

[Cite as *Baker v. Dept. of Rehab. & Corr.*, 2012-Ohio-1921.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Carl Baker,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 11AP-987
v.	:	(C.C. No. 2011-09632)
	:	
Department of Rehabilitation and	:	(REGULAR CALENDAR)
Correction et al.,	:	
	:	
Defendants-Appellees.	:	
	:	

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D E C I S I O N

Rendered on May 1, 2012

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*Carl Baker, pro se.*

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

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APPEAL from the Court of Claims of Ohio.

FRENCH, J.

{¶ 1} Plaintiff-appellant, Carl Baker ("appellant"), appeals the judgment of the Court of Claims of Ohio, which dismissed appellant's complaint against the following defendants-appellees: the Governor's Office and Governor John Kasich; the Ohio Department of Rehabilitation and Correction ("DRC") and Director Gary Mohr; the Ohio Adult Parole Authority ("APA"), Chief Sara Andrews, and Chairperson Cynthia Mausser; and the Marion Correctional Institution ("MCI"), Warden Margaret Beightler,

Deputy Warden Jason Bunting, and Deputy Warden Tim Milligan (collectively, "appellees"). For the following reasons, we affirm in part and reverse in part the trial court's judgment.

## **I. BACKGROUND**

{¶ 2} Appellant is an inmate at MCI. In his complaint, he alleged that APA acted improperly by extending his sentence. He cited 42 U.S.C. 1983 and alleged generally that APA violated state and federal statutory and constitutional law. Appellant's complaint asked for \$385,000 in compensatory and punitive damages.

{¶ 3} In a pre-screening entry, the trial court ordered appellant to file an amended complaint that removed the individual defendants and dismissed appellant's claim for punitive damages. Appellant filed an amended complaint that named the Governor's Office, DRC, APA, and MCI. He asked for \$535,000 in compensatory and punitive damages. In a pre-screening entry, the trial court deleted APA as a defendant as unnecessary and dismissed appellant's claim for punitive damages.

{¶ 4} Appellees moved to dismiss appellant's complaint. Appellees argued the following: (1) appellant failed to allege a factual basis in support of his claims and, therefore, a cognizable claim for relief; (2) the court lacked jurisdiction over appellant's constitutional claims; (3) appellant failed to make direct claims against the Governor's Office; (4) appellees are immune from liability for discretionary decisions; and (5) if appellant was alleging false imprisonment, his claims were barred by the one-year statute of limitations because, as stated in his complaint, his claim accrued on January 21, 2010.

{¶ 5} In his response to appellees' motion, appellant argued that his sentence had expired and he was being detained illegally. He also argued that the court had jurisdiction over his constitutional claims, that the Governor's Office was a proper party, and that his claims for false imprisonment were not time-barred.

{¶ 6} On October 24, 2011, the trial court issued an entry of dismissal. The court concluded that it had no jurisdiction over appellant's constitutional claims. Further, to the extent that appellant was claiming false imprisonment, the court held that such

claims would not accrue until appellant is released from custody; therefore, his claims for false imprisonment were not yet ripe for review.

## II. DISCUSSION

{¶ 7} Appellant filed a timely appeal. He lists a number of assignments of error, not one of which identifies a specific error by the trial court. Appellant's statements of purported law do not constitute assignments of error. Nevertheless, in the interest of justice, we will consider the following two arguments we can discern from appellant's brief: (1) the trial court erred by dismissing his complaint for lack of subject-matter jurisdiction because the court has jurisdiction over his constitutional claims concerning the actions of APA; and (2) the trial court erred by dismissing his complaint for lack of subject-matter jurisdiction because his claim against DRC for false imprisonment is ripe for review.

{¶ 8} 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 (4th Dist.). 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. *Moore v. Franklin Cty. Children Servs.*, 10th Dist. No. 06AP-951, 2007-Ohio-4128, ¶ 15.

{¶ 9} Here, the trial court concluded that it lacked subject-matter jurisdiction over appellant's claims for constitutional violations relating to the actions of APA. We agree. It is well-settled that the Court of Claims of Ohio has no jurisdiction to consider constitutional claims. *Bleicher v. Univ. of Cincinnati College of Medicine*, 78 Ohio App.3d 302, 307 (10th Dist.1992). Accordingly, we reject appellant's contrary contention.

{¶ 10} The trial court also concluded that appellant's allegations raised issues of false imprisonment, but that it lacked jurisdiction over this claim because it was not yet ripe for review. The doctrine of ripeness arises from principles of judicial economy and

the desire to prevent courts " 'from entangling themselves in abstract disagreements.' " *State ex rel. Elyria Foundry Co. v. Indus. Comm.*, 82 Ohio St.3d 88, 89 (1998), quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967). To determine whether an issue is ripe for review, a court must weigh the following: (1) whether the alleged future harm is likely to occur; (2) whether delayed review is likely to cause hardship to the parties; and (3) whether the factual record is developed sufficiently to allow a fair resolution. *State ex rel. Keller v. Columbus*, 164 Ohio App.3d 648, 656, 2005-Ohio-6500, ¶ 20 (10th Dist.), citing *Ohio Forestry Assn., Inc. v. Sierra Club*, 523 U.S. 726 (1998). Generally, if a claim rests upon future events that may not occur at all or may not occur as anticipated, then the claim is not ripe for review. *Eagle Fireworks, Inc. v. Ohio Dept. of Commerce*, 4th Dist. No. 03CA28, 2004-Ohio-509, ¶ 9.

{¶ 11} The trial court held, and DRC argues here, that appellant's claim for false imprisonment was not ripe for review because such a claim does not begin to accrue until an inmate has been released from custody. In support of this principle, DRC cites decisions from this court that considered when an inmate's claim for false imprisonment accrued for purposes of determining whether the one-year statute of limitations had expired. *See Cummins v. Madison Corr. Inst.*, 10th Dist. No. 10AP-769, 2011-Ohio-1608 (stating that the appellant's 2007 claim for false imprisonment was time-barred where he had been released in 2001); *Robinson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 10AP-550, 2011-Ohio-713, ¶ 14 (stating that, because the appellant was last confined in 2003, "his claim for false imprisonment accrued at that time, at the latest, and his December 2009 assertion of the claim was untimely"). *See also Stubbs v. Dept. of Rehab. & Corr.*, 10th Dist. No. 11AP-484, 2012-Ohio-1374, ¶ 18 (stating that the appellant's 2011 claim for false imprisonment was time-barred where he had been released in 2008). None of these decisions considered whether an inmate's claim for false imprisonment was ripe for review prior to his release, and reliance on them in this context is misplaced.

{¶ 12} False imprisonment occurs when a person intentionally confines another, without a lawful privilege and against that person's consent, within a limited area for any appreciable time. *Feliciano v. Kreiger*, 50 Ohio St.2d 69, 71 (1977). The Supreme Court of Ohio has recognized the "continuing nature of the false imprisonment tort" and

has held that each day of a person's unauthorized imprisonment is confinement for these purposes. *Bennett v. Ohio Dept. of Rehab. & Corr.*, 60 Ohio St.3d 107, 109 (1991). More specifically, the court has held "[i]n the absence of an intervening justification, a person may be found liable for the tort of false imprisonment if he or she intentionally continues to confine another despite knowledge that the privilege initially justifying that confinement no longer exists." *Id.* at paragraph one of the syllabus. DRC's contention, and the trial court's holding, that appellant essentially does not have a cause of action for false imprisonment until that imprisonment ends is completely contrary to these principles. In the absence of an intervening justification, DRC may be found liable for the tort of false imprisonment if it intentionally continues to confine an individual despite knowledge that the privilege initially justifying his or her confinement no longer exists, and that liability may extend to each day of any unlawful confinement.

{¶ 13} As noted by the trial court, the elements of a false imprisonment claim are the following: (1) expiration of the lawful term of confinement; (2) intentional confinement beyond that expiration; and (3) knowledge that the privilege initially justifying the confinement no longer exists. *Corder v. Ohio Dept. of Rehab. & Corr.*, 94 Ohio App.3d 315, 318 (10th Dist.1994). The trial court found, and we agree, that appellant's claim of illegal detention sounds in false imprisonment. In his complaint, appellant alleged that, "on or about the 21st of January, 2010 the Parole Board Maxed [appellant] out on his Old law sentence, instead of Restating him on Parole or should we say, after not Reinstating him on parole after [appellant] had completed his New Law Sentenced [sic]." He also alleged that DRC, through APA, has done so by holding him under his expired identification number. This minimally states a claim for false imprisonment against DRC for continuing to confine appellant after his lawful term of imprisonment expired.

{¶ 14} We acknowledge that DRC has many possible defenses to limit or preclude recovery on a claim for false imprisonment. *See, e.g.*, R.C. 2305.11(A) (providing that a claim for false imprisonment must be brought within one year after the cause of action accrued); *Fisk v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 11AP-432, 2011-Ohio-5889, ¶ 12 (stating that "DRC may not be held liable on a claim for false imprisonment if DRC incarcerated the plaintiff pursuant to a facially-valid order, even if that order is

later determined to be void"). We decline to consider other arguments, however, in the absence of their consideration in the first instance by the trial court. Instead, we limit our holding to the confines of the trial court opinion.

### III. CONCLUSION

{¶ 15} In conclusion, we affirm that portion of the trial court opinion holding that the Court of Claims of Ohio has no jurisdiction over constitutional claims. We reverse that portion of the trial court opinion holding that appellant's claim against DRC for false imprisonment is not ripe for review until he is released from custody. To the extent consistent with this holding, we sustain appellant's second and third assignments of error, and we overrule his remaining assignments. Accordingly, we affirm in part and reverse in part the judgment of the Court of Claims of Ohio and remand this matter for further proceedings on appellant's claim for false imprisonment.

*Judgment affirmed in part, reversed in part;  
cause remanded.*

TYACK and DORRIAN, JJ., concur.

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