

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Pamela Rankin,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 09AP-524
v.	:	(C.C. No. 2009-02332)
	:	
Ohio Reformatory for Women,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on December 15, 2009

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*Pamela Rankin*, pro se.

*Richard Cordray*, Attorney General, and *Brian M. Kneafsey, Jr.*, for appellee.

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APPEAL from the Court of Claims of Ohio.

BRYANT, J.

{¶1} Plaintiff-appellant, Pamela Rankin, appeals from a judgment of the Court of Claims of Ohio granting the Civ.R. 12(B)(6) motion of defendant-appellee, Ohio Reformatory for Women, and dismissing plaintiff's complaint alleging medical negligence and violation of her Eighth Amendment rights under the United States Constitution.

Plaintiff assigns a single error:

The Plaintiff has a constitutional right to basic medical and dental, care, and deliberate indifference to serious medical

needs of an inmate constitutes cruel and unusual punishment under the Eighth Amendment.

Because the Court of Claims properly determined (1) the applicable statute of limitations bars plaintiff's medical negligence allegations and (2) the Court of Claims lacks jurisdiction over plaintiff's allegations that defendant violated her Eighth Amendment rights under the United States Constitution, we affirm.

### **I. Procedural History**

{¶2} On February 17, 2009, plaintiff filed a five-count complaint against defendant. The initial paragraph stated plaintiff "submits this Complaint for Medical Negligence. The Plaintiff is also claiming that her Eighth Amendment rights were violated in direct connection to the inadequate medical care she received in the Ohio Reformatory for Women." (Complaint, 1.)

{¶3} The complaint explained that on December 29, 2005, plaintiff was living in cottage Arn-2, but was moved to Arn-1, a cell that had no heat. Plaintiff attempted to remedy the situation through the proper procedures, but was told the "insulation was the problem." (Complaint, 1.) Plaintiff alleged she continued to complain but was beginning to become ill from the lack of heat in her cell. Unsatisfied with the response of the institutional personnel, plaintiff "utilized her family members to call the institution to complain." (Complaint, 2.) Plaintiff alleged she then began to experience problems with the staff, which did "not respond well to family members calling on behalf of the inmates due to inadequate treatment or staff misconduct." (Complaint, 2.) Plaintiff alleged that, as a result, she received cottage tickets and ultimately was placed in segregation on March 30, 2006, where she remained for five days. Plaintiff at the time "was having a

hard time breathing and the medical staff was called to the segregation unit." (Complaint, 2.)

{¶4} Count one of plaintiff's complaint asserted the nurses tested plaintiff's breathing on March 30, 2006 while she was in the segregation unit. Results were not normal, but "[t]he medical staff did nothing to treat the Plaintiff on March 30th, 2006." (Complaint, 3.) Instead, "Plaintiff was not seen again until 2:00 p.m. on April 5th, 2006, the day she was released from segregation." (Complaint, 3.)

{¶5} Count two of the complaint alleged that on April 5, 2006, the medical staff refused to see plaintiff, even though it was aware of her breathing difficulties. She asserted defendant's prison staff negligently, and in violation of her Eighth Amendment constitutional rights, "failed to ensure her safety and provide necessary medical treatment." (Complaint, 3.)

{¶6} According to count three of the complaint, plaintiff on April 6, 2006, went to get her medication and again asked to be seen. "[F]or the third time, the Plaintiff was not seen by a doctor," even though she "was coughing up blood" the night before. (Complaint, 4.) Plaintiff alleged that when she arrived at a group meeting, the nurse checked her; an ambulance then took her to a Marysville Hospital where the results of a CT scan revealed she had fluid on her lungs.

{¶7} Count four of the complaint asserted plaintiff on April 6, 2006 was taken to Ohio State University Medical Center because the fluid on her lungs was causing heart problems. She there fell into a 12-day coma. She alleged the coma would not have occurred had defendant listened to her and acted on her complaints that her cell had no heat.

{¶8} Finally, count five of the complaint alleged plaintiff was scheduled to be before the parole board in 2006 but, due to her time in segregation, she served additional time in the penitentiary. She asserts "[c]omplaints were lodged in Central Office regarding the transfer of the Plaintiff to the Northeast Pre-Release Center." (Complaint, 5.) According to plaintiff "[t]he hardship for transfer took seven and a half months." (Complaint, 5.)

{¶9} Plaintiff's complaint sought damages in excess of \$300,000 "for the life long damage to her lungs, due to the negligence on behalf of the institution, the emotional distress and mental anguish of almost losing her life and laying in a coma for twelve days." (Complaint, 5-6.) Plaintiff further sought "damages for Pain and Suffering for all the events that transpired, and led up to, her being retaliated against for wanting to move to a cottage with heat." (Complaint, 6.)

{¶10} On March 18, 2009, defendant filed a motion to dismiss pursuant to Civ.R. 12(B)(6). Defendant asserted the applicable statute of limitations barred plaintiff's negligence and medical negligence allegations. Defendant further contended the Court of Claims lacked jurisdiction over plaintiff's allegations that defendant violated her rights under the Eighth Amendment to the United States Constitution.

{¶11} On May 8, 2009, the Court of Claims filed an entry of dismissal concluding plaintiff's claims for violation of her Eighth Amendment rights, appropriately litigated under 42 U.S.C. 1983, could not be maintained in the Court of Claims. The court further concluded plaintiff's February 17, 2009 complaint was filed "more than two years after the events described in her complaint. Therefore, plaintiff's case is time-barred." (Entry, 2.) Accordingly, the Court of Claims dismissed plaintiff's complaint, at the same time denying

her motion for an extension of time to file the Civ.R. 10 affidavit of merit that should have accompanied her complaint on filing.

## II. Assignment of Error

{¶12} Plaintiff's single assignment of error, in essence, contends the Court of Claims erred in dismissing her complaint.

### A. Standard of Review

{¶13} In deciding whether to dismiss a complaint pursuant to Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted, the trial court must presume all factual allegations in the complaint are true and construe the complaint in the light most favorable to the plaintiff, drawing all reasonable inferences in favor of plaintiff. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. Before the court may dismiss the complaint, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling the plaintiff to recovery. *O'Brien v. Univ. of Community Tenants Union* (1975), 42 Ohio St.2d 242, syllabus.

### B. Negligence Allegations and Statute of Limitations

{¶14} The Court of Claims initially determined the applicable statute of limitations bars the negligence allegations of plaintiff's complaint. A complaint may be dismissed under Civ.R. 12(B)(6) as time-barred under the statute of limitations if the face of the complaint makes clear that the action is time-barred. *Steiner v. Steiner* (1993), 85 Ohio App.3d 513, 518-19; *Swanson v. Boy Scouts of Am.*, 4th Dist. No. 07CA663, 2008-Ohio-1692, ¶6, quoting *Doe v. Robinson*, 6th Dist. No. L-07-1051, 2007-Ohio-5746, ¶17, citing *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, ¶11. Only where the complaint shows conclusively on its face that the action is time-barred should a Civ.R.

12(B)(6) motion to dismiss based upon the statute of limitations be granted. *Swanson*, supra, quoting *Jackson v. Sunnyside Toyota, Inc.*, 175 Ohio App.3d 370, 2008-Ohio-687, ¶15. Plaintiff's complaint plainly presents allegations of negligence, medical or otherwise, and of Eighth Amendment rights violations. The complaint likewise plainly sets forth the date when plaintiff contends the wrongful action took place. Accordingly, the applicable statute of limitations may be applied to the dates presented in plaintiff's complaint to determine whether the appropriate statute of limitations time-bars plaintiff's complaint.

{¶15} Under R.C. 2743.02(A)(1), the state "waives its immunity from liability \* \* \* and consents to be sued \* \* \* subject to the limitations set forth in this chapter." With exceptions that do not apply here, R.C. 2743.16(A) states the applicable statute of limitations for civil actions against the state. According to R.C. 2743.16(A), such actions "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."

{¶16} Insofar as plaintiff asserted a claim for medical negligence, the applicable statute of limitations is R.C. 2305.113(A), as it governs such actions between private parties and is shorter than the two-year statute of limitations in R.C. 2743.16(A). R.C. 2305.113(A) states that "an action upon a medical \* \* \* claim shall be commenced within one year after the cause of action accrued." Plaintiff's medical negligence allegations arise out of defendant's alleged failure to correct the heating problem in her cell and its alleged failure to address medically the health issues that allegedly arose out of those circumstances. Plaintiff's complaint specifies that defendant's actions occurred between

December 2005 and April 2006. Because her complaint was not filed until February 17, 2009, it is untimely under R.C. 2305.113(A) and therefore is time-barred.

{¶17} Even if we were to determine the appropriate statute of limitations on the premise that plaintiff's complaint alleged negligence rather than medical negligence, the statute of limitations found in R.C. 2743.16(A) would apply. Under that statute, plaintiff had two years after the accrual of the cause of action to file a civil action against the state. Again, because plaintiff asserts that the negligence occurred from December 2005 to April 2006, her complaint filed on February 17, 2009 is time-barred under R.C. 2743.16(A).

{¶18} Accordingly, the Court of Claims did not err in concluding the applicable statute of limitations bar the allegations of plaintiff's complaint insofar as they assert claims for medical negligence or negligence.

### C. Jurisdiction over Eighth Amendment claims

{¶19} In addition to her negligence allegations, plaintiff's complaint included allegations that defendant's actions amounted to cruel and unusual punishment in violation of plaintiff's rights under the Eighth Amendment to the United States Constitution.

{¶20} "Under the Court of Claims Act, individuals can sue the state in the court of claims and have liability determined with the same rules of law applicable to suits between private parties." *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), 10th Dist. No. 98AP-1105, citing R.C. 2743.02(A)(1). As a result, "a plaintiff in the Court of Claims is limited to causes of action which he [or she] could pursue if defendant were a private party." *Thompson v. Southern State Comm. College* (June 15, 1989), 10th Dist.

No. 89AP-114. To the extent plaintiff's complaint sought to present an Eighth Amendment claim, the requirement that she demonstrate an element of state action in the constitutional violation removes the claim from the Court of Claims' jurisdiction, which is limited to actions against the state as between private parties. *Id.* While such actions commonly are litigated under 42 U.S.C. 1983, see *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 91, 1994-Ohio-37, plaintiff's complaint nonetheless is outside the jurisdiction of the Court of Claims because the state, the only defendant in the Court of Claims, is not a person subject to liability within the meaning of 42 U.S.C. 1983. Thus, to the extent plaintiff's complaint asserted a Section 1983 claim, it may not be maintained in the Ohio Court of Claims. *Burkey v. Southern Ohio Corr. Facility* (1988), 38 Ohio App.3d 170, 171.

{¶21} Accordingly, apart from any statute of limitations issues related to plaintiff's Eighth Amendment allegations, the Court of Claims properly concluded plaintiff's allegations of cruel and unusual punishment in violation of her rights under the Eighth Amendment fall outside its jurisdiction.

{¶22} Because (1) plaintiff's allegation of medical negligence, or negligence, are time-barred under the appropriate statute of limitations, and (2) the Ohio Court of Claims lacks jurisdiction over allegations that defendant violated plaintiff's rights under the Eighth Amendment, we overrule her single assignment of error and affirm the judgment of the Court of Claims of Ohio.

*Judgment affirmed.*

KLATT and McGRATH, JJ., concur.

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