

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| Ronald E. Harris, II, | : | |
| Plaintiff-Appellant, | : | |
| v. | : | No. 14AP-668 (Ct.Cl. No. 2014-00161) |
| Department of Rehabilitation and Correction, | : | (REGULAR CALENDAR) |
| Defendant-Appellee. | : | |

D E C I S I O N

Rendered on March 31, 2015

Ronald E. Harris, II, pro se.

Michael DeWine, Attorney General, *Amber Wootoon Hertlein*
and *Peter E. DeMarco*, for appellee.

APPEAL from the Court of Claims of Ohio

DORRIAN, J.

{¶ 1} Plaintiff-appellant, Ronald E. Harris, II, appeals from the July 23, 2014 judgment of the Court of Claims of Ohio granting the motion to dismiss filed by defendant-appellee, the Ohio Department of Rehabilitation and Correction ("DRC").

Statement of Facts and Procedural History

{¶ 2} On April 11, 2014, appellant filed a complaint in the Court of Claims against appellee making various allegations, the essence of which was that he was purportedly exposed to asbestos while an inmate at the Chillicothe Correctional Institution and was denied participation in a class action lawsuit, and settlement regarding the same, in the federal courts. *See Smith v. Ohio Dept. of Rehab. & Corr.*, S.D. Ohio No. 2:08-CV-15 (Apr. 26, 2012).

{¶ 3} On April 30, 2014, appellee filed a motion to dismiss, pursuant to Civ.R. 12(B)(1) and (6), arguing that the claims asserted by appellant are either (1) outside the subject-matter jurisdiction of the Court of Claims, or (2) barred by the relevant statute of limitations. On July 9, 2014, appellant filed a response.

{¶ 4} On July 23, 2014, the court granted appellee's motion to dismiss. The court construed several of appellant's claims to be constitutional claims over which the Court of Claims has no jurisdiction, including claims brought alleging violations of 42 U.S.C. 1983 and due process. The court found it lacked jurisdiction to consider the same. It also found that it lacked jurisdiction to review federal court proceedings in *Smith*—the case in which appellant claims he was allegedly denied due process. Finally, the court found that, even if the complaint could be construed to raise a tort claim related to asbestos exposure, such a claim would be barred by the statute of limitations.

{¶ 5} Appellant filed an appeal and raises three issues, which we address below.

Standard of Review

{¶ 6} Civ.R. 12(B)(1) permits dismissal where the trial court lacks jurisdiction over the subject matter of the litigation. *Guillory v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 07AP-861, 2008-Ohio-2299, ¶ 6. 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. The standard of review for a dismissal pursuant to Civ.R. 12(B)(1) is "whether any cause of action cognizable by the forum has been raised in the complaint." *Washington Mut. Bank v. Beatley*, 10th Dist. No. 06AP-1189, 2008-Ohio-1679, ¶ 8. This court reviews a trial court's decision on a Civ.R. 12(B)(1) motion to dismiss for lack of subject-matter jurisdiction under a de novo standard of review. *Pankey v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 13AP-701, 2014-Ohio-2907, ¶ 7.

{¶ 7} In deciding whether to dismiss a complaint, pursuant to Civ.R. 12(B)(6), for failure to state a claim upon which relief can be granted, the trial court must presume all factual allegations in the complaint are true and construe the complaint in a light most favorable to the plaintiff, drawing all reasonable inferences in favor of the plaintiff. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). Before the court may dismiss the complaint, it must appear beyond doubt from the complaint that the plaintiff can

prove no set of facts entitling the plaintiff to recovery. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus. We review de novo the dismissal of a complaint pursuant to Civ.R. 12(B)(6). *Shockey v. Wilkinson*, 96 Ohio App.3d 91, 94 (4th Dist.1994).

{¶ 8} Before considering appellant's assignments of error, we note at the outset that appellant does not assign specific errors but, rather, raises issues for this court to consider. Nevertheless, in the interest of justice, to the extent we are able to discern the issue and any implied error, we will address them below.

First Assignment of Error

{¶ 9} In his first assignment of error, appellant asks the court to consider whether the Court of Claims lacks subject-matter jurisdiction over claims asserting violation of constitutional rights.

{¶ 10} " 'R.C. 2743.02 limits actions brought in the Court of Claims to those which could be brought between private parties.' " *Allen v. Dept. of Rehab. & Corr.*, 10th Dist. No. 14AP-619, 2015-Ohio-383, ¶ 13, quoting *Peters v. Ohio Dept. of Natural Resources*, 10th Dist. No. 03AP-350, 2003-Ohio-5895, ¶ 13. Accordingly, it is well-settled law that the Court of Claims does not have subject-matter jurisdiction of actions alleging that the state violated an inmate's constitutional rights. *Allen* at ¶ 14, citing *Cotten v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 13AP-935, 2014-Ohio-2619, ¶ 17-20; *Hamilton v. Ohio Dept. of Natural Resources*, 10th Dist. No. 06AP-916, 2007-Ohio-1173, ¶ 14. " 'It is also true that a [civil rights] action under 42 U.S.C. 1983 may not be brought against the state in the Court of Claims because the state is not a "person" within the meaning of 42 U.S.C.1983.' " *Allen* at ¶ 14, quoting *Hanna v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-374, 2009-Ohio-5094, ¶ 6, citing *Jett v. Dallas Indep. School Dist.*, 491 U.S. 701 (1989).

{¶ 11} Therefore, we hold that the Court of Claims lacked subject-matter jurisdiction to consider appellant's claims for relief grounded upon the DRC's alleged violations of appellant's constitutional rights as specified in the complaint. Thus, the Court of Claims did not err when it dismissed those claims.

{¶ 12} Accordingly, we overrule appellant's first assignment of error.

Second Assignment of Error

{¶ 13} In his second assignment of error, appellant asks this court to consider whether his claims were barred by the statute of limitations. In support of this assignment of error, appellant argues that his original filing to participate in the class action lawsuit was timely to the Federal Southern District Court of Ohio. To the extent appellant asks us to opine regarding a question either pending in or already determined by the federal court, we decline to do so for lack of jurisdiction.

{¶ 14} To the extent appellant asks us to opine whether the Court of Claims erred in applying R.C. 2743.16(A) to his claims, we find that the trial court did not err. R.C. 2743.16(A) states: "Subject to division (B) of this section, 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 in his complaint that, sometime in 2007-2008, he learned that he suffered injury as a result of exposure to asbestos while he was an inmate at the Chillicothe Correctional Institution and that he made an effort to be accepted in the class action litigation. Appellant filed his complaint in 2014—well over two years from when he first learned of his injury. The trial court properly applied R.C. 2743.16(A) to bar appellant's complaint pursuant to the statute of limitations.

{¶ 15} Accordingly, we overrule appellant's second assignment of error.

Third Assignment of Error

{¶ 16} It is not clear to this court what error is being asserted in appellant's third assignment of error. In the statement of assignments of error section of his brief, appellant states:

Did the request for private employment towards Cures of asbestos, get denied and harm all inmates and their Constitutional Rights to class act settlements private employment, inmate art. Good day assessments, under USCA Fed Rules Civ. Proc R52 (Copy w/ Cite) & USCS Fed Rules Civ Proc R 44 (Copy w/ Cite) Proving an Official Record OAC 5120-3-04 Private Employment id 2246774 SEE 42 USCS § 285a-7, CANCER & 42 USCS § 285a-6 (Copy w/ Cite) Breast and gynecological cancers Baker v. United States, 115 F.2d 533 (Copy w/ Cite) CORE TERMS: cancer, patient, cure,

indictment, district attorney, mail, scheme to defraud, medicine, disease, cured, false pretenses Article 1, 8 16 of the Ohio Constitution.

(Sic passem.) (Appellant's Brief, ii.) In the argument section of his brief, appellant frames his assignment of error, as follows:

Did the Champaign County Court/Claims Court of Ohio deny declaratory judgment, private employment, In accordance with AR"s 5120-2-04 Private Employment inmate art. Good day assessments, under USCS Fed Rules Civ. Proc R 52 (Copy w/ Cite) & USCS Fed Rules Civ Proc R 44 (Copy w/ Cite) Proving an Official Record Particulare Consultants in 2246774 CURE FOR CANCER

(Sic passem.) (Appellant's Brief, 4.)

{¶ 17} Unfortunately, the text of the argument does not illuminate the issue raised in the statement of the assignments of error. In concluding his argument, however, appellant states that "all courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delays. 42 USCS & 1983 & 1985." (Appellant's Brief, 6.) To the extent appellant assigns error that he is being denied due process, pursuant to our overruling of the first assignment of error alleging the same, we overrule the third assignment of error. To the extent appellant assigns other error, being unable to discern what the error is, we overrule the same. App.R. 12(A)(2).

{¶ 18} Accordingly, we overrule appellant's third assignment of error.

Conclusion

{¶ 19} For the reasons stated above, we overrule appellant's three assignments of error and affirm the judgment of the Court of Claims dismissing appellant's complaint.

Judgment affirmed.

KLATT and SADLER, JJ., concur.
