

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

John C. Stubbs,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 11AP-484
v.	:	(C.C. No. 2011-01585)
	:	
Department of Rehabilitation and	:	(ACCELERATED CALENDAR)
Correction,	:	
	:	
Defendant-Appellee.	:	
	:	

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D E C I S I O N

Rendered on March 29, 2012

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*John C. Stubbs, pro se.*

*Michael DeWine, Attorney General, Jennifer Anne Adair and Peter E. DeMarco, for appellee.*

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APPEAL from the Court of Claims of Ohio

CONNOR, J.

{¶ 1} Appearing pro se, appellant, John C. Stubbs ("appellant"), appeals from a judgment rendered by the Court of Claims of Ohio granting a dismissal in favor of the Ohio Department of Rehabilitation and Correction ("ODRC"). For the reasons that follow, we affirm.

{¶ 2} This matter regards appellant's incarceration after having been convicted of rape, robbery, and kidnapping in 1981. On July 28, 1981, appellant began serving a 13 to 55 year prison sentence. On August 26, 1986, appellant was transferred from the Ohio State Reformatory ("OSR") to the Southern Ohio Correctional Facility ("SOCF"). He was provided a different inmate number as a result. On October 16, 2000, appellant was paroled.

{¶ 3} On January 21, 2011, appellant filed the instant suit against ODRC and titled his complaint, "Petition for Habeas Corpus, ORC 2725." In his complaint, appellant alleged that ODRC had no right to confine him after transferring him from OSR to SOCF, which occurred 5 years into his 13 to 55 year prison term. He therefore presented five constitutional claims based upon his purported improper incarceration. In response, ODRC filed a motion to dismiss, which the Court of Claims granted on June 7, 2011. Appellant has timely appealed and raises the following assignments of error:

[I.] THE LOWER COURT INAPPROPRIATELY APPLIED [THE] STATUTE OF LIMITATIONS ON ISSUES OF RECENT DUE PROCESS VIOLATION[S] AND [TO APPELLANT'S] UNLAWFUL DETENTION.

[II.] THE LOWER COURT FAILED TO GRANT REASONABLE CONSIDERATION [TO THE] PENDING CASE MATTER AND THE FACT [THAT] APPELLANT [IS A PRO SE] LITIGANT.

[III.] THE LOWER COURT DID NOT ADDRESS [THE] ISSUE OF THE LEGALITY OF SEX OFFENDER REGISTRATION ON FALSE RECORDS FROM NOVEMBER 1, 2000 TO NOVEMBER 1, 2010.

[IV.] THE LOWER COURT'S DECISION IS CONTRARY TO LAW AS THE FACTS INDICATE THAT FURTHER HARMS ARE COMPOUNDED WITHOUT COURT INTERVENTION.

For ease of discussion, we will address appellant's assignments of error out of order. Where assignments of error are interrelated, they will be addressed together.

{¶ 4} Initially, we turn to the second assignment of error, in which appellant argues that he should have been granted reasonable consideration based upon his pro se status. More specifically, he argues that the Court of Claims should have granted his motion to stay in order to permit a pending common pleas action to conclude.

{¶ 5} Our court recently outlined the law with respect to pro se litigants. See *Goodrich v. Ohio Unemp. Comp. Rev. Comm.*, 10th Dist. No. 11AP-473, 2012-Ohio-467, ¶ 25. In that case, we held: "[P]ro se litigants are held to the same rules, procedures, and standards as [represented] litigants[.]" *Id.* While some leeway may be granted, courts "cannot simply disregard the rules in order to accommodate a party who fails to obtain

counsel." *Id.* When pro se litigants are treated differently, this process may threaten the impartiality of the courts and may prejudice the rights of represented litigants. *Id.*, quoting *Pinnacle Credit Servs., LLC v. Kuzniak*, 7th Dist. No. 08 MA 111, 2009-Ohio-1021, ¶ 31, quoting *Karnofel v. Kmart Corp.*, 11th Dist. No. 2007-T-0036, 2007-Ohio-6939, ¶ 27.

{¶ 6} With respect to the denial of appellant's motion to stay, appellate courts review such denials for an abuse of discretion. See *Eastley v. Volkman*, 4th Dist. No. 09CA3308, 2010-Ohio-4771, ¶ 43, citing *State ex rel. Verhovec v. Mascio*, 81 Ohio St.3d 334, 336 (1998). "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 157 (1980), citing *Steiner v. Custer*, 137 Ohio St. 448 (1940); *Conner v. Conner*, 170 Ohio St. 85 (1959); *Chester Twp. v. Geauga Co. Budget Comm.*, 48 Ohio St.2d 372 (1976).

{¶ 7} Appellant never contends that the Court of Claims abused its discretion. Instead, he simply states that permitting the pending common pleas action to conclude would have allowed the parties to have had a better understanding of the facts. We see no abuse of discretion in the record before us. Indeed, appellant never argues otherwise. We therefore reject the arguments supporting appellant's second assignment of error.

{¶ 8} In appellant's first, third, and fourth assignments of error, he argues that the Court of Claims erred in dismissing his claims.

{¶ 9} The standard of review applicable to a Civ.R. 12(B)(1) dismissal for lack of subject-matter jurisdiction is whether the complaint raises any cause of action cognizable in the forum. *Crable v. Ohio Dept. of Youth Servs.*, 10th Dist. No. 09AP-191, 2010-Ohio-788, ¶ 8, citing *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77 (1989). Appellate courts review such dismissals de novo by reviewing the entire record and affording no deference to the trial court's determination. *Id.*, citing *Meccon, Inc. v. Univ. of Akron*, 182 Ohio App.3d 85, 2009-Ohio-1700 (10th Dist.).

{¶ 10} A motion to dismiss for failure to state a claim under Civ.R. 12(B)(6) tests the sufficiency of the complaint and is also reviewed de novo. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992). 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). 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.*, 42 Ohio St.2d 242 (1975), syllabus. In conducting this review, the court must presume that all factual allegations in the complaint are true and must draw all reasonable inferences in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988).

{¶ 11} In these assignments of error, as best as we can discern, appellant argues that he should have been released in 1986 instead of being transferred to another correctional institution. He therefore argues that his incarceration from 1986 through 2000 constituted false imprisonment. Furthermore, he argues that at some unspecified time during 2008, ODRC's website indicated that his date of conviction was August 26, 1986. According to appellant, the publication of this false information constituted defamation. Through these assignments of error, appellant also generally presents constitutional challenges to the conduct of ODRC.

{¶ 12} It is well-settled, however, that "the Court of Claims has no jurisdiction to decide constitutional claims." *Robinson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 10AP-550, 2011-Ohio-713, ¶ 21, citing *Triplett v. S. Ohio Corr. Facility*, 10th Dist. No. 06AP-1296, 2007-Ohio-2526, ¶ 11, citing *Bleicher v. Univ. of Cincinnati College of Medicine*, 78 Ohio App.3d 302, 306 (10th Dist.1992). Thus, we reject appellant's contention that the Court of Claims erred in dismissing his constitutional claims.

{¶ 13} With respect to any purported claims for defamation and for false imprisonment, ODRC argued that such claims were time-barred when appellant filed suit in 2011.

{¶ 14} R.C. 2743.16(A) provides the applicable statute of limitations for civil actions against the state, stating 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."

{¶ 15} R.C. 2305.11(A) requires an action for defamation to be commenced within one year of the time the cause of action accrued, governs such actions between private

parties, and is shorter than the two-year statute of limitations in R.C. 2743.16(A). Accordingly, R.C. 2305.11 applies to appellant's defamation action against ODRC. *Pankey v. Ohio Adult Parole Auth.*, 10th Dist. No. 11AP-36, 2011-Ohio-4209, ¶ 9 (stating "defamation claims between private parties are subject to a one-year limitation period, as set forth in R.C. 2305.11(A)," meaning "appellant's defamation claim in the Court of Claims is likewise subject to the shorter limitations period").

{¶ 16} It is settled that "[a] cause of action for defamation accrues on the date of publication of the alleged defamatory matter." *Id.*, citing *Fleming v. Ohio Atty. Gen.*, 10th Dist. No. 02AP-240, 2002-Ohio-7352, ¶ 13.

{¶ 17} "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.' " *Bennett v. Ohio Dept. of Rehab. & Corr.*, 60 Ohio St.3d 107, 109 (1991), quoting *Feliciano v. Kreiger*, 50 Ohio St.2d 69, 71 (1977), quoting 1 Harper & James, *The Law of Torts*, Section 3.7, at 226 (1956). An inmate is "confined" each day he is imprisoned by the state. *Id.* However, claims for false imprisonment must be brought within one year after the cause of action accrues. *Robinson*, 10th Dist. No. 10AP-550, 2011-Ohio-713, at ¶ 10, citing R.C. 2305.11.

{¶ 18} Based upon the allegations presented herein, appellant contends that he was defamed in 2008 when ODRC's website published false information about the date of his conviction. Again, defamation claims accrue at the time of the publication. *Pankey* at ¶ 9, citing *Fleming* at ¶ 13. For appellant, this occurred in 2008. Moreover, with respect to his claim for false imprisonment, appellant was last confined by ODRC in 2000. His claim for false imprisonment accrued at that time. *Robinson* at ¶ 14. Because appellant's defamation and false imprisonment claims were filed more than one year beyond the time they accrued, they were time-barred when he filed suit on January 21, 2011. The trial court did not err in reaching this same conclusion.

{¶ 19} Based upon the foregoing, we overrule each of appellant's four assignments of error and affirm the judgment of the Court of Claims of Ohio.

*Judgment affirmed.*

SADLER and DORRIAN, JJ., concur.

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