

[Cite as *White v. Unknown*, 2010-Ohio-3031.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Darrell White,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 09AP-1120
v.	:	(C.C. No. 2009-08187)
	:	
Unknown,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee	:	

D E C I S I O N

Rendered on June 30, 2010

Darrell White, pro se.

Richard Cordray, Attorney General, and *Emily M. Simmons*,
for appellee.

APPEAL from the Court of Claims of Ohio

KLATT, J.

{¶1} Plaintiff-appellant, Darrell White, appeals from a judgment of the Court of Claims of Ohio that dismissed his action. Because the trial court's judgment is not a final, appealable order, we dismiss this appeal.

{¶2} On October 13, 2009, White filed a complaint in the trial court against the "Allen County Jail." In his complaint, White alleged that, beginning on January 11, 2009, he was incarcerated in the Allen County Jail. When he entered the jail, he was recovering from a gun-shot wound to his leg. White claimed that the Allen County Jail violated the

Eighth Amendment to the United States Constitution when it: (1) denied him physical therapy, his prescribed medication, and a leg brace; (2) aggravated his injury by forcing him to sleep on the floor; and (3) failed to prevent him from contracting methicillin-resistant staphylococcus aureus ("MRSA").

{¶3} The day after White filed his complaint, the trial court issued an entry dismissing the Allen County Jail from the action. The trial court explained that according to R.C. 2743.02(E), only state agencies and instrumentalities can be defendants in original actions in the Court of Claims. Because the Allen County Jail is an instrumentality of a political subdivision—not the state—White could not file suit against it in the Court of Claims. After dismissing the Allen County Jail, the trial court informed White that it would dismiss his action if he did not file an amended complaint on or before November 13, 2009 that named as a defendant a state department, board, office, commission, agency, institution, or other state instrumentality.

{¶4} On October 28, 2009, White filed an amended complaint naming "Ohio Sheriff Department Daniel Beck of Allen County" as the defendant. Because "Ohio Sheriff Department Daniel Beck of Allen County" is not an instrumentality of the state, the trial court dismissed White's action pursuant to Civ.R. 41(B)(1). In its December 17, 2009 dismissal entry, the trial court specified that the dismissal was without prejudice.

{¶5} White now appeals from the December 17, 2009 judgment, and he assigns the following error:

OHIO COURT OF CLAIMS SHOULD OF EXCEPTED [sic]
NAMED DEFENDANT ALLEN COUNTY SHERRIFF [sic]
DEPARTMENT LOCATED A [sic] 301 N. MAIN ST.LIMA,
OHIO 45801.

{¶6} We cannot address the merits of White's assignment of error unless the December 17, 2009 judgment is a final, appealable order. Pursuant to Section 3(B)(2), Article IV, of the Ohio Constitution and R.C. 2505.03(A), appellate courts' jurisdiction extends only to the review of final, appealable orders. Generally, an involuntary dismissal without prejudice is not a final, appealable order. *Dues v. Ohio Dept. of Rehab. and Corr.*, 10th Dist. No. 08AP-943, 2009-Ohio-1668, ¶9; *Johnson v. H & M Auto Serv.*, 10th Dist. No. 07AP-123, 2007-Ohio-5794, ¶7; *Thompson v. Ohio State Univ. Hosps.*, 10th Dist. No. 06AP-1117, 2007-Ohio-4668, ¶19. See also *Natl. City Commercial Capital Corp. v. AAAA At Your Service, Inc.*, 114 Ohio St.3d 82, 2007-Ohio-2942, ¶8 ("Ordinarily, a dismissal 'otherwise than on the merits' does not prevent a party from refiling and, therefore, ordinarily, such a dismissal is not a final, appealable order."). A dismissal without prejudice is not an adjudication on the merits, and it leaves the parties as if the action had never been commenced. *Dues* at ¶9; *Johnson* at ¶7. Because a dismissal without prejudice does not bar a plaintiff from refiling his complaint, in most instances, such a dismissal does not constitute a final determination of the rights of the parties. *Selmon v. Crestview Nursing & Rehab. Ctr., Inc.*, 184 Ohio App.3d 317, 2009-Ohio-5078, ¶2. However, a dismissal without prejudice may be a final, appealable order if the plaintiff cannot refile his suit because the applicable statute of limitations has lapsed and he cannot take advantage of the savings statute. *Id.*; *Johnson* at ¶7; *Thompson* at ¶19, 21.

{¶7} In the case at bar, White's complaint challenges the conditions of his confinement by claiming that they violated the United States Constitution. Such a challenge can state a cause of action under Section 1983, Title 42, of the United States Code if filed in the appropriate court and against the appropriate party. *Waites v.*

Gansheimer, 110 Ohio St.3d 250, 2006-Ohio-4358, ¶6 ("[D]eliberate indifference to serious medical needs of prisoners is proscribed by the Eighth Amendment to the United States Constitution and states a cause of action under Section 1983, Title 42, U.S.Code."); *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 91, 1994-Ohio-37 ("[P]risoners challenging the conditions of their confinement may utilize Section 1983 to obtain relief"); *Deavors v. Ohio Dept. of Rehab. and Corr.* (May 20, 1999), 10th Dist. No. 98AP-1105 ("Acts by prison officials that infringe upon a prisoner's constitutional rights * * * create a Section 1983, Title 42, U.S.Code cause of action.").

{¶8} Section 1983 claims are subject to a two-year statute of limitations. *Nadra v. Mbah*, 119 Ohio St.3d 305, 2008-Ohio-3918, syllabus (holding that the two-year statute of limitations contained in R.C. 2305.10 applies to Section 1983 claims filed in state court). White's Section 1983 claim arose, at the earliest, when he entered the Allen County Jail on January 11, 2009. Consequently, the applicable statute of limitations has not yet expired. Because White may refile his claim,¹ the trial court's December 17, 2009 judgment is not a final, appealable order. Accordingly, we dismiss White's appeal.

Appeal dismissed.

BRYANT and McGRATH, JJ., concur.

¹ By concluding that White may refile his Section 1983 claim, we do not suggest that the Court of Claims is an appropriate forum for that claim. We have long held that the Court of Claims lacks jurisdiction over Section 1983 claims. *Jackson v. Northeast Pre-Release Ctr.*, 10th Dist. No. 09AP-457, 2010-Ohio-1022, ¶19.