and failure to act on the part of the Defendant, the Plaintiff suffered serious physical, mental, and emotional suffering to his body and his mind.

We conclude that Wade alleged a cause of action for injury to his person, which is governed by KRS 413.140(1)(a). Wade concedes that the allegedly improper care occurred between April 2005 and September 2006 and that he was aware of the issue at that time. He did not file his complaint until December 3, 2008. Further, pursuant to KRS 413.140(1)(a), a one-year statute of limitations is in effect for constitutional claims presented in Kentucky courts that are analogous to 42 U.S.C. § 1983. *Million v. Raymer*, 139 S.W.3d 914, 919 (Ky. 2004). Therefore, to the extent Wade raises any constitutional claims arising from the alleged denial of medical treatment, these claims are also time-barred.

Wade has failed to demonstrate the applicability of KRS 413.120(2) and (7), which provide a five-year limitations period for actions upon a liability created by statute and actions for injury to rights not based upon contract and not otherwise enumerated. He failed to allege any claim based upon a statute in his complaint. The cases cited by Wade in support of his argument that the five-year statute of limitations contained in KRS 413.120(2) and (7) applies are inapplicable. *Due v. Bankhardt*, 151 Ky. 624, 152 S.W. 786 (1913), involved an action to enforce a lien. *King v. Floyd County Bd. of Education*, 5 F. Supp.2d 504 (E.D. Ky. 1998), involved a suit to recover attorney fees under the Individuals with Disabilities Education Act. *Vandertoll v. Commonwealth*, 110 S.W.3d 789 (Ky. 2003),

involved an action to repurchase condemned property that the Transportation Cabinet had failed to develop. We conclude that the trial court properly dismissed the complaint as time-barred under KRS 413.140(1)(a).

Accordingly, the order of the Franklin Circuit Court is affirmed.

ACREE, CHIEF JUDGE, CONCURS.

STUMBO, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Joel R. Smith  
Jamestown, Kentucky

BRIEF FOR APPELLEE:

Stafford Easterling  
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