

NORMAN V. WHITESIDE

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2005-07852

Judge Joseph T. Clark

Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} On June 13, 2006, defendant filed a motion for summary judgment pursuant to Civ.R. 56. On July 21, 2006, plaintiff filed a response and a supporting affidavit. On August 2, 2006, the court held an oral hearing on defendant's motion for summary judgment.

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} “*** 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, *Gilbert v. Summit County* (2005), 104 Ohio St.3d 660, 2004-Ohio-7108, citing, *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff's complaint sets forth two causes of action. Plaintiff's first claim alleges that he was injured by toxic fumes from a roofing project while incarcerated in the Southern Ohio Correctional Facility. His second claim alleges that he was injured by a toxic cleaning product while exiting the shower area of the

Madison Correctional Institution.

{¶ 5} In its motion for summary judgment, defendant asserts that plaintiff's claim relating to the roofing project is barred by the applicable statute of limitations, and that plaintiff can prove no set of facts that entitle him to recovery for the alleged injury that resulted from exposure to the cleaning product.

{¶ 6} Pursuant to R.C. 2743.16, claims against the state must be brought within two years of the date of accrual of the cause of action. Defendant argues that plaintiff's cause of action relating to the roofing incident accrued in 1989 and thus his claim is time-barred. Plaintiff asserts that when his cause of action accrued, the statute of limitations was tolled by his incarceration.

{¶ 7} Incarceration was considered a "disability" under former R.C. 2305.16, which tolled the statute of limitations for persons "imprisoned." However, pursuant to R.C. 2743.16, which was in effect when plaintiff's cause of action accrued, the statute of limitations was not, by its own language, tolled for imprisoned individuals. See *Willis v. Ohio Dept. of Rehab. & Corr.* (Aug. 11, 1994), Franklin App. No. 94API03-345. Accordingly, the time within which plaintiff was required to file his claim relating to the 1989 roofing project was not tolled by his incarceration and that claim is now time-barred.

{¶ 8} With regard to plaintiff's claims concerning the alleged use of a toxic cleaning product, plaintiff asserts that defendant knew the product was hazardous based upon both information provided on the manufacturer's safety data sheet and the fact that inmates who used the cleaning product were wearing protective masks and goggles.

[Cite as *Whiteside v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-4738.]

{¶ 9} Defendant argues that the product was used in accordance with the manufacturer's guidelines; that plaintiff was on notice when the showers were being cleaned; that defendant had no notice that injury could occur as a result of the use of the product; that defendant has immunity with regard to decisions concerning when and how to clean showers; and that plaintiff cannot prove a causal link between his injury and defendant's conduct.

{¶ 10} Upon review of the evidence provided by the parties, the court finds that there are genuine issues of material fact regarding plaintiff's second claim for relief.

{¶ 11} Based upon the foregoing, it is recommended that defendant's motion for summary judgment be granted, in part, as it pertains to plaintiff's cause of action that accrued in 1989, and denied, in part, as it pertains to plaintiff's claims involving the allegedly toxic cleaning product.

STEVEN A. LARSON
Magistrate

Entry cc:

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