

[Cite as *Carter v. Ohio Dept. of Rehab. & Corr.*, 2015-Ohio-5662.]

DEE CARTER	Case No. 2015-00039
Plaintiff	Judge Patrick M. McGrath Magistrate Gary W. Peterson
v.	
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	<u>ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT</u>
Defendant	

{¶1} On June 9, 2015, plaintiff filed a motion for summary judgment pursuant to Civ.R. 56(A). With leave of court, on August 21, 2015, defendant filed both a memorandum in opposition and a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file a response; however, on August 24, 2015, plaintiff filed both a motion for default judgment and a motion to strike defendant's evidence, which plaintiff believes is unrelated to his case. Plaintiff subsequently filed two additional motions to strike on August 28, 2015 and September 17, 2015, with various unauthenticated documents attached thereto. The motions to strike are DENIED as is plaintiff's motion for default 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 Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} In support of his motion, plaintiff offered an unauthenticated document entitled "summary of evidence used in arriving at findings." Defendant supports its motion with the affidavit of parole board hearing officer Jennifer Pribe, plaintiff's post release control revocation hearing documents, which includes the "summary of evidence" document offered by plaintiff, defendant's policy concerning parole board release consideration hearings, and a certified copy of an entry, dated December 11, 2013, from the Court of Common Pleas of Clark County finding that plaintiff is competent to stand trial. Defendant also submitted a transcript of plaintiff's deposition.

{¶5} As set forth in the complaint, plaintiff, formerly an inmate in defendant's control and custody, brings this action asserting a claim of false imprisonment. The undisputed facts establish that plaintiff, a convicted sex offender, was originally released from defendant's custody in 2006 and was subsequently placed on post-release control under the supervision of the Ohio Adult Parole Authority (APA). On December 21, 2011, plaintiff was arrested for a release violation arising out of his unsupervised contact with a minor on two separate occasions in December 2011. Plaintiff was subsequently placed in defendant's custody. Plaintiff admitted to the alleged offense; however, on January 17, 2012, Jennifer Pribe, a hearing officer for the APA, determined that plaintiff had not technically violated a condition of his parole. Due to a clerical error, plaintiff's conditions of supervision did not contain a "no-minor-contact" provision. Pribe ordered defendant to release plaintiff on January 20, 2012. Plaintiff filed this complaint on January 20, 2015.

{¶6} Defendant argues that plaintiff's claim is time-barred by the one-year statute of limitations. Indeed, R.C. 2305.11(A) provides that "An action for * * * false

imprisonment * * * shall be commenced within one year after the cause of action accrued * * *.” Plaintiff was released from defendant’s custody on January 20, 2012, but he did not file his complaint until January 20, 2015. In his complaint, plaintiff alleges that he is disabled due to “mental retardation” such that the statute of limitations is tolled pursuant to R.C. 2305.16.

{¶7} R.C. 2305.16 provides:

{¶8} “Unless otherwise provided in sections 1302.98, 1304.35, and 2305.04 to 2305.14 of the Revised Code, if a person entitled to bring any action mentioned in those sections, unless for penalty or forfeiture, is, at the time the cause of action accrues, within the age of minority or of unsound mind, the person may bring it within the respective times limited by those sections, after the disability is removed. * * *

{¶9} “After the cause of action accrues, if the person entitled to bring the action becomes of unsound mind and is adjudicated as such by a court of competent jurisdiction or is confined in an institution or hospital under a diagnosed condition or disease which renders the person of unsound mind, the time during which the person is of unsound mind and so adjudicated or so confined shall not be computed as any part of the period within which the action must be brought.” Pursuant to R.C. 1.02, “of unsound mind” includes “all forms of mental retardation or derangement.”

{¶10} “Where a plaintiff claims to have been of unsound mind at the time a cause of action accrues, so as to suspend the statute of limitations, which claim is denied by the defendant, plaintiff has the burden of proving that [he] was suffering some species of mental deficiency or derangement.” *Gareau v. Grossman*, 8th Dist. Cuyahoga No. 88246, 2007-Ohio-5711, ¶ 48. (Citations omitted.)

{¶11} Defendant argues that plaintiff cannot prove that he was of unsound at the time his cause of action accrued or that he was continually prevented from the timely prosecution of his lawsuit due to his alleged disability. In support, defendant submitted a certified copy of an entry dated December 11, 2013 from the Court of Common Pleas

for Clark County finding that plaintiff was competent to stand trial. In the entry, the court notes that plaintiff “demonstrated an adequate basic understanding of the nature and objectives of the legal proceedings against him, and comprehended the basic nature of the adversary process. He presented no condition or circumstances that would prevent him from counseling in a rational and reasonable manner with an attorney in the preparation of his own defense.”

{¶12} Plaintiff's cause of action accrued, at the latest on January 20, 2012 when he was released from defendant's custody, but he did not file his complaint until January 20, 2015. Additionally, plaintiff has not challenged defendant's contention that he was adjudicated competent to stand trial on December 11, 2013. Indeed, plaintiff failed to put forth any facts demonstrating a genuine issue of material fact regarding his alleged disability. “[A] general claim of disability, absent specific details, will not toll the time for the running of an applicable statute of limitations.” *Robinson v. Kramer*, 8th Dist. Cuyahoga No. 76643, 1999 Ohio App. LEXIS 5916 (Dec. 9, 1999). “Furthermore, the plaintiff must demonstrate that his or her condition continually prevented the timely prosecution of the lawsuit.” *Gareau*, at ¶ 52; *see also Fisher v. Ohio Univ.*, 63 Ohio St.3d 484 (1992). Based upon the foregoing, the court can only conclude that plaintiff's claim is time barred.

{¶13} Assuming that plaintiff's claim is not time barred, defendant argues that plaintiff's claim of false imprisonment must also fail.

{¶14} “False imprisonment occurs when a person confines another intentionally ‘without lawful privilege and against his consent within a limited area for any appreciable time, however short.’” *Bennett v. Ohio Dept. of Rehab. & Corr.*, 60 Ohio St.3d 107, 109 (1991), quoting *Feliciano v. Kreiger*, 50 Ohio St.2d 69, 71 (1977). “Pursuant to R.C. 2743.02(A)(1), the state may be held liable for the false imprisonment of its prisoners.” *Id.* at paragraph two of the syllabus. “An action for false imprisonment cannot be maintained, however, when the imprisonment is in accordance with the

judgment or order of a court, unless it appears such judgment or order is void on its face.” *Pruitt v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 13AP-117, 2013-Ohio-3743, ¶ 7.

{¶15} “Once the initial privilege expires, the justification for continued confinement expires and possible liability for false imprisonment begins.” *Bennett* at 109. However, “*Bennett* recognized factors may support continued confinement, noting an entity may be liable for false imprisonment ‘[i]n the absence of an intervening justification.’” *Griffin v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 10AP-733, 2011-Ohio-2115, ¶ 21 quoting *Bennett* at paragraph one of the syllabus.

{¶16} In support of its motion, defendant submitted the affidavit of parole board hearing officer Jennifer Pribe, who avers as follows:

{¶17} “3. [Plaintiff] was issued notice of findings of release violations on December 30, 2011 when he was believed to have previously, on December 1 and December 15, 2011, had unsupervised contact with a minor without permission from his supervising officer.

{¶18} “4. [Plaintiff] was arrested for a release violation on December 21, 2011.

{¶19} “5. On December 30, 2011 he was scheduled for a release violation hearing. And that same day, he was given notice that it had been scheduled for January 17, 2012. * * *

{¶20} “6. Furthermore, [plaintiff] *admitted* to the alleged offense on the hearing notification, thereby, waiving his right to a full hearing regarding his release violation.

{¶21} “7. Standard conditions for post release control regarding offenders who have committed sex offenses previously included a limitation on contact with minors. * *

*

{¶22} “* * *

{¶23} “9. In 2009, all offenders, including [plaintiff] were asked to sign new conditions of supervision. This ‘no-minor-contact’ condition did not ‘roll-over’ to his new

post-release control conditions due to a clerical error. While it *should* have been included, this clerical error resulted in it not being included on his new conditions.

{¶24} “10. Therefore, when I reviewed his release violation offense in January 2012, I determined that he technically had not violated the conditions of his release because of this clerical error, as it was not included on the most recent supervisions conditions he had signed. * * *

{¶25} “11. For this reason, I found him not guilty on January 17, 2012 and ordered that he be released from custody and placed back on supervision beginning January 20, 2012.

{¶26} “* * *

{¶27} “14. Because [plaintiff] had waived a full hearing and had admitted to the alleged violation, I did not review his file and alleged offenses until after completion of the scheduled full hearings that day. This resulted in my reviewing his alleged violation in the late afternoon on the 17th of January 2012, *after* the Record Office could start processing a release from the correctional institution that [plaintiff] was being held at.

{¶28} “15. Standard practice, and for security reasons, the Corrections Reception Center (where [plaintiff] was being detained while awaiting his release revocation hearing) required 48 hours advance notice before an inmate could be released. For this reason, after I found [plaintiff] not guilty of the violation on January 17, 2012, I ordered he be released on January 20, 2012 * * *.

{¶29} “16. A delay of 48 hours of advance notice of release to the institution is typical, standard, and reasonable because the institution must run detainers and warrant checks on the individual, return his personal property back to him and receive the State’s property back in exchange, and process him out of the institution’s administrative system, as well as secure transport from the institution he is being held at back to his county of supervision and residence.

{¶30} “* * *

{¶31} “18. [Plaintiff] was released on January 20, 2012, timely and in compliance with the Order of Release I issued to the institution after finding him not guilty at the release violation hearing.”

{¶32} Civ.R. 56(E) states, in part:

{¶33} “* * * When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.”

{¶34} Based upon the undisputed evidence put forth by defendant, the court can only conclude that defendant was legally justified to confine plaintiff at all times during his confinement. “[Defendant ha[s] no discretion to release an inmate until it receive[s] an entry indicating [defendant] no longer [is] privileged or justified in confining the inmate.” *Trice v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 07AP-828, 2008-Ohio-1371, ¶ 19; see also *Griffin, supra*, ¶ 24 (finding that the state is immune from liability even though the facially valid judgment or order was later determined to be void).

{¶35} There is no dispute that plaintiff was subject to post-release control and that he was re-incarcerated for perceived violations of the conditions of his post-release control. Plaintiff admitted to the perceived violations. Additionally, when the APA became aware that the justification for confinement had expired, the APA ordered plaintiff's release from defendant's custody. Furthermore, as Pribe explained, and pursuant to applicable policy, the APA could not order plaintiff's immediate release; rather, defendant required 48 hours advance notice in order to run detainers and warrant checks, return his personal property, receive the state's property in return, process him out of the administrative system, and secure transportation for plaintiff from

the institution to his county of supervision and residence. Plaintiff has put forth no evidence to challenge the facts set forth by defendant.

{¶36} Based upon the foregoing, the court must conclude that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. As a result, defendant's motion for summary judgment is GRANTED and plaintiff's motion for summary judgment is DENIED. Judgment is hereby rendered in favor of defendant. All other pending motions are DENIED as moot. All previously scheduled events are VACATED. 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.

PATRICK M. MCGRATH
Judge

cc:

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