[Cite as *Dubliln v. Bansek*, 2010-Ohio-2372.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Earnest Dublin,	:	
Plaintiff-Appellant,	:	
		No. 10AP-14
v.	:	(C.P.C. No. 09CVH-07-10857)
J. Bansek et al.,	:	(ACCELERATED CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on May 27, 2010

Earnest Dublin, pro se.

Richard C. Pfeiffer, Jr., City Attorney, *Lara N. Baker*, City Prosecutor, and *Andrew D.M. Miller*, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Plaintiff-appellant, Earnest Dublin ("appellant"), appeals from the judgment of the Franklin County Court of Common Pleas granting the motion of defendants-appellees, "J. Bansek, C. Bailey, T. Zywezyk, Sgt. Tarini, Sgt. Kerin, E. Thomas, Deann Trionfante, G. Luzny, J. Ward, and CFO Medic 27" (collectively "appellees"), to dismiss appellant's action for failure to state a claim upon which relief can be granted.

{¶2} Appellant filed his original complaint on July 21, 2009, an amended complaint on July 27, 2009, and a second amended complaint on August 13, 2009.

Though somewhat difficult to decipher, appellant alleges that on November 11, 2004, his ex-wife called the police "for no reason." When the police arrived, appellant allegedly told the officers that he had been consuming alcohol, and when he further tried to explain his side of the story, the police allegedly hit him with a taser multiple times, which resulted in serious injury. Appellant was allegedly treated at the scene, arrested on a charge of disorderly conduct, and transported to the Franklin County Jail where he received "a cup of pink substance" for treatment of his taser injuries. Appellant alleges the medics who arrived at the scene lied about what treatment was administered. Appellant also alleges his attorney instructed him to say nothing about the taser incident when he appeared in court and entered a plea of no contest to the disorderly conduct charge. Upon finding appellant guilty of disorderly conduct, the Franklin County Municipal Court sentenced appellant to 30 days in jail, a $100 fine and court costs, of which 29 days and $50 were suspended.

{¶3} On August 29, 2009, appellees filed a motion to dismiss pursuant to Civ.R. 12(B)(6) contending that any claims appellant could assert are barred by the statute of limitations.[1] The trial court granted appellees' motion to dismiss on September 21, 2009, and appellant timely appealed. Appellant brings the following two assignments of error[2] for our review:

> [1.] Is review of the defendant's challenging that Mr. Dublin was treated or not treated on 11-11-04 by medic 27 and jail nurse in Franklin County.

[1] Though there is an issue concerning which defendants were actually served and/or able to be identified, as appellees argued before the trial court, such issue is irrelevant as this matter is subject to dismissal based on the statute of limitations.

[2] Appellant has labeled these assignments of error as "Statement of Issues Presented."

> [2.] Is the Defendant's claiming or challenging the fact 11-11-04 of being treated and said to Be nothing wrong which 10-15-08 reflects other which defendant's facts state plaintiff Claims were barred by the statute of limitations. [Sic passim.]

{¶4} Appellate review of a trial court's decision to dismiss a case, pursuant to Civ.R. 12(B)(6), is de novo. *Singleton v. Adjutant Gen. of Ohio*, 10th Dist. No. 02AP-971, 2003-Ohio-1838. In order for a court to dismiss a case, pursuant to Civ.R 12(B)(6), "it must appear beyond a doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, syllabus. The court must presume all factual allegations in the complaint are true and draw all reasonable inferences in favor of the non-moving party. *Bridges v. Natl. Engineering & Contracting Co.* (1990), 49 Ohio St.3d 108, 112. In considering a motion to dismiss under Civ.R. 12(B)(6), the court looks only to the complaint to determine whether the allegations are legally sufficient to state a claim. *Springfield Fireworks, Inc. v. Ohio Dept. of Commerce*, 10th Dist. No. 03AP-330, 2003-Ohio-6940. We will not, however, consider unsupported conclusions that may be included among, but not supported by, the factual allegations of the complaint because such conclusions cannot be deemed admitted and are not sufficient to withstand a motion to dismiss. *Wright v. Ghee*, 10th Dist. No. 01AP-1459, 2002-Ohio-5487, citing *Grange Mut. Cas. Co. v. Klatt* (Mar. 18, 1997), 10th Dist. No. 96AP-888.

{¶5} First, we note that all three of the complaints filed by appellant are difficult to decipher, and none set forth a specific cause of action.[3] We also note that it appears appellant is arguing on appeal that he is indeed within the statute of limitations because

[3] Though leave of court was neither requested nor permitted for the filing of the two amended complaints, we will do as appellees did in the trial court and review all three to attempt to decipher a cause of action.

although the taser incident occurred on November 11, 2004, he was not aware of any potential problems until October 15, 2008. Though appellant has filed and argued this action pro se, it is well-established that pro se litigants are held to the same rules, procedures, and standards as litigants who are represented by counsel and must accept the results of their own mistakes and errors. *Atkins v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 08AP-182, 2008-Ohio-4109.

{¶6} To the extent appellant's complaint can be interpreted as an attempt to assert claims for negligence, personal injury, and violations under 42 U.S.C. 1983, said claims are barred by the two-year statute of limitations contained in R.C. 2744.04(A) and R.C. 2305.10(A). R.C. 2744.04(A) provides:

> An action against a political subdivision to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with a governmental or proprietary function, whether brought as an original action, cross-claim, counterclaim, third-party claim, or claim for subrogation, shall be brought within two years after the cause of action accrues[.]

{¶7} Additionally, "[t]he Supreme Court has instructed that in Section 1983 actions, courts must apply a state's general or residual statute of limitations that governs personal-injury actions." *Nadra v. Mbah*, 119 Ohio St.3d 305, 2008-Ohio-3918, ¶1, citing *Owens v. Okure* (1989), 488 U.S. 235, 109 S.Ct. 573. Thus, in *Nadra*, the Supreme Court of Ohio held that "R.C. 2305.10, which contains a two-year limitations period, is Ohio's general statute of limitations governing personal injury in Ohio." Id.

{¶8} Though appellant seems to concede the incident giving rise to his alleged injuries occurred on November 11, 2004, he argues the statute of limitations should begin to run from October 15, 2008, because that is when he discovered foreign objects in his

abdomen that he claims are taser prongs left from the November 2004 incident. "The statute of limitations commences to run as soon as the injurious act complained of is committed; delayed damage is ineffective to delay the accrual of a cause of action predicated upon a wrongful act." *Ohio Assn. of Pub. School Employees v. Liberty Moving and Storage, Inc.* (Dec. 20, 1984), 10th Dist. No. 84AP-605. Here, the alleged damages and injuries occurred on November 11, 2004, when the tasering incident is alleged to have occurred, not in 2008, when appellant allegedly discovered barbs from a taser in his abdomen. As such, appellant's complaint is clearly outside the statute of limitations and was properly dismissed pursuant to Civ.R. 12(B)(6).

{¶9} For the foregoing reasons, appellant's two assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

TYACK, P.J., and SADLER, J., concur.

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