

[Cite as *Robinson v. Ohio Dept. of Rehab. & Corr.*, 2011-Ohio-713.]  
IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Paul Robinson,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 10AP-550
v.	:	(C.C. No. 2009-09566)
	:	
Ohio Department of Rehabilitation	:	(REGULAR CALENDAR)
and Correction et al.,	:	
	:	
Defendant-Appellee.	:	
	:	

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D E C I S I O N

Rendered on February 17, 2011

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*Paul Robinson, pro se.*

*Michael DeWine, Attorney General, and Christopher P. Conomy, for appellee.*

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APPEAL from the Court of Claims of Ohio.

FRENCH, J.

{¶1} Plaintiff-appellant, Paul Robinson ("appellant"), appeals the judgment of the Court of Claims of Ohio, which dismissed his complaint against the Ohio Department of Rehabilitation and Correction ("ODRC") and the Adult Parole Authority ("APA") (collectively, "appellees"). For the following reasons, we affirm.

{¶2} On December 17, 2009, appellant filed a complaint against ODRC and the APA. He alleged that he had been wrongly classified as a sexual offender following his conviction for felonious assault in 1990. He claimed that he was wrongfully imprisoned from 1996 to 2000 and from 2000 to 2003 as a result of the misclassification. He claimed that he had suffered the following: "Violation of constitutional rights as a result of false imprisonment; mental anguish; disgrace & physical suffering; ha[r]assment and ostracism from the community; violation of A.P.A. guidelines & procedures; cruel & unusual punishment; wrongful classification." He attached to his complaint a judgment entry dated May 14, 2009, and signed by Judge Peter J. Kontos of the Court of Common Pleas of Trumbull County, Ohio. The entry orders that appellant "be DECLASSIFIED as a tiered sex offender." In his complaint, appellant also asked for damages in the amount of \$500,000.

{¶3} Appellees moved to dismiss appellant's complaint for lack of jurisdiction and for failure to state a claim for relief, pursuant to Civ.R. 12(B)(1) and (B)(6). Appellees contended the following: (1) the trial court lacked jurisdiction over appellant's constitutional claims; (2) appellant had not stated a claim for wrongful imprisonment, nor had he followed the statutory steps necessary for bringing such a claim; (3) appellant had not stated a claim for false imprisonment, nor had he brought the claim within the two-year statute of limitations; (4) appellant had not stated a cognizable claim against the APA, nor had he brought his claim within the two-year statute of limitations; and (5) appellant's claim of wrongful classification was not cognizable in the Court of Claims.

Appellant filed a response styled "RESPONSE TO INVESTIGATION REPORT pursuant to Rule 6(A) of the Rules of Court of Claims."

{¶4} On May 10, 2010, the trial court dismissed appellant's complaint.

Appellant filed a timely appeal, and he raises the following assignments of error:

First Assignment of Error:

The court did not afford appellant due process when appellant's complaint was dismissed pursuant to Civ.R. 12(B)(1) and (6).

Second Assignment of Error:

[Appellees] abused their discretion by "False & Wrongful Imprisonment" of appellant.

Third Assignment of Error:

[Appellees] abused their discretion by "Wrongful Classification" of appellant.

Fourth Assignment of Error:

The [APA's] determination against appellant was unjust and erroneous; violating guidelines and procedures, double jeopardy, and violating appellant's constitutional rights imposed by the General Assembly.

{¶5} In dismissing appellant's complaint, the trial court ruled under Civ.R. 12(B)(1) and (B)(6). In ruling on a Civ.R. 12(B)(1) motion to dismiss for lack of subject-matter jurisdiction, a trial court "must determine whether the claim raises any action cognizable in that court." *Milhoan v. E. Local School Dist. Bd. of Edn.*, 157 Ohio App.3d 716, 2004-Ohio-3243, ¶10. The issue of subject-matter jurisdiction involves "a court's power to hear and decide a case on the merits and does not relate to the rights of the parties." *Vedder v. Warrensville Hts.*, 8th Dist. No. 81005, 2002-Ohio-5567, ¶14. We

review de novo a trial court's grant or denial of a Civ.R. 12(B)(1) motion to dismiss. *Hudson v. Petrosurance*, 10th Dist. No. 08AP-1030, 2009-Ohio-4307, ¶12.

{¶6} A motion to dismiss for failure to state a claim under Civ.R. 12(B)(6) is procedural and tests whether the complaint is sufficient. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 1992-Ohio-73. In considering a Civ.R. 12(B)(6) motion to dismiss, a trial court may not rely on allegations or evidence outside the complaint. *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207, 1997-Ohio-169. Rather, the trial court may only review the complaint and may dismiss the case only if it appears beyond a doubt that the plaintiff can prove no set of facts entitling the plaintiff to recover. *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, syllabus. Moreover, the court must presume that all factual allegations in the complaint are true and draw all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. We review de novo a judgment on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶5.

{¶7} With these standards in mind, we turn to appellant's assignments of error.

{¶8} In his first assignment, appellant contends that the court violated his right to due process. Appellant takes issue with the trial court's statement that appellant failed to file a response to appellees' motion to dismiss. Appellant requested, and received, an extension of time in which to file a response. He then filed a "response to investigation report," which the trial court may have overlooked. In any event, appellees

do not contend that appellant waived any arguments below. Our review is de novo, and we will consider his arguments.

{¶9} Appellant also contends within this assignment that the trial court's decision itself violated due process because it was wrongly decided. We will address appellant's substantive arguments below. We overrule his first assignment of error.

{¶10} In his second assignment of error, appellant appears to contend that the trial court erred by concluding that it had no jurisdiction to address his claims of false or wrongful imprisonment. R.C. 2305.11 requires that an action for false imprisonment be brought within one year after the cause of action accrues. The trial court held, and appellees contend, that appellant's cause of action accrued upon his release, which occurred, at the latest, in 2003.

{¶11} In support of their proposition that a claim for false imprisonment accrues, in general, upon a plaintiff's release from prison, appellees cite this court's holding in *Haddad v. Dept. of Rehab. & Corr.*, 10th Dist. No. 01AP-1130, 2002-Ohio-2813. In *Haddad*, the plaintiff filed a complaint against ODRC, arguing that ODRC's wrongful use of "bad time" extended his imprisonment. The plaintiff was originally scheduled for release on November 6, 1998. ODRC extended his imprisonment to February 10, 1999. On June 14, 2000, the Supreme Court of Ohio declared the use of "bad time" to extend prison terms unconstitutional. See *State ex rel. Bray v. Russell* (2000), 89 Ohio St.3d 132. The plaintiff filed his complaint on June 29, 2000.

{¶12} This court determined, first, that the plaintiff was not a "wrongfully imprisoned individual" for purposes of bringing a wrongful imprisonment claim. The

court then considered whether plaintiff had filed his claim for false imprisonment beyond the one-year statute of limitations. This court held: "At the latest, plaintiff's cause of action for false imprisonment accrued on June 14, 2000, when the Supreme Court declared the 'bad time' statute, R.C. 2967.11, unconstitutional. Plaintiff did not file his complaint until June 29, 2001, more than a year after his claim accrued. Therefore, plaintiff's cause of action for false imprisonment was barred pursuant to the one-year statute of limitations in R.C. 2305.11(A)." *Haddad* at ¶14. This court in *Haddad* did not consider the question before us, i.e., whether a plaintiff's cause of action for false imprisonment accrues upon his release from prison, nor did we state that, generally, a claim for false imprisonment accrues upon the plaintiff's release.

{¶13} False imprisonment occurs when a person confines another " 'intentionally without lawful privilege and against his consent within a limited area for any appreciable time, however short.' " *Feliciano v. Kreiger* (1977), 50 Ohio St.2d 69, 71, quoting 1 Harper & James, *The Law of Torts* (1956) 226, Section 3.7. An inmate is "confined" each day he is imprisoned by the state. *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107, 109. "[T]he state may be held liable for the false imprisonment of its prisoners." *Id.* at 110. See also *Corder v. Ohio Dept. of Rehab. & Corr.* (1996), 114 Ohio App.3d 360 (affirming trial court's damage award for plaintiff's false imprisonment).

{¶14} Here, accepting all facts alleged in appellant's complaint as true, appellant was last confined by ODRC in 2003. Therefore, his claim for false imprisonment accrued at that time, at the latest, and his December 2009 assertion of the claim was untimely. Accord *Maxey v. Gather* (1952), 94 Ohio App. 115 (construing prior code

provision and stating that the statute of limitations for claims including false imprisonment expired one year after the plaintiff was released from prison).

{¶15} Nevertheless, appellant argues that his cause of action did not accrue until May 2009, when the Trumbull County court issued its order to declassify him. At that point, appellant argues, his imprisonment during the 1999 to 2003 timeframe became wrongful, and his claim became cognizable. Appellant's complaint indicates, however, that he was fully aware that he had been misclassified as a sex offender, even as early as his initial release from prison in 1996. Action by the Trumbull County court had no impact on his term of confinement, which ended, at the latest, in 2003.

{¶16} Appellant also made a separate claim for wrongful imprisonment. Ohio law prescribes a two-step process by which a person claiming wrongful imprisonment may sue the state for damages incurred due to the imprisonment. The first action, in the common pleas court under R.C. 2305.02, seeks a factual determination that wrongful imprisonment occurred; the second action, in the court of claims under R.C. 2743.48, seeks damages. See *Walden v. State* (1989), 47 Ohio St.3d 47, 49.

{¶17} Important here, R.C. 2743.48(A)(4) provides that to be considered "wrongfully imprisoned," an individual must show, in part, that his "conviction was vacated or was dismissed, or reversed on appeal." While appellant stated that he had been declassified as a sex offender, he did not allege that his *conviction* was vacated, dismissed or reversed. Therefore, he did not state a proper claim for wrongful imprisonment.

{¶18} Because appellant's claim for false imprisonment was untimely, and because appellant did not state a proper claim for wrongful imprisonment, we overrule his second assignment of error.

{¶19} In his third and fourth assignments of error, appellant argues, again, that his claims for false imprisonment and wrongful imprisonment were proper and timely. We have already rejected those arguments.

{¶20} Appellant also appears to argue, more generally, that ODRC and the APA should be held liable in some other way for improperly classifying appellant. We agree with appellant that the state may be held liable for the negligent actions of state employees, in some circumstances. See *Reynolds v. State* (1984), 14 Ohio St.3d 68. But even if we were to interpret appellant's complaint to state a proper claim for negligence against ODRC and the APA and were then to determine that the Court of Claims has jurisdiction to consider his claim, we could only conclude that appellant's claim was untimely. R.C. 2743.16(A) provides that civil actions against the state must be brought within two years after the cause of action accrues. Accepting all facts within appellant's complaint to be true, the last act by ODRC or the APA occurred, at the latest, in 2006. Therefore, appellant's complaint in December 2009 was untimely.

{¶21} Finally, appellant also appears to argue that the actions of ODRC and the APA were unconstitutional. As the trial court concluded, however, the Court of Claims has no jurisdiction to decide constitutional claims. See *Triplett v. S. Ohio Corr. Facility*, 10th Dist. No. 06AP-1296, 2007-Ohio-2526, ¶11, citing *Bleicher v. Univ. of Cincinnati*

*College of Medicine* (1992), 78 Ohio App.3d 302, 306. Therefore, the court properly dismissed them.

{¶22} For all these reasons, we overrule appellant's third and fourth assignments of error.

{¶23} In summary, we overrule appellant's first, second, third, and fourth assignments of error. We affirm the judgment of the Court of Claims of Ohio.

*Judgment affirmed.*

BRYANT, P.J., and KLATT, J., concur.

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