

[Cite as *Rembert v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-5618.]

IN THE COURT OF CLAIMS OF OHIO

ALBERT L. REMBERT :  
 :  
 Plaintiff : CASE NO. 2003-03582  
 : Judge J. Warren Bettis  
 v. :  
 :  
 DEPARTMENT OF REHABILITATION : ENTRY GRANTING DEFENDANT'S  
 AND CORRECTION : MOTION FOR JUDGMENT ON THE  
 : PLEADINGS  
 : Defendant

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

{¶1} On August 20, 2003, defendant filed a motion for judgment on the pleadings, pursuant to Civ.R. 12(C) on the grounds that plaintiff's complaint was not timely filed. On September 8, 2003, plaintiff filed his response.

{¶2} In construing a complaint upon a motion for judgment on the pleadings, the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the nonmoving party. *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161. A motion for judgment on the pleadings presents only a question of law and it may be granted only where no material factual issues exist and when movant is entitled to judgment as a matter of law. *Id.*

{¶3} Plaintiff's complaint in this case was filed on March 17, 2003. He alleges that he was kidnaped, raped, and sodomized by defendant's correction officers (COs) while he was in the custody of defendant on October 1, 2000, and that defendant subsequently failed to provide him with any medical care for his injuries. R.C. 2743.16 provides, in relevant part:

{¶4} "(A) 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."

{¶5} As a general rule, claims for relief based upon an assault are governed by the one-year statute of limitations set forth in R.C. 2305.11(A). See *Doe v. First United Methodist Church*, 68 Ohio St.3d 531, 1994-Ohio-531; *Scott v. Borelli* (1995), 106 Ohio App.3d 449. However, where an action is brought against an employer for injuries sustained due to an assault and battery by its employees, the two-year statute of limitations set forth in R.C. 2305.10 applies to the claims based upon the employer's own negligence in hiring, training, and supervising the employees in question. See *Grimm v. White* (1980), 70 Ohio App.2d 201. See, also, *Moore v. Burt* (1994), 96 Ohio App.3d 520 (claim of negligent credentialing brought against a hospital for injuries patient sustained as a result of medical malpractice governed by the two-year statute of limitations relating to claims for bodily injury rather than the one-year statute of limitations for medical malpractice claims.) This is particularly true where there is a special relationship between the employer and plaintiff, such as the custodial relationship that exists in this case. See *Stewart v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 02AP-1203, 2003-Ohio-3331.

{¶6} Plaintiff argues that the two-year limitations period should not begin to run until plaintiff identifies, by name, each of the COs involved in the assault. However, plaintiff's argument has no merit since plaintiff clearly knew that the alleged assailants were in defendant's employ at the time of any assault.

{¶7} Thus, upon review of the complaint in this matter and assuming the factual allegations therein to be true, it is clear that plaintiff's claims that are based upon the assault are barred by the passage of time.

{¶8} To the extent that plaintiff asserts a claim for medical malpractice, R.C. 2305.11(B)(1) provided, in part:

{¶9} "\*\*\* [A]n action upon a medical \*\*\* claim shall be commenced within one year after the action accrued \*\*\*."

{¶10} R.C. 2305.11(D)(3) provided, in part:

{¶11} "'Medical claim' means any claim that is asserted in any civil action against a physician, podiatrist, or hospital, against any employee or agent of a physician, podiatrist, or hospital, or against a registered nurse or physical therapist, and that arises out of the medical diagnosis, care, or treatment of any person. \*\*\*"

{¶12} A cause of action for malpractice accrues and the statute of limitations begins to run when the patient discovers, or, in the exercise of reasonable care and diligence should have discovered, the resulting injury. *Canaday v. Ohio Dept. of Rehab. & Corr.* (1992), 80 Ohio App.3d 382.

{¶13} The allegations of the complaint conclusively establish that plaintiff knew he needed medical care immediately after the claimed assault on October 1, 2000, and that he did not receive medical treatment. Consequently, plaintiff's claim for medical malpractice accrued on October 1, 2000, more than three years before the complaint was filed. In short, the allegations of plaintiff's own complaint conclusively establish that plaintiff's medical claim was untimely filed.

{¶14} For the foregoing reasons, defendant's motion for judgment on the pleadings shall be GRANTED. Court costs are assessed against

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

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J. WARREN BETTIS  
Judge

Entry cc:

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LP/cmd  
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