

[Cite as *Starcher v. Ohio Adult Parole Auth.*, 2004-Ohio-309.]

**IN THE COURT OF CLAIMS OF OHIO**

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| DONALD STARCHER        | : |                        |
| Plaintiff              | : | CASE NO. 2003-05038    |
|                        |   | Judge J. Warren Bettis |
| v.                     | : |                        |
|                        |   | <u>DECISION</u>        |
| ADULT PAROLE AUTHORITY | : |                        |
| Defendant              | : |                        |
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On November 24, 2003, the court granted defendant's motion for leave to file a motion for summary judgment *instanter*. Plaintiff has not filed a memorandum in opposition to the motion for summary judgment. The case is now before the court for a non-oral hearing. Civ.R. 56(C) and L.C.C.R. 4.

Civ.R. 56(C) states, in part, as follows:

“\*\*\* 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.

The Tenth District Court of Appeals has stated:

“The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of fact on a material element of one or more of the nonmoving party’s claims for relief. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292, 1996-Ohio-107. If the moving party satisfies this initial burden by presenting or identifying appropriate Civ.R. 56(C) evidence, the nonmoving party must then present similarly appropriate evidence to rebut the motion with a showing that a genuine issue of material fact must be preserved for trial. *Norris v. Ohio Standard Oil Co.* (1982), 70 Ohio St.2d 1, 2. The nonmoving party does not need to try the case at this juncture, but its burden is to produce more than a scintilla of evidence in support of its claims. *McBroom v. Columbia Gas of Ohio, Inc.* (June 28, 2001), Franklin App. No. 00AP-1110.” *Nu-Trend Homes, Inc. et al. v. Law Offices of DeLibera, Lyons & Bibbo et al.*, Franklin App. No. 01AP-1137, 2003-Ohio-1633.

In his complaint, plaintiff alleges: that defendant wrongfully placed him on post-release control upon his release from Lorain Correctional Institution (LOCI); that he was subsequently returned to LOCI as a result of a sanction imposed by defendant for violating the terms of his post-release control; and that he served an additional four-month term of imprisonment as a result of defendant’s wrongful conduct. Plaintiff contends that the decision to place him on post-release control was erroneous because he had already served his entire sentence prior to his release.

In the motion for summary judgment, defendant characterizes plaintiff’s cause of action as one for false imprisonment and argues that plaintiff’s complaint was not timely filed. R.C. 2743.16(A) provides in relevant part:

“\*\*\* 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 the accrual of the cause of action *or within any shorter period that is applicable to similar suits between private parties.*” (Emphasis added.)

The applicable statute of limitations for a cause of action that alleges false imprisonment is R.C. 2305.11(A) which requires an action for false imprisonment to be commenced within one year after its accrual. *Mickey v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 02AP-539, 2003-Ohio-90; *Haddad v. Dept. of Rehab. & Corr.*, Franklin App. No. 01AP-1130, 2002-Ohio-2813; *Haller v. Borror* (June 14, 1994), Franklin App. No. 93APE12-1657.

Upon review of the allegations of the complaint, plaintiff arguably states a claim against defendant based upon negligence. Giving plaintiff the benefit of the doubt, the court will apply the two-year limitations period.

The exhibits attached to defendant's motion for summary judgment conclusively establish that plaintiff was released from LOCI on September 25, 2000, and placed on post-release control for a period of one year beginning on September 26, 2000, at 9:00 a.m. Plaintiff's signature upon the "Post-Release Control Order" conclusively establishes that he received notice thereof. Thus, plaintiff's cause of action based upon the allegedly wrongful imposition of post-release control accrued on September 26, 2000. Plaintiff did not file his complaint in this matter until April 18, 2003, more than two and one-half years later. Consequently, whether plaintiff's cause of action is characterized as false imprisonment or negligence, his complaint was not timely filed as a matter of law.

Furthermore, to the extent that plaintiff alleges that the imposition of a post-release control sanction was wrongful, this court lacks subject matter jurisdiction to hear that claim. See *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), Franklin App. No. 98AP-1105; *Johnson v. Adult Parole Auth.* (Feb. 15, 2000), Franklin App. No. 99AP-522.

In light of the standard of review, the court finds that the only reasonable conclusion to be drawn from the undisputed evidence set forth above is that defendant is not liable to plaintiff as a matter of law. Defendant's motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor

of defendant. 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:

Donald Starcher, #434-551  
P.O. Box 8107  
Mansfield, Ohio 44901

Plaintiff, Pro se

Sally Ann Walters  
Assistant Attorney General  
150 East Gay Street, 23rd Floor  
Columbus, Ohio 43215-3130

Attorney for Defendant

LP/cmd  
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