

Plaintiff's complaint alleges claims for conversion, retaliation, and medical negligence.

{¶ 5} To the extent that plaintiff alleges that defendant retaliated against him for filing a federal lawsuit, his claims are to be treated as violations of Section 1983, Title 42, U.S.Code. See *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), Franklin App. No. 98AP-1105. Actions against the state under Section 1983, Title 42, U.S.Code may not be brought in the Court of Claims because the state is not a "person" within the meaning of Section 1983. *Id.* See, also, *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App.3d 170. Thus, this court is without jurisdiction to hear plaintiff's claim for retaliation.

{¶ 6} To the extent that plaintiff alleges that he did not receive adequate medical care in May 2004, a cause of action for medical negligence is governed by the one-year statute of limitations as set forth in R.C. 2305.11. The complaint in this action was not filed until June 6, 2005, more than one year after his cause of action accrued. Therefore, plaintiff's claim for medical negligence is barred by the statute of limitations.

{¶ 7} With respect to plaintiff's claim of conversion, he alleges that on or about February 12, 2003, while he was being held in isolation, defendant stole four "Maxim" magazines belonging to plaintiff. Claims based upon the wrongful taking of personal property are generally subject to the four-year limitations of action period set forth in R.C. 2305.09. However, R.C. 2743.16(A) provides:

{¶ 8} "(A) Subject to division (B) of this section, 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."

{¶ 9} Thus, plaintiff's conversion claim is governed by the two-year statute of limitations set forth in R.C. 2743.16. Applying R.C. 2743.16, the statutory period for plaintiff to file his conversion claim against the state ended on February 14, 2005.

Plaintiff contends, however, that his claim is subject to the savings provisions of R.C. 2305.19.

{¶ 10} R.C. 2305.19 provides in relevant part:

{¶ 11} "In an action commenced, or attempted to be commenced, if in due time a judgment for the plaintiff is reversed, or if the plaintiff fails otherwise than upon the merits, and the time limited for the commencement of such action at the date of reversal or failure has expired, the plaintiff, or, if he dies and the cause of action survives, his representatives may commence a new action within one year after such date. ***"

{¶ 12} In his memorandum in opposition to the motion to dismiss, plaintiff states that he timely filed his claim of conversion on January 4, 2005, in the United States District Court, Northern District of Ohio, Case No. 1:05CV0012, and that on April 7, 2005, the district court dismissed his claim for reasons other than on the merits. Although plaintiff's assertions regarding his district court case are not set forth in the complaint, the court is reluctant to dismiss the claim as being time-barred under circumstances where the savings statute may apply.

{¶ 13} For the foregoing reasons, defendant's motion to dismiss shall be granted, in part, as to plaintiff's claims of retaliation and medical negligence. Additionally, the court finds that plaintiff's remaining claim for conversion of Maxim magazines is a claim of \$2,500 or less. Accordingly, this case shall be

150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

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