

**IN THE COURT OF CLAIMS OF OHIO**

DAVID A. TURNER	:	
Plaintiff	:	CASE NO. 2003-01881
		Judge J. Warren Bettis
v.	:	
		<u>DECISION</u>
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	
	:	
Defendant		
.....		

{¶ 1} Plaintiff filed his initial complaint in this court on December 21, 2000, against defendant, Ohio Department of Rehabilitation and Correction (ODRC), alleging that ODRC violated both Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000(e) et seq.) and Ohio Revised Code Section 4112 and that he was terminated in January 1997 from his position as deputy warden on the basis of his race. In his complaint, plaintiff avers that he received a letter from the Civil Rights Division of the U.S. Justice Department on September 23, 2000, that granted him the right to sue defendant within 90 days thereof. Plaintiff subsequently dismissed his complaint voluntarily on May 6, 2002.

{¶ 2} Plaintiff next filed the instant action on January 27, 2003, alleging claims of employment discrimination in violation of both federal and state statutes, including R.C. 4112.02,<sup>1</sup> and intentional infliction of emotional distress based upon the publication of unsubstantiated rumors

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<sup>1</sup>R.C. 4112.02 provides in relevant part:  
"It shall be an unlawful discriminatory practice: (A) For any employer, because of the race, color, religion, sex, national origin, handicap, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment."

[Cite as *Turner v. Ohio Dept. of Rehab. and Corr.*, 2004-Ohio-5921.]

regarding plaintiff's interactions with others that occurred outside the workplace.<sup>2</sup> The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 3} Defendant insists that plaintiff's claims, with the exception of the Title VII action, are barred by the two-year statute of limitations, R.C. 2743.16. To the extent that plaintiff's complaint alleges a cause of action for defamation, defendant maintains that R.C. 2305.11(A) provides a one-year statute of limitations. Plaintiff asserts conversely that all of the claims were initially filed timely pursuant to R.C. 2305.07, in light of the holdings in *Cosgrove v. Williamsburg of Cincinnati Mgt. Co.*, 70 Ohio St.3d 281, 1994-Ohio-295; *Campbell v. Rockynol Retirement Community* (1994), 71 Ohio St.3d 144, and *Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369, inasmuch as claims under R.C. 4112 are subject to a six-year statute of limitations and claims alleging intentional infliction of emotional distress have a four-year statute of limitations under R.C. 2305.09.

{¶ 4} The court notes that R.C. 2743.16(A), the statute of limitations for commencing actions in this court, states as follows: "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." The Supreme Court of Ohio has explained that "[t]he rationale underlying statutes of limitations is fourfold: to ensure fairness to defendant; to encourage prompt prosecution of causes of action; to suppress stale and fraudulent claims; and to avoid the inconvenience engendered by delay, specifically the difficulties of proof present in older cases." *O'Stricker v. Jim Walter Corp.* (1983), 4 Ohio St.3d 84, 88, citing *Harig v. Johns-Manville Products Corp.* (1978), 284 Md. 70, 75. In addition, the Tenth District Court of Appeals has held that "R.C. 2743.16(A) applies to all actions against the state in the Ohio Court of Claims. *Fellman v. Ohio Dept. of Commerce* (Sept. 29, 1992), No. 92AP-457, \*\*\*. In that decision [the appellate court] stated that R.C. 2743.16(A) 'was clearly intended to take precedence over all other statute of

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<sup>2</sup>On April 8, 2003, this court granted defendant's motion to dismiss plaintiff's claims for relief premised upon alleged violations of Sections 1981 and 1983, Title 42, U.S.Code.

[Cite as *Turner v. Ohio Dept. of Rehab. and Corr.*, 2004-Ohio-5921.]

limitations provisions of the Ohio Revised Code.” *Talmon v. Ohio State Lottery Commission* (Oct. 6, 1992), Franklin App. No. 92AP-693.

{¶ 5} The statute of limitations for a defamation action begins to run when the allegedly defamatory words were uttered or published, regardless of when plaintiff first learned of the statements. *Miller v. Ohio Rehab. Serv. Comm.* (1997), 86 Ohio Misc.2d 97, 100. In the instant case, the alleged intentional infliction of emotional distress and the defamation actions began to accrue at the latest in the fall of 1996. Plaintiff’s causes of action premised upon alleged violations of R.C. 4112 arose, at the latest, when defendant terminated plaintiff’s employment effective January 22, 1997.

{¶ 6} This court has previously held that the statute of limitations is not tolled during the pendency of administrative proceedings. *Taylor v. Dept. of Rehab. and Correction* (Oct. 11, 2000), Court of Claims No. 2000-08711, citing *Wiley v. Adjutant General’s Department* (Sept. 1, 1994), Franklin App. No. 94API02-176. Plaintiff delayed filing his original complaint in this court until December 21, 2000, well after the alleged defamatory remarks were communicated and nearly four years after he was fired. Consequently, the court finds that, with the exception of his Title VII action, plaintiff’s claims were not timely filed and are hereby dismissed.

{¶ 7} Turning to plaintiff’s remaining cause of action which alleges racial discrimination, the court notes that the Supreme Court of Ohio has stated as follows: “[f]ederal case law interpreting Title 7 of the Civil Rights Act of 1964, Section 2000(e) *et seq.*, Title 42, U.S. Code, is generally applicable to cases involving alleged violations of R.C. Chapter 4112.” *Plumbers & Steamfitters Joint Apprenticeship Commt. v. Ohio Civ. Rights Comm.* (1981), 66 Ohio St.2d 192, 196. To establish a prima facie case, plaintiff must show that (1) he was a member of a statutorily protected class; (2) he was discharged; (3) he was qualified for the position; (4) he was replaced by a person not belonging to the protected class. *Manofsky v. Goodyear Tire and Rubber Co.* (1990), 69 Ohio App.3d 663, 667. See, also, *Sivarajan v. Nationwide Life Ins. Co.* (June 16, 1998), Franklin App. No. 97APE10-1426, discussing *Henderson v. Cincinnati Bell Long Distance, Inc.* (1996), 113 Ohio App.3d 793, 796, and *Mitchell v. Toledo Hosp.* (C.A.6, 1992), 964 F.2d 577, 582. If plaintiff is able to demonstrate a prima facie case, defendant need only show a legitimate nondiscriminatory reason

[Cite as *Turner v. Ohio Dept. of Rehab. and Corr.*, 2004-Ohio-5921.]

for its actions. Once the employer meets its burden of proof, plaintiff-employee must prove defendant's reason was only a pretext for discrimination or was unworthy of credence. *Texas Dept. of Community Affairs v. Burdine* (1981), 450 U.S. 248.

{¶ 8} Plaintiff testified that he was employed with ODRC in 1983, as a corrections officer. During the next 14 years, plaintiff's career with defendant included several advancements such that prior to his termination in 1997 he was working at Allen Correctional Institute (ACI) in the position of a deputy warden, an unclassified employee, exempted from any collective bargaining unit protection. On at least four occasions preceding these promotions, plaintiff submitted signed application forms to defendant that included information about his academic achievements. In November 1983, plaintiff declared he had 13 years of education, including 1.5 years of university course work taken at an "Ohio State Branch." In December 1992, plaintiff listed his total years of education as 14 and in answer to the query "Highest academic degree or level attained" plaintiff responded as follows: "A/A Law Enforcement/Business Administration" from Ohio State University, Lima Branch. The same information was supplied by plaintiff to defendant in October 1993 and January 1995. (Joint Exhibits E, F, G, and H.) At trial, plaintiff claimed that the designation should have been N/A (not applicable) instead of A/A. In addition, plaintiff insisted that the forms had been prepared by either inmate-typists or temporary secretaries and as such, he was not directly responsible for the alleged falsification of records. Plaintiff further argued that it had been common knowledge at ACI that he was attending a local college to obtain an undergraduate degree.

{¶ 9} Plaintiff stated that he began working as a deputy warden under Warden Holland, who had a relaxed administrative style such that she allowed employees to study during normal working hours and to use state resources for personal business projects. Plaintiff testified that Warden Holland also permitted him to counsel inmates individually in an effort to reduce drug trafficking in the institution. Plaintiff further testified that he had developed such a relationship with inmate Palmer, and that his influence on the inmate was having the desired effect; i.e., drug-related problems had declined at ACI. However, Warden Holland left ODRC and she was replaced by Warden Leonard.

[Cite as *Turner v. Ohio Dept. of Rehab. and Corr.*, 2004-Ohio-5921.]

{¶ 10} Warden Leonard, an African-American male, testified that almost immediately upon arriving at ACI, he fielded numerous complaints regarding plaintiff's activities that were in violation of ODRC policies, including such accusations as: plaintiff assigning secretaries to type his term papers, youth sports team bulletins, and Sunday school lessons during regular working hours; showing preferential treatment for certain inmates, especially inmate Palmer; allowing inmates to congregate in his office; permitting inmates to make long-distance telephone calls from his office at state expense; and providing certain inmates special favors.

{¶ 11} At approximately the same time during 1996, defendant began a statewide review of the educational credentials for employees such as plaintiff who were at or above Pay Range (10). In compliance with a request sent to him in June 1996, plaintiff informed defendant that his highest degree attained was a high school diploma and that he was currently attending Findlay University. (Joint Exhibit M.) Soon thereafter, defendant requested that each warden obtain verification of all post-secondary educational achievements listed by employees who had applied for employment or promotion. (Plaintiff's Exhibit 34.) Meanwhile, in August 1996, plaintiff was placed on administrative leave pending an investigation into the allegations that he violated numerous ODRC policies prohibiting favoritism toward specific inmates and the unauthorized use of state property.

{¶ 12} Assistant Chief Inspector Coval commenced an in-depth investigation of the complaints levied against plaintiff, which included interviews of many of plaintiff's co-workers and several inmates at ACI. Plaintiff readily admitted to committing many of the listed infractions, although he offered various rationalizations for his belief that his behavior was acceptable. During the course of the investigation, Inspector Coval also learned that plaintiff did not earn a degree from either Lima Technical College or from The Ohio State University. In addition, several of the other allegations were substantiated either through telephone records or by the recollections of those interviewed. The results of the investigation were turned over to Warden Leonard who instituted disciplinary proceedings in November 1996. As a result of the disciplinary process, plaintiff was found to have violated numerous ODRC rules as well as standards of employee conduct. Warden Leonard recommended that plaintiff be terminated from his employment. The order of removal was executed on January 15, 1997, and it became effective on January 22, 1997.

[Cite as *Turner v. Ohio Dept. of Rehab. and Corr.*, 2004-Ohio-5921.]

{¶ 13} Warden Leonard acknowledged that plaintiff's position was filled by Tom Judd, a Caucasian male, who had been transferred from another institution. According to Warden Leonard, Mr. Judd subsequently resigned when his educational credentials also came into question.

{¶ 14} In the instant action, although plaintiff has not brought forth direct evidence of racial discrimination an inference of discrimination has been shown circumstantially inasmuch as: 1) he was a member of a protected class (African-American); 2) he was discharged; 3) he was arguably qualified for the position;<sup>3</sup> and 4) he was replaced by a person outside the class. Accordingly, the court must determine whether ODRC presented legitimate, nondiscriminatory reasons for its actions and, if so, whether plaintiff has shown that the reasons proffered were a mere pretext for race discrimination.

{¶ 15} Upon review of all the testimony and evidence adduced at trial, the court finds that ODRC supplied ample, credible and compelling documentation that established that it terminated plaintiff's employment for legitimate business and professional reasons unrelated to plaintiff's race. During Inspector Coval's investigation, she compiled transcripts of interviews, telephone records and other information that spans several hundred pages. (Defendant's Exhibit UU.) The hearing officer who reviewed the investigatory reports and who evaluated plaintiff's rebuttal testimony in November 1996, specifically found cause for discipline for multiple violations of institution rules and standards for employee conduct including: 1) dishonesty and falsification regarding the applications for positions, the most recent one having been notarized January 18, 1995; 2) engaging in unauthorized relationships with inmates or their families and theft (with reference to the long-distance telephone calls placed by or for inmate Palmer from plaintiff's office extension at state expense); and 3) misuse of state property and of plaintiff's official position by directing secretaries or allowing inmates to assist in the completion of plaintiff's personal business at state expense.

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<sup>3</sup>The court did not find evidence in the record that plaintiff was required to have an undergraduate degree in order to be qualified for the position of a deputy warden.

[Cite as *Turner v. Ohio Dept. of Rehab. and Corr.*, 2004-Ohio-5921.]

{¶ 16} Inasmuch as the court finds that ODRC has articulated a legitimate, nondiscriminatory reason for termination, the presumption of discrimination has been rebutted; therefore, the burden shifts to plaintiff to present evidence that ODRC's proffered reason was a mere pretext for unlawful discrimination. *Manofsky v. Goodyear Tire & Rubber Co.*, supra.

{¶ 17} The Tenth District Court of Appeals explained that in order to meet the burden with respect to pretext, plaintiff must show the "employer's explanation is not credible." *Ullmann v. Ohio Bureau of Job & Family Servs.*, Franklin App. No. 03AP-184, 2004-Ohio-1622. Pretext requires proof by a preponderance of the evidence. *Id.* In addition, the Sixth Circuit has held that to prove pretext, plaintiff must show "1) defendant's reasons had no basis in fact; 2) the reasons did not actually motivate the discharge; and 3) the reasons were insufficient to warrant a discharge." *Manzer v. Diamond Shamrock Chemicals Co.* (C.A.6, 1994), 29 F.3d 1078.

{¶ 18} Plaintiff argued that he should have received a less severe penalty ranging from a written reprimand to a suspension for one or more days. However, plaintiff failed to identify any other employee who acted similarly and yet was allowed to retain employment. Warden Leonard testified that he had never seen anyone at any other institution conduct himself in the manner adopted by plaintiff and that this was the first time he had encountered this type of problem with a deputy warden. Warden Leonard further testified that race was not a factor in his decision; rather, he viewed the conduct and rule violations to be unacceptable breaches of the safety and security measures that were in place at the institution. The misconduct was in direct conflict with ODRC's overall policy of "fair, firm, and consistent" treatment of inmates. In addition, Warden Leonard stated that he could not readily separate the charges; he considered the totality of the offenses before making his recommendation.

{¶ 19} This court concurs that such a pattern of improper conduct by a senior management employee at defendant's institution compromised the safety and security of employees and other inmates. Absent a finding of illegal purpose or discriminatory intent, this court has consistently held that it will not substitute its judgment for that of the employer and may not second-guess the business judgments of employers regarding personnel decisions. See, e.g., *Dodson v.*

[Cite as *Turner v. Ohio Dept. of Rehab. and Corr.*, 2004-Ohio-5921.]  
*Wright State Univ.* (1997), 91 Ohio Misc.2d 57; *Washington v. Central State Univ.* (1998), 92 Ohio Misc.2d 26; *Boyle v. Dept. of Rehab. and Corr.* (Apr. 22, 2002), Court of Claims No. 00-03140.

{¶ 20} Plaintiff argues that the statewide review and verification of educational credentials was a sham perpetrated by defendant to “weed-out” African-American employees. Upon review of the testimony offered by plaintiff’s witnesses, the court finds that plaintiff failed to substantiate this allegation with sufficient credible or substantive evidence. Moreover, the court does not find that plaintiff’s termination was based solely on his falsification of educational achievement, nor does the court find that defendant was motivated by racially discriminatory animus.

{¶ 21} In sum, the court finds that plaintiff failed to prove, by a preponderance of the evidence, that defendant’s reasons for terminating him were a mere pretext.

{¶ 22} For the foregoing reasons, the court concludes that plaintiff cannot prevail on any of his claims for relief. Consequently, judgment shall be rendered in favor of defendant.

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		<u>JUDGMENT ENTRY</u>
OHIO DEPARTMENT OF	:	
REHABILITATION AND CORRECTION	:	
Defendant	:	
.....	:	

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, 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.

[Cite as *Turner v. Ohio Dept. of Rehab. and Corr.*, 2004-Ohio-5921.]

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J. WARREN BETTIS  
Judge

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Filed October 14, 2004  
To S.C. reporter November 5, 2004