

Court of Claims of Ohio

The Ohio Judicial Center
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DENNIS R. GIBSON, JR.

Plaintiff

v.

OHIO DEPARTMENT OF JOB AND
FAMILY SERVICES

Defendant

Case No. 2006-04571

Judge Clark B. Weaver Sr.
Magistrate Matthew C. Rambo

MAGISTRATE DECISION

{¶1} On September 11, 2006, defendant filed a motion to dismiss pursuant to Civ.R. 12(B)(6), on the grounds that plaintiff's claim is barred by the applicable statute of limitations. On September 20, 2006, plaintiff filed a "motion to dismiss" that the court construes as a memorandum contra. On September 25, 2006, plaintiff filed a motion for summary judgment pursuant to Civ.R. 56(A). On November 9, 2006, an oral hearing was held before a magistrate of the court on both defendant's motion to dismiss and plaintiff's motion for summary judgment.

{¶2} With regard to defendant's motion to dismiss, it is noted that in construing a complaint upon a motion to dismiss for failure to state a claim, the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190. Dismissal under Civ.R. 12(B)(6) premised on a theory of a statute of limitations is proper only when the face of the complaint conclusively shows that the action is time-barred. *Leichliter v. Natl. City Bank of Columbus* (1999), 134 Ohio App.3d 26.

{¶3} In paragraphs 10-12 of his amended complaint, plaintiff alleges that between November 30, 1999, and February 18, 2003, defendant committed a breach of contract and violated several criminal statutes when defendant removed his daughter, Tiffiney Gibson, from his custody.

{¶4} R.C. 2743.16(A) provides in relevant part:

{¶5} "**** 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.)

{¶6} Defendant argues that plaintiff's amended complaint conclusively establishes that his cause of action accrued no later than February 18, 2003, meaning that plaintiff had to file his complaint on or before February 18, 2005. Plaintiff filed his original complaint on July 13, 2006, and filed an amended complaint on August 28, 2006. Plaintiff argues that pursuant to the "discovery rule" the statute of limitations did not begin to run until he "discovered all the facts" necessary to prove his claim.

{¶7} In general, statutes of limitation begin to run when some act is committed that gives rise to a cause of action. *O'Stricker v. Jim Walter Corp.* (1983), 4 Ohio St.3d 84, 87. The discovery rule provides an exception in that "a cause of action does not arise until the

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plaintiff discovers, or by the exercise of reasonable diligence should have discovered, that he or she was injured by the wrongful conduct of the defendant.” *Norgard, et al. v. Brush Wellman, Inc.*, 95 Ohio St.3d 165, 2002-Ohio-2007, ¶8; see, also, *Oliver v. Kaiser Community Health Found.* (1983), 5 Ohio St.3d 111. However, the rule has been limited in application to actions for medical and legal malpractice and actions for bodily injury or injury to personal property, and courts have declined to extend the rule unless it is specifically incorporated into a statute. See *Investors REIT One v. Jacobs* (1989), 46 Ohio St.3d 176; *Creaturo v. Duko.*, 7th Dist. No. 04 CO 1, 2005-Ohio-1342.

{¶8} The court finds that plaintiff’s claims do not fall into any of the categories under which the discovery rule applies. Based upon the allegations contained in plaintiff’s complaint, the court finds that plaintiff’s claims were filed beyond the time allowed under the applicable statute of limitations and are therefore time-barred. Accordingly, it is recommended that defendant’s motion to dismiss be granted, that plaintiff’s motion for summary judgment be denied, and that all other pending motions be denied as moot.

A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

MATTHEW C. RAMBO
Magistrate

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