

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Charles B. Lowery,	:	
	:	No. 14AP-730
Plaintiff-Appellant,	:	(Ct. of Cl. No 2014-00430)
v.	:	
	:	(REGULAR CALENDAR)
Ohio Department of Rehabilitation and Correction,	:	
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on March 12, 2015

Charles B. Lowery, pro se.

Michael DeWine, Attorney General, and Christopher L. Bagi,
for appellee.

APPEAL from the Court of Claims of Ohio

LUPER SCHUSTER, J.

{¶ 1} Plaintiff-appellant, Charles B. Lowery, appeals from a judgment of the Court of Claims of Ohio granting the motion to dismiss of defendant-appellee, Ohio Department of Rehabilitation and Correction ("ODRC"). For the reasons that follow, we affirm.

I. Facts and Procedural History

{¶ 2} Lowery is an inmate in the custody and control of ODRC. On May 1, 2014, Lowery, proceeding pro se, filed a complaint in the Court of Claims against ODRC. Lowery alleged that ODRC took "unauthorized possession" of his property, namely his name and race, for its own profit and commercial gain. (Complaint, 1.) Lowery claims that he was improperly classified as being African-American even though he is actually an

American-Indian. Additionally, Lowery maintains that his name constitutes a "corporate fiction" and cannot be used by ODRC without his authorization. (Complaint, 2.) The complaint further alleged that Lowery was assaulted in 2008 and 2010 by other inmates as a result of the alleged misconduct of ODRC. Lowery attached a federal court civil cover sheet to his complaint, identifying his cause of action as copyright infringement. ODRC filed a motion to dismiss, arguing that Lowery's complaint failed to state a claim upon which relief can be granted and that the action is barred by the applicable statute of limitations.

{¶ 3} The Court of Claims granted ODRC's motion to dismiss. Insofar as the complaint is construed to allege copyright infringement, the Court of Claims dismissed that claim without prejudice for lack of subject-matter jurisdiction. The Court of Claims also dismissed the remainder of Lowery's complaint, upon finding that the complaint failed to state any claim upon which relief can be granted. Lowery timely appeals.

II. Assignments of Error

{¶ 4} Lowery presents the following assignments of error for our review:

[1.] Court erred in its Judgment of Dismissal contrary to "Civ.R. 12(B)(1);(B)(6)".

[2.] Court erred in its "lack of subject-matter" finding.

[3.] Court erred when it failed to conduct proper/valid investigation into Plaintiff's allegations against Defendant's.

[4.] Court erred in ruling "it lacked jurisdiction".

[5.] Defendant's sought to "Conspire (18 U.S.C. 241)" against Plaintiff when it attempted to conceal its Knowledge of the "Commercial Violations" (Title 46 U.S.C.) in which Plaintiff has so accused it of.

[6.] Court erred in its judgment against the Theft and misuse of Plaintiffs' property, to-wit; "Racial Heritage".

(Emphasis sic. Sic passim.)

III. Discussion

{¶ 5} Because Lowery's first, second, third, fourth, and sixth assignments of error are interrelated, we will address them together. Lowery generally asserts that the Court of Claims erred in granting ODRC's motion to dismiss pursuant to Civ.R. 12(B)(1) and (6). More particularly, Lowery argues that the Court of Claims erred in granting ODRC's motion to dismiss because the court erred in finding it lacked subject-matter jurisdiction, because the court did not engage in the proper "investigation" into his allegations, and because the court did not properly resolve his "theft" claim. (Lowery Brief.) Lowery's arguments lack merit.

{¶ 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} Under Civ.R. 12(B)(6), a defendant may move to dismiss a complaint for failure to state a claim upon which relief can be granted. A Civ.R. 12(B)(6) motion to dismiss tests the sufficiency of a complaint. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245 (1975). In ruling on a motion to dismiss pursuant to Civ.R. 12(B)(6), the court must construe the complaint in the light most favorable to the plaintiff, presume all factual allegations in the complaint are true, and make all reasonable inferences in favor of the plaintiff. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). The dismissal of a complaint for failure to state a claim is proper when it appears, beyond doubt, that the plaintiff can prove no set of facts entitling him to relief. *Celeste v. Wiseco Piston*, 151 Ohio App.3d 554, 2003-Ohio-703, ¶ 12 (11th Dist.). Furthermore, a motion to dismiss based upon the application of a statute of limitations may be granted

when the complaint shows conclusively on its face that the action is time barred. *See Velotta v. Leo Petronzio Landscaping, Inc.*, 69 Ohio St.2d 376 (1982), paragraph three of the syllabus. When reviewing a decision on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted, this court's standard of review is de novo. *Foreman v. Dept. of Rehab. & Corr.*, 10th Dist. No. 14AP-15, 2014-Ohio-2793, ¶ 9.

{¶ 8} To the extent Lowery's complaint is construed to assert a claim for copyright infringement, the Court of Claims properly dismissed this claim for lack of subject-matter jurisdiction. A claim of copyright infringement is within the exclusive jurisdiction of the federal courts. *See* 28 U.S.C. 1338(a) ("The [federal] district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights."); *Automated Solutions Corp. v. Paragon Data Sys., Inc.*, 167 Ohio App.3d 685, 2006-Ohio-3492, ¶ 17 (8th Dist.) (noting that federal law reserves exclusive jurisdiction over copyright issues to the federal courts). Therefore, the Court of Claims lacked jurisdiction over any claim for copyright infringement.

{¶ 9} Aside from Lowery expressly asserting, on a document submitted with his complaint, that he seeks to advance a copyright claim, the precise nature of Lowery's claims against ODRC are unclear. Nonetheless, the gravamen of Lowery's complaint is that ODRC has engaged in the unauthorized use of his name and race, and has improperly designated his race. Lowery summarily alleges that ODRC's use of his name has resulted in damage to him in the amount of \$5,000 for each occurrence. Lowery also asserts that ODRC's misclassification of his race resulted in him being assaulted by other inmates in 2008 and 2010, and that it caused him to receive less desirable work assignments with lower compensation rates.

{¶ 10} Lowery's claims relating to his name and race fail as a matter of law. First, Lowery fails to explain how ODRC committed a "theft" in relation to his name and race so as to entitle him to monetary relief under any cause of action cognizable in the Court of Claims. Second, Lowery's claim that ODRC is liable for injuries he sustained at the hands of other inmates, due to ODRC's alleged misclassification of his race, is barred by the applicable statute of limitations. The applicable statute of limitations for claims brought

in the Court of Claims is set forth in R.C. 2743.16(A), which provides, in pertinent part, as follows: "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." Because Lowery filed this action in 2014, any claim based on Lowery's allegation that ODRC is liable for injuries he sustained in 2008 and 2010 due to the misclassification of his race are barred by the two-year statute of limitations in R.C. 2743.16(A). And third, to the extent Lowery alleges employment discrimination on the basis of race, such a claim fails because ordinary prison labor performed by inmates is not predicated upon an employer-employee relationship. See *McElfresh v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 04AP-177, 2004-Ohio-5545, ¶ 14; *Moore v. Ohio Dept. of Rehab. & Corr.*, 89 Ohio App.3d 107, 111 (10th Dist.1993). For these reasons, Lowery's claims against ODRC fail as a matter of law.

{¶ 11} In support of his position that the Court of Claims erred in dismissing his complaint, Lowery also argues that the Court of Claims' review of his complaint was deficient. According to Lowery, the dismissal of his complaint was erroneous because the Court of Claims did not conduct the necessary and proper investigation into Lowery's allegations against ODRC. To the contrary, the decision of the Court of Claims granting ODRC's motion to dismiss correctly set forth the applicable standard for the court's review of the complaint and the allegations contained therein. Moreover, the decision of the Court of Claims reflects the careful review of Lowery's complaint, as well as the comprehensive effort to address each of Lowery's allegations despite Lowery's failure to clearly identify what causes of action he sought to advance.

{¶ 12} For these reasons, Lowery's first, second, third, fourth, and sixth assignments of error lack merit and are overruled.

{¶ 13} Lowery's fifth assignment of error asserts that ODRC conspired to deprive him of his rights by attempting to conceal its knowledge of the alleged commercial violation by ODRC. But this assignment of error does not allege any error by the Court of Claims. Assignments of error should designate specific rulings which the appellant wishes to challenge on appeal. *Taylor v. Franklin Blvd. Nursing Home, Inc.*, 112 Ohio App.3d 27, 32 (8th Dist.1996); see App.R. 16(A)(3) (providing that the brief of appellant shall

include "[a] statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected"). Because Lowery's fifth assignment of error fails to allege any error by the Court of Claims, it is overruled.

IV. Disposition

{¶ 14} For the foregoing reasons, the trial court did not err in granting ODRC's motion to dismiss. Having overruled Lowery's six assignments of error, we affirm the judgment of the Court of Claims of Ohio.

TYACK and HORTON, JJ., concur.

Judgment affirmed.