

[Cite as *Brunson v. Belmont Correctional Inst.*, 2004-Ohio-5141.]

IN THE COURT OF CLAIMS OF OHIO

TROY BRUNSON :
Plaintiff :
v. : CASE NO. 2004-05996-AD
BELMONT CORRECTIONAL : ENTRY OF DISMISSAL
INSTITUTION :
Defendant :

{¶ 1} On July 15, 2002, plaintiff, Troy Brunson, an inmate incarcerated at defendant, Belmont Correctional Institution (BeCI), filed an original complaint, Case No. 2002-06740-AD in this court. In Case No. 2002-06740-AD, plaintiff alleged his personal property valued at \$427.04 was stolen or destroyed on May 6, 2002, while under the custody and care of BeCI staff. Therefore, plaintiff's cause of action in this particular matter accrued on May 6, 2002 and under the statute of limitations provisions of R.C. 2743.16 ¹ plaintiff had to May 6, 2004, to timely file his complaint. Case No. 2002-06740-AD was subsequently dismissed without prejudice on August 28, 2003, due to plaintiff's failure to pay the requisite filing fee. This August 28, 2003 dismissal constituted a judgment otherwise than on the merits. The August 28, 2002 dismissal entry was affirmed on appeal on November 24, 2003.

{¶ 2} On May 24, 2004, plaintiff filed this complaint alleging the same set of facts and damages as declared in Case No. 2002-06740-AD. Although, this second complaint was filed

¹ R.C. 2743.16(A) states:
“(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.”

outside the two-year statutory time frame promulgated in R.C. 2743.16, plaintiff has presumed the applicable one year saving statute, R.C. 2305.19 applies to the filing of his second complaint.

{¶ 3} R.C. 2305.19, Ohio's general savings statute provides:

{¶ 4} "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 action survives, his representatives may commence a new action within one year after such date. ***"

{¶ 1} Under the clear and unambiguous language of this savings statute, a plaintiff must satisfy three specific requirements before the one-year refiling period is triggered: (1) plaintiff must have commenced or attempted to have commenced the original action within the statute of limitations period; (2) a judgment for the plaintiff is reversed or the action is dismissed otherwise than on the merits; and (3) at the time of the reversal or dismissal otherwise on the merits, the statute of limitations period has already run. See *Lewis v. Connor* (1985), 21 Ohio St. 3d 1, 4 ("It is clear that R.C. 2305.19 has no application unless an action is commenced and is then dismissed without prejudice after the applicable statute of limitations has run."); *Reese v. Ohio State Univ. Hosp.* (1983), 6 Ohio St. 3d 162, 163 ("R.C. 2305.19 can have no application unless an action was timely commenced, was dismissed without prejudice, and the applicable statute of limitations had expired by the time of such dismissal.")

{¶ 2} Here the two-year statute of limitations on plaintiff's property loss claim did not expire until May 6, 2004. Plaintiff's original complaint was dismissed without prejudice on August 28, 2003, and that dismissal was affirmed on November 24, 2003. Consequently, because the statute of limitations of R.C. 2743.16 had not expired at the time of dismissal, the savings statute of R.C. 2305.19 does not apply. Where the statute of limitations has not expired at the time a claim is dismissed, a plaintiff in this court with a property loss claim has two years from the date of loss to refile the claim. In the instant action, plaintiff had through May 6, 2004, to refile his complaint. Since plaintiff refiled his complaint on May 24, 2004, the claim is considered untimely filed and is,

therefore, dismissed for failing to comply with R.C. 2743.16.

{¶ 3} Having considered all the evidence in the claim file and for the reasons set forth above, plaintiff's claim is DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
8/20
Filed 9/2/04
Sent to S.C. reporter 9/27/04