

[Cite as *Dean v. Ohio State Highway Patrol*, 2002-Ohio-7399.]

IN THE COURT OF CLAIMS OF OHIO

AGNES M. DEAN, et al. :
Plaintiffs : CASE NO. 2001-01639
v. : DECISION
OHIO STATE HIGHWAY PATROL, :
et al. :
Defendants :
: :

{¶1} On November 8, 2002, the court elected to treat defendants' motion to dismiss as a motion for summary judgment. The case is now before the court for non-oral hearing upon defendants' motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the

evidence or stipulation construed most strongly in the party's favor. ***" See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} The relevant procedural facts in this case were set forth by the Tenth District Court of Appeals in *Dean v. Ohio State Highway Patrol* (March 28, 2002), Franklin App. No. 00AP-1455 as follows:

{¶5} "On September 21, 2000, Agnes M. Dean and her husband, James Dean, filed a complaint in the Court of Claims of Ohio against the Ohio State Highway Patrol ('OSHP'). The lawsuit arose out of a automobile collision which occurred on September 13, 1998. At the time of the filing of this lawsuit, the Deans had a similar case pending in the Franklin County Court of Common Pleas. The common pleas court action had been filed two years after the collision, on September 13, 2000.

{¶6} "On September 29, 2000, OSHP filed a Civ.R. 12(B)(1) and (6) motion to dismiss the complaint on the grounds such complaint had not been commenced within the two-year statute of limitations contained in R.C. 2743.16(A). The Deans filed a memorandum contra arguing that they had made a good faith effort to file against the defendant(s) prior to expiration of the two-year statute of limitations and that the Court of Claims should deem the filing of the complaint in the common pleas court (which was filed within the two-year statute of limitations) sufficient to satisfy R.C. 2743.16(A).

{¶7} "On November 22, 2000, the Court of Claims journalized an entry of dismissal. The Court of Claims held that under R.C. 2743.16(A), the Deans had two years from the date of the collision to commence their claims against the state in the Court of Claims. The Deans did not commence the complaint within two years of the

collision, and the Court of Claims stated that the filing of the action in the common pleas court did not toll the two-year statute of limitations in R.C. 2743.16(A). Accordingly, the Court of Claims granted OSHP's motion to dismiss.

{¶8} "The Deans filed a notice of appeal with this court on December 19, 2000. On January 18, 2001, the Deans voluntarily dismissed their complaint in the common pleas court. The next day, the Deans filed a substantially similar complaint with the Court of Claims."

{¶9} The Court of Appeals held that the saving statute did not apply and the court affirmed this court's prior ruling that plaintiffs' complaint was not timely filed. *Id.* Plaintiffs subsequently attempted to appeal the Tenth District Court of Appeals' decision to the Supreme Court of Ohio, but the court declined to hear the appeal.

{¶10} The doctrine of *res judicata* holds that a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 1995-Ohio-331. A dismissal due to the bar of the statute of limitations is a dismissal on the merits.

Indeed, it has been held that *res judicata* attaches when a party fails to meet the applicable statute of limitations. *LaBarbera v. Batsch* (1967), 10 Ohio St.2d 106; *Saffold v. Hillside Rehab., et al.*, 7th Dist. No. 99 CA 278, 2001-Ohio-3328.

{¶11} In the instant case, there is no dispute that plaintiffs' claim against defendants was previously dismissed by this court on the merits and that the dismissal was reviewed and affirmed by the Court of Appeals in *Dean*, *supra*. Consequently, *res judicata* bars plaintiffs from pursuing the claim for a second time in this case.

{¶12} Plaintiffs argue that their instant complaint is timely filed under R.C. 2305.19 since it was refiled in this court within one year of plaintiffs' voluntary dismissal in the common pleas court. However, plaintiffs' argument overlooks the intervening dismissal of plaintiffs' claim on the merits. The judgment of dismissal in this court constitutes a valid, final determination of the same claims for relief asserted by plaintiffs' claims in this case. See *Dean*, supra. In short, R.C. 2305.19 has no application in this case.

{¶13} Upon review of defendants' motion for summary judgment and the memoranda filed by the parties, and construing the facts in a light most favorable to plaintiffs, the court finds that no genuine issues of material fact exist and that defendants are entitled to judgment as a matter of law. Accordingly, defendants' motion for summary judgment is GRANTED.

J. WARREN BETTIS
Judge

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