

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ardell P. Jones,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 11AP-758
v.	:	(Ct. of Cl. No. 2011-05866)
	:	
Chillicothe Correctional Institution,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on April 19, 2012

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*Ardell P. Jones, pro se.*

*Michael DeWine, Attorney General, and Amy S. Brown, for  
appellee.*

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APPEAL from the Court of Claims of Ohio

KLATT, J.

{¶ 1} Plaintiff-appellant, Ardell P. Jones, appeals the judgment of the Court of Claims of Ohio dismissing his complaint against defendant-appellee, the Chillicothe Correctional Institution, pursuant to Civ.R. 12(B)(6). Because appellant's claims are barred by the two-year statute of limitations contained in R.C. 2743.16(A), we affirm.

{¶ 2} Appellant alleges that on October 11, 2006 he was injured while incarcerated in the Chillicothe Correctional Institution when a plexiglass window from a corrections officer's observation area fell on him while he was taking a shower. On April 12, 2011, appellant filed a complaint against appellee in the Court of Claims of Ohio

alleging negligence.<sup>1</sup> Thereafter, appellant filed a first and then a second amended complaint, again asserting negligence claims. Appellee filed a motion to dismiss contending that appellant's negligence claims were barred by the two-year statute of limitations contained in R.C. 2743.16(A). The trial court agreed and granted appellee's motion.

{¶ 3} Appellant now appeals, assigning the following error:

THE COURT OF CLAIMS DISMISSAL OF PLAINTIFF'S  
COMPLAINT FOR NEGLIGENCE BY DEFENDANTS  
CONSTITUTES AN ABUSE OF DISCRETION WHEN THE  
COURT MISCONTRUES RELEVANT CASELAW.

{¶ 4} This court applies a de novo standard when reviewing a trial court's grant of a motion to dismiss pursuant to Civ.R. 12(B)(6). *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶ 5; *Hill v. Pfeiffer*, 10th Dist. No. 11AP-295, 2011-Ohio-5623, ¶ 5. In construing a motion to dismiss pursuant to Civ.R. 12(B)(6), the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190 (1988). Then, before the court may dismiss the complaint, it must appear beyond doubt that the plaintiff can prove no set of facts entitling him to recovery. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975). Dismissal pursuant to Civ.R. 12(B)(6) based upon a statute of limitations is proper only when the complaint conclusively shows that the action is time barred. *Leichliter v. Natl. City Bank of Columbus*, 134 Ohio App.3d 26 (10th Dist.1999).

{¶ 5} Section 2743.16(A) of the Ohio Revised Code provides, in relevant part, that "civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code 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." Appellant alleges that his claims arose on October 11, 2006, when a plexiglass window fell on him while he was showering. Therefore, appellant had to file his negligence claim against appellee no later than October 11, 2008. Appellant filed his

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<sup>1</sup> Appellant's initial complaint was against various individuals including the former Warden of the Chillicothe Correctional Institution. In his subsequent first amended complaint, appellant substituted the Chillicothe Correctional Institution as the sole defendant.

complaint against appellee on September 16, 2011. Therefore, on the face his complaint, appellant's negligence claims are time barred.

{¶ 6} Appellant alleges that his negligence claims are not time barred because he timely filed a federal court action based upon the same operative facts. Although his federal court action was ultimately dismissed, appellant argues that the statute of limitations was extended pursuant to R.C. 2305.19, Ohio's Savings Statute. We disagree.

{¶ 7} R.C. 2305.19 provides in relevant part:

In any action that is commenced \* \* \* if the plaintiff fails otherwise than upon the merits, the plaintiff \* \* \* may commence a new action within one year after the date of \* \* \* the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later.

{¶ 8} By its express terms, the savings provision in R.C. 2305.19 only applies to previously filed claims that fail otherwise than on the merits. Appellant alleged in his complaint that the federal district court granted summary judgment in favor of the defendants in that action. The Sixth Circuit Court of Appeals affirmed that decision. Because appellant's federal court action failed on its merits, the savings provision in R.C. 2305.19 does not apply.<sup>2</sup>

{¶ 9} For these reasons, we overrule appellant's sole assignment of error and affirm the judgment of the Court of Claims of Ohio.

*Judgment affirmed.*

BROWN, P.J., and FRENCH, J., concur.

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<sup>2</sup> Even if appellant's federal court action had failed otherwise than upon the merits, R.C. 2305.19 still would not have applied. The Ohio Savings Statute only applies when the original suit and the new action are "substantially the same." *Wilhem v. Ohio Dept. of Natural Resources*, Ct. of Cl. No. 2006-07902, 2009-Ohio-7061, citing *Heilprin v. Ohio State Univ. Hosps.*, 31 Ohio App.3d 35 (10th Dist.1986); *Children's Hosp. v. Ohio Dept. of Public Welfare*, 69 Ohio St.2d 523 (1982). Two actions are not considered "substantially the same" when the claims or parties in the first action are different than the claims or parties in the subsequent action. *Id.* In his federal action, appellant sued a number individuals based upon alleged constitutional violations. The state of Ohio was not a party in the federal action. Appellant's suit in the court of claims is for negligence against the Chillicothe Correctional Institution (state of Ohio). Therefore, the actions are not substantially the same.