

IN THE COURT OF CLAIMS OF OHIO

ANDREW E. MILLER, #A223-784 :  
 2500 South Avon Belden Road :  
 Grafton, Ohio 44044 : Case No. 2002-06359-AD

Plaintiff : ORDER DISMISSING  
 PLAINTIFF'S CASE

v. :

DEPT. OF REHAB. AND CORRECTION :

Defendant :

: : : : : : : : : : : : : : :

For Defendant: James R. Guy, Staff Counsel  
 Department of Rehabilitation and  
 Correction  
 1050 Freeway Drive North  
 Columbus, Ohio 43229

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{¶1} THE COURT FINDS THAT:

{¶2} 1) On June 27, 2002, plaintiff, Andrew E. Miller, filed a complaint against defendant, Department of Rehabilitation and Correction. Plaintiff alleges on October 2, 1997, his personal property was lost due to the negligence of defendant's employees. Plaintiff asserts he originally filed this suit on January 23, 1998 and it was assigned Claim No. 98-01680. He now asserts he wishes to continue to litigate this action under this new claim number;

{¶3} 2) Claim No. 98-01680 was dismissed without prejudice by a judge of the Court of Claims on June 1, 1998;

{¶4} 3) On July 10, 2002, defendant filed a motion to dismiss;

{¶5} 4) In support of the motion to dismiss, defendant stated in pertinent part:

{¶6} "The Court of Claims does not have jurisdiction over this claim as it has been filed beyond the applicable statute of limitations. Revised Code §2743.16 states in pertinent part:

{¶7} '. . . civil actions against the state . . . 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.'

{¶8} This means that the deadline for filing this claim would have been in October of 1999. At the very latest, the deadline would have been in November of 1999, two years from the initial report of the theft.

{¶9} Inmate Miller notes that this property claim had been brought before in Case No. 98-01680, and that it had been voluntarily dismissed. Inmate Miller chose to include his claim for lost property in another action, in another forum. It is noted from the Court's docket that the Inmate Miller's Motion to Dismiss was filed on May 26, 1998. Inmate Miller's voluntary dismissal of his property claim does not toll the statute of limitations pursuant to R.C. §2305.15 (minority or incompetency) nor does it trigger the provisions of the savings statute, R.C. §2305.19. A party who voluntarily dismisses an action before the limitations period expires cannot take advantage of the savings statute: *Armbrust v. United Tel. Co. of Ohio, Inc.* (1977), 119 O App 3d 497, 695 NE 2d 823. Even if the saving statute were applicable in this matter, Inmate Miller would still be well beyond any extended filing deadline.";

{¶10} 5) On July 19, 2002, plaintiff filed a motion in opposition to defendant's motion to dismiss;

{¶11} 6) In support of the opposition motion, plaintiff

stated in pertinent part:

{¶12} "Plaintiff submits that the statute of limitations had not run against him. Plaintiff sought to voluntarily dismiss his action without prejudice so that he could file it along with his federal claims. However, the federal judge dismissed his property claims stating he had a state remedy with an order for him to refile it in the state courts.

{¶13} Here, the two-year statute of limitations had not elapsed before his original filing. R.C. §2305.16 entitles plaintiff to the tolling of the statute of limitations because of the disability of imprisonment, without any further justification. *Perdue v. Handelman* (1990), 68 O.App.2d 240, 429 N.E. 2d 165; *Hawkins v. Justin* (1981), 68 O.App. 2d 240, 429 N.E. 2d 165.";

{¶14} 7) On November 18, 2002, plaintiff filed a motion to supplement the record.

{¶15} THE COURT CONCLUDES THAT:

{¶16} 1) R.C. 2743.16(A) states:

{¶17} ". . . civil actions against the state permitted by sections 2743.04 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.";

{¶18} 2) R.C. 2743.16(C)(1) states:

{¶19} "The period of limitations prescribed by division (A) of this section shall be tolled pursuant to section 2305.16 of the Revised Code.";

{¶20} 3) R.C. 2305.16 states:

{¶21} "Unless otherwise provided in sections 1302.98, 1304.35,

and 2305.04 to 2305.14 of the Revised Code, if a person entitled to bring any action mentioned in those sections, unless for penalty or forfeiture, is, at the time the cause of action accrues, within the age of minority or of unsound mind, the person may bring it within the respective times limited by those sections, after the disability is removed. When the interest of two or more parties are joint and inseparable, the disability of one shall inure to the benefit of all.

{¶22} After the cause of action accrues, if the person entitled to bring the action becomes of unsound mind and is adjudicated as such by a court of competent jurisdiction or is confined in an institution or hospital under a diagnosed condition or disease which renders the person of unsound mind, the time during which the person is of unsound mind and so adjudicated or so confined shall not be computed as any part of the period within which the action must be brought.”;

{¶23} 4) “In *Hitchcock*, this court addressed whether the distinction drawn under R.C. 2743.16 between those of unsound mind and those imprisoned violates equal protection of law as guaranteed under the United States and Ohio Constitutions. In finding the provision to be constitutional, this court noted:

{¶24} ‘\* \* \* Although a minor and one of unsound mind do not ordinarily have the mental capacity to secure counsel and assist in presenting a case, such is not generally true of a prisoner. Moreover, the rational basis for the disparate treatment between prisoners with a claim against the state and prisoners with a claim against a private party rests in the difference in physical accessibility to the court. While the state is required to provide supervised transportation to and from state courts in suits against

the state, such is not true if the prisoner's action is against a private party.'" *Id.* at 1695. *Willis v. Department of Rehabilitation and Correction* (1994), No. 94 API 03-345 (10<sup>th</sup> Dist.) 1994 Ohio App. Lexis 3520;

{¶25} 5) In *Armbrust v. United Telephone Company of Ohio, Inc.* (1997), 119 Ohio App. 3d 497, the Court of Appeals for the Twelfth District held:

{¶26} "R.C. 2305.19 provides in pertinent part:

{¶27} 'In an action commenced, or attempted to be commenced, \*\*\* if the plaintiff fails otherwise than upon the merits, and the time limited for the commencement of such action at the date of reversal or failure has expired, the plaintiff \*\*\* may commence a new action within one year after such date.'

{¶28} A Civ.R. 41(A)(1) voluntary dismissal is a failure otherwise than upon the merits. *Fry singer v. Leech* (1987), 32 Ohio St. 3d 38, 512 N.E. 2d 337, paragraph two of the syllabus. R.C. 2305.19 on its face, however, is not applicable to an action dismissed before the statute of limitations has run. A party who voluntarily dismisses an action before the limitations period expires therefore cannot take advantage of the savings statute. *Malatesta v. Sharon Twp. Trustees* (1993), 87 Ohio App. 3d 791, 722, 622 N.E. 2d 1163.";

{¶29} Plaintiff's reliance on the holdings in *Perdue V. Handelman* (1980), 68 Ohio App. 2d 240 is misplaced since this case interprets former R.C. 2305.16 not the version of the statute applicable to plaintiff in this case;

{¶30} Accordingly, plaintiff's initial cause of action arose on October 2, 1997. He filed his initial suit on January 23, 1997 and dismissed the suit without prejudice on June 1, 1998. He did not

refile the suit until June 27, 2002. The statute of limitations pursuant to R.C. 2743.16(A) ran on October 2, 1999. The saving statute has no applicability in this case.

{¶31} IT IS ORDERED THAT:

{¶32} 1) Plaintiff's motion to supplement the record is GRANTED;

{¶33} 2) Defendant's motion to dismiss is GRANTED;

{¶34} 3) Plaintiff's motion in opposition is DENIED;

{¶35} 4) Plaintiff's case is DISMISSED;

{¶36} 5) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT  
Deputy Clerk

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