

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

George Alonzo Simmons et al., :
 :
 Plaintiffs-Appellants, :
 :
 v. : No. 09AP-1034
 : (C.C. No. 2009-05765)
 Ohio Rehabilitation Services Commission, :
 : (REGULAR CALENDAR)
 Defendant-Appellee. :

D E C I S I O N

Rendered on April 8, 2010

Byron L. Potts and Olivia O. Singletary, for appellants.

Richard Cordray, Attorney General, *Velda K. Hofacker* and *Amy S. Brown*, for appellee.

APPEAL from the Court of Claims of Ohio.

TYACK, P.J.

{¶1} Appellant, George Alonzo Simmons ("Simmons"), was an employee of the Ohio Rehabilitation Services Commission ("Commission") from 1979 until April 4, 2007, when the Commission terminated his employment. On June 23, 2009, Simmons filed a complaint against the Commission alleging unlawful discrimination, in violation of the Ohio Civil Rights Act (R.C. Chapter 4112). The Commission filed a Civ.R. 12(C) motion for judgment on the pleadings, arguing that Simmons' claims were barred by the two-year limitation period in R.C. 2743.16(A), which governs all actions filed against the state in the

Court of Claims of Ohio. Simmons argued that the applicable statute of limitations is six years, as provided by R.C. 2305.07, which governs employment discrimination lawsuits. The Court of Claims found that the former two-year limitation period applied and dismissed Simmons' case. The sole issue before us is which statute of limitations applies to Simmons' employment discrimination claims against the Commission:

[I.] THE TRIAL COURT ERRED WHEN IT DISMISSED PLAINTIFF'S CLAIMS AS UNTIMELY APPLYING THE TWO-YEAR STATUTE OF LIMITATIONS UNDER [R.C.] 2743.16 AND NOT THE SPECIFIC SIX YEAR STATUTE OF LIMITATIONS UNDER [R.C. CHAPTER 4112] OHIO REV. CODE § 4112.02 ET. SEQ.

{¶2} Appellate review of a motion for judgment on the pleadings is de novo—we review all legal issues without deference to the trial court's decision. *Fontbank, Inc. v. CompuServe, Inc.* (2000), 138 Ohio App.3d 801, 807. The Civ.R. 12(C) motion presents only questions of law; thus, it may be granted only when there are no material issues of fact, and the movant is entitled to a judgment as a matter of law. *Id*; *Burnside v. Leimbach* (1991), 71 Ohio App.3d 399, 403 (citations omitted).

{¶3} Again, in this assignment of error, the only legal issue for us to consider is which statute of limitations applies to Simmons' discrimination claim against the Commission. Counsel for Simmons argues that the trial court applied the wrong statute of limitations period—that R.C. 2743.16 provides a general limitation period for suits against the State of Ohio, and that the six-year limitation period applicable to discrimination cases is the more specific statute, which should govern in this case. We disagree with that reasoning and analysis.

{¶4} Appellants correctly assert the canon of statutory construction providing that when there is an apparent conflict between a specific statutory provision and a more general one, the more specific one governs. See, e.g., *U.S. v. Perry* (C.A.6, 2004), 360 F.3d 519, 535; see also *State v. Aspell* (1967), 10 Ohio St.2d 1, 4. Appellant also correctly cites the statute of limitations for claims filed under the Ohio Civil Rights Act—six years, under R.C. 2305.07. See *Cosgrove v. Williamsburg of Cincinnati Mgt. Co., Inc.* (1994), 70 Ohio St.3d 281, 282 (holding that the limitation period in R.C. 2305.07 governs claims filed under R.C. 4112.99, which does not, itself, contain an express limitation period). But this six-year limitations period is the more general provision, not the more specific one.

{¶5} Although the six-year limitation period may be specific to claims of discrimination, the six-year limitation period is general insofar as it applies to all such claims, which are filed in Ohio courts of common pleas. The limitation period in R.C. 2743.16 is more specific because it applies only to the limited number of claims that are filed against the state of Ohio, in the Court of Claims. In fact, we need only to look to the table of contents to confirm that R.C. 2305.07 is within Title XXIII, entitled "COURTS—COMMON PLEAS," while R.C. 2743.16 is within Title XXVII, entitled "COURTS—GENERAL PROVISIONS—SPECIAL REMEDIES." Chapter 2743 of the Revised Code is in fact entitled "COURT OF CLAIMS," and is exclusive to practice therein.

{¶6} This interpretation is also consistent with our previous rulings. See, e.g., *McFadden v. Cleveland State Univ.*, 180 Ohio App.3d 810, 2009-Ohio-362, ¶2 (overruling *Senegal v. Ohio Dept. of Rehab. & Corr.* (Mar. 10, 1994), 10th Dist. No. 93AP-1161); *Anglen v. Ohio State Univ.*, 10th Dist. No. 06AP-901, 2007-Ohio-935, ¶14 (holding that a

plaintiff's right to sue the state of Ohio is created by statute, and is appropriately limited by statute); *Fellman v. Ohio Dept. of Commerce, Div. of Securities* (Sept. 29, 1992), 10th Dist. No. 92AP-457 (holding that R.C. 2743.16 "applies to all actions against the state in the Ohio Court of Claims."). The limitations period in R.C. 2743.16 was enacted at the same time that the legislature created the Court of Claims, and by including a specific limitations period within that same chapter of the Revised Code, the legislature clearly intended for that two-year limitation period to take precedence over all other statutes of limitation in the Revised Code at large. *Id.*

{¶7} The first assignment of error is overruled.

[II.] THE TRIAL COURT ERRED WHEN IT DISMISSED APPELLANT MRS. SIMMONS['] CLAIM BECAUSE IT IS A DERIVATIVE CLAIM.

{¶8} In the second assigned error, Simmons asks that Mrs. Simmons' loss of consortium claim be reinstated on the basis of our "favorable ruling" on Simmons' claim. Since we did not rule favorably on Simmons' claim, we must overrule the second assigned error as well, because Mrs. Simmons' claim is a derivative claim.

{¶9} Loss-of-consortium claims are derivative claims, and any defense to the underlying claim will generally constitute a defense to the derivative claim (except in the narrow circumstance where the underlying claim is barred by a shorter limitation period than the limitation period for a loss-of-consortium claim). See *Bowen v. Kil-Kare, Inc.* (1992) 63 Ohio St.3d 84, 96 (Wright, J., concurring in part and dissenting in part); *Clouston v. Remlinger Oldsmobile Cadillac, Inc.* (1970), 22 Ohio St.2d 65, 74; cf. *Wells v. Michael*, 10th Dist. No. 05AP-1353, 2006-Ohio-5871, ¶17.

{¶10} The Court of Claims, thus, correctly dismissed Mrs. Simmons' claim. We accordingly overrule the second assignment of error. Having overruled both assignments of error, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

BROWN and McGRATH, JJ., concur.
