

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

J. M.,
Plaintiff-Appellant,
v.

OREGON YOUTH AUTHORITY,
a state agency; and
Gary Lawhead, individually,
Defendants-Respondents,
and

Richard HILL,
individually; and
Frank James Milligan, individually,
Defendants.

Marion County Circuit Court
14C15773; A162416

Claudia M. Burton, Judge.

Argued and submitted August 15, 2017.

Dennis Steinman argued the cause for appellant. With him on the briefs was Scott J. Aldworth.

Peenesh Shah, Assistant Attorney General, argued the cause for respondents. With him on the brief were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Before Ortega, Presiding Judge, and Garrett, Judge, and Powers, Judge.

GARRETT, J.

Reversed and remanded.

GARRETT, J.

The sole issue in this appeal is whether the trial court erred by declining to follow the Oregon Supreme Court's rule that the two-year statute of limitations begins to run on a claim under 42 USC section 1983 when the claim is discovered. In reliance on cases from the lower federal courts, the trial court concluded that the statute of limitations begins to run at the time of injury. The court consequently granted defendant Lawhead's motion for summary judgment and dismissed plaintiff's claims alleging a sexual assault that occurred 16 years before the complaint was filed. On appeal, plaintiff argues that the court erred by relying on case law from the lower federal courts rather than controlling authority from the Oregon Supreme Court. We agree with plaintiff, and reverse.

We review the trial court's grant of summary judgment for legal error, viewing all facts and reasonable inferences in the light most favorable to the nonmoving party to determine whether the moving party is entitled to judgment as a matter of law. ORCP 47 C; *Jones v. General Motors Corp.*, 325 Or 404, 408, 939 P2d 608 (1997). We state the facts in accordance with that standard.

Plaintiff was a juvenile residing at an Oregon Youth Authority facility when he was sexually abused by a facility employee. It was not until 14 years later, in June 2012, that plaintiff learned that defendant Lawhead may have played a role in causing his abuse. Within two years of that discovery, plaintiff brought this action against Lawhead under 42 USC section 1983.¹

Lawhead moved for summary judgment on the basis that plaintiff's section 1983 claims were untimely under the two-year statute of limitations set out in ORS 12.110(1). Lawhead relied on lower federal court decisions applying the "injury accrual rule," under which the statute of limitations begins to run at the time of injury. *See, e.g., V.T. v. City of Medford, Or.*, No 1:09-CV-03007-PA, WL 300270

¹ Plaintiff also brought negligence claims against defendants and section 1983 claims against the other individual defendants, which were dismissed at summary judgment. Those claims are not at issue on appeal.

at *2-3 (D Or Jan 22, 2015); *Matheny v. Clackamas Cty.*, No 3:10-CV-1574-BR, WL 171015 at *n 3-4 (D Or Jan 20, 2012). Plaintiff responded by directing the court to *T. R. v. Boy Scouts of America*, 344 Or 282, 181 P3d 758, *cert den*, 555 US 825 (2008), in which the Oregon Supreme Court held that the statute of limitations for section 1983 claims does not begin to run until the plaintiff discovers the claim (the “discovery accrual rule”).

The trial court, concluding that it was bound by federal court precedent in the interpretation of a federal statute, ruled that plaintiff’s claim was untimely under the injury accrual rule.

On appeal, plaintiff renews his argument that the issue of when the statute of limitations begins to run for section 1983 claims is controlled by our Supreme Court’s decision in *T. R.* In response, defendant has refined his argument. Defendant does not contend that it was proper for the trial court to defer to lower federal court decisions over a controlling and contrary decision of the Oregon Supreme Court. However, defendant argues that the trial court’s decision was nevertheless correct in light of *Wallace v. Kato*, 549 US 384, 127 S Ct 1091, 166 L Ed 2d 973 (2007), a United States Supreme Court decision that, in defendant’s view, controls over *T. R.*²

It is well settled that Oregon courts are bound by the Oregon Supreme Court’s interpretation of federal law, regardless of any competing pronouncement by a lower federal court. See *State v. Febuary*, 274 Or App 820, 830, 361 P3d 661 (2015), *aff’d*, 361 Or 544, 396 P3d 894 (2017) (“[W]e are not bound by the decisions of the United States Court of Appeals for the Ninth Circuit ***.”); *State v. Bailey*, 258 Or App 18, 29, 308 P3d 368 (2013), *rev’d on other grounds*, 356 Or 486 (2014) (“On questions of federal law, we are bound by decisions of the United States Supreme Court and of the Oregon Supreme Court.”); *Fox v. Collins*, 213 Or App 451, 464-65, 162 P3d 998, *rev den*, 343 Or 223 (2007); *Miller v. Pacific Trawlers, Inc.*, 204 Or App 585, 612, 131 P3d 821

² Defendant also argues that plaintiff’s claims are time-barred even if the discovery accrual rule applies. We reject that argument without discussion.

(2006). The only federal court that controls over the Oregon Supreme Court on matters of federal law is the United States Supreme Court. *State v. Moyle*, 299 Or 691, 707, 705 P2d 740 (1985) (“As to the meaning of the federal Constitution and laws *** we are bound only by the interpretations given those laws by the Supreme Court of the United States.”); see also *Van De Hey v. U.S. National Bank*, 313 Or 86, 95 n 9, 829 P2d 695 (1992) (stating that the Ninth Circuit’s decisions are “not binding on this court” and that “only decisions of the Supreme Court of the United States are binding on this court in the interpretation of federal law”).

As defendant now acknowledges, the Oregon Supreme Court adopted the discovery accrual rule for section 1983 claims in *T. R.*, and the trial court was therefore bound by that decision in the absence of contrary authority from the United States Supreme Court.

Defendant contends that *Wallace* is such contrary authority. In *Wallace*, the Court held that “the statute of limitations upon a § 1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process.” 549 US at 397. In doing so, the Court explained:

“[T]he accrual date of a § 1983 cause of action is a question of federal law that is *not* resolved by reference to state law. *** Aspects of § 1983 which are not governed by reference to state law are governed by federal rules conforming in general to common-law tort principles. Under those principles, it is the standard rule that [accrual occurs] when the plaintiff has a complete and present cause of action, that is, when the plaintiff can file suit and obtain relief.”³

³ Even though federal law, not state law, governs the accrual date for section 1983 claims, our state’s Supreme Court still binds our lower state courts in interpreting those federal rules. See *ASARCO Inc. v. Kadish*, 490 US 605, 617, 109 S Ct 2037, 104 L Ed 2d 696 (1989) (“[State courts] possess the authority, absent a provision for exclusive federal jurisdiction, to render binding judicial decisions that rest on their own interpretations of federal law.”); *Collins*, 213 Or App at 464-65 (providing that the Oregon Court of Appeals is bound by the Oregon Supreme Court’s interpretation of the federal Due Process Clause). We are thus bound, as the trial court was bound, by the Oregon Supreme Court’s holding in *T. R.* that the discovery accrual rule applies to claims under section 1983.

Wallace, 549 US at 388 (emphasis in original; citations omitted and internal quotation marks omitted). Defendant argues that the quoted language in *Wallace* is “facially inconsistent” with *T. R.* because it mandates an injury accrual rule for section 1983 claims.

Defendant misreads *Wallace*. *Wallace* had nothing to do with the discovery accrual rule, and the Court did not purport to articulate a single accrual rule for all section 1983 claims, much less conclude that a discovery accrual rule is inconsistent with the “common-law tort principles” that apply.⁴ In explaining that a claim ordinarily accrues “when the plaintiff has a complete and present cause of action,” the Court did not speak about situations when a plaintiff reasonably does not know about the grounds for a claim until some time after the injury occurs.

Our conclusion that *Wallace* does not preclude a discovery rule in all section 1983 cases is consistent with later federal court decisions that have applied precisely that rule. See, e.g., *Bonneau v. Centennial Sch. Dist. No. 28J*, 666 F3d 577, 581 (9th Cir 2012). Some lower federal courts have even cited *T. R.* to support their conclusion that the discovery rule applies to section 1983 claims, and have not found that case inconsistent with the federal precedents that bind them. See, e.g., *Coultas v. Payne*, No 3:11-CV-00045-AC, WL 740421 at *5 (D Or Feb 24, 2016) (applying the discovery accrual rule to a section 1983 claim, and citing *T. R.* to state that that rule is “consistently applied to claims under § 1983”); *Stafford v. Wings-Yanez*, No 1:15-CV-00523-MC, WL 5331242 at *3 (D Or Sept 9, 2015) (citing *T. R.* in applying the discovery rule to a section 1983 claim); *Abraham v. Or. Dep’t of Corr.*, No 2:13-CV-00827-AC, WL 5018813 at *3 (D Or Oct 2, 2014) (same). Those cases indicate to us that the United States Supreme Court has not definitively spoken.

⁴ Defendant also relies on *Gabelli v. S.E.C.*, 568 US 442, 133 S Ct 1216, 185 L Ed 2d 297 (2013), arguing that it confirms *Wallace*’s purported rejection of the discovery accrual rule by citing *Wallace* as support for rejecting that rule for claims of securities fraud. However, *Gabelli* never mentions section 1983, and cites *Wallace* just once—in a string citation—for the purpose of identifying general principles that are not necessarily inconsistent with the application of the discovery accrual rule in section 1983 cases. See *Gabelli*, 568 US at 448 (stating the same “standard rule” from *Wallace*, 549 US at 388, which we concluded above does not conflict with *T. R.*).

For the foregoing reasons, the trial court erred by failing to follow controlling authority from the Oregon Supreme Court and by granting defendant's motion for summary judgment.

Reversed and remanded.