



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."

{¶6} Plaintiffs claim that their action was timely filed under the Ohio Saving Statute, R.C. 2305.19, because they had previously filed this claim in Lucas County Common Pleas Court against the city of Toledo and several other unidentified defendants including "ABC Corporation," whom plaintiffs now claim is the Ohio Department of Transportation, defendant herein.

{¶7} R.C. 2305.19 provides in relevant part:

{¶8} "In an action commenced, or attempted to be commenced, if in due time a judgment for the plaintiff is reversed, or 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, or, if he dies and the cause of action survives, his representatives may commence a new action within one year after such date."

{¶9} Defendant argues that plaintiffs never commenced or attempted to commence their action in the court of common pleas because the state was not specifically named as a party in that case or served with a summons and complaint as required by Civ.R. 3. Plaintiffs contend that the state may still be made a party to that suit under Civ.R. 15(D).

{¶10} Notwithstanding the argument regarding commencement of the case in the court of common pleas, a more fundamental problem exists for plaintiffs in that they have not produced any evidence that such case had been dismissed prior to the filing of the instant complaint. Thus, even if a complaint alleging a claim against the state had been timely filed in Lucas County and even if

service had been achieved, in order for the savings statute to apply, that claim must have been dismissed prior to the filing of the new complaint in this court. The only argument that plaintiffs have established in opposition to the motion for summary judgment is that the instant complaint against the state was filed within one year of the *filing* of plaintiffs' amended complaint in Lucas County. Given these undisputed facts, the only reasonable inference to draw is that plaintiffs' complaint in this case was untimely filed, as a matter of law.

{¶11} For the foregoing reason, defendant's motion for summary judgment is GRANTED. Court costs are assessed against plaintiffs.

The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

---

JUDGE

Entry cc:

R. Jeffrey Lydy  
4930 N. Holland-Sylvania Road  
Sylvania, Ohio 43560-2149

Attorney for Plaintiffs

Eric A. Walker  
Assistant Attorney General  
65 East State St., 16th Fl.  
Columbus, Ohio 43215

Attorney for Defendant

LP/cmd  
Filed 7-24-2003  
To S.C. reporter 7-28-2003