

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Dr. Terrie Sizemore, R.N., D.V.M.,	:	
Plaintiff-Appellant,	:	
v.	:	No. 10AP-841
The Ohio Veterinary Medical Licensing Board et al.,	:	(C.C. No. 2010-01328)
Defendants-Appellees.	:	(REGULAR CALENDAR)
	:	
	:	

D E C I S I O N

Rendered on May 12, 2011

Dr. Terrie Sizemore, R.N., D.V.M., pro se.

Michael DeWine, Attorney General, and *Jennifer Anne Adair*,
for appellees.

APPEAL from the Court of Claims of Ohio.

SADLER, J.

{¶1} Plaintiff-appellant, Dr. Terrie Sizemore, R.N., D.V.M., appeals from the judgment of the Court of Claims of Ohio granting the motion to dismiss filed by defendants-appellees, the Ohio Veterinary Medical Licensing Board ("OVMLB"), the Office of the Governor, the Ohio General Assembly, the Office of the Attorney General, and the Office of the Inspector General, collectively referred to as appellees.

{¶2} According to the complaint, on June 14, 2005, the OVMLB received a complaint regarding veterinary care rendered by appellant in May 2005 to pets owned by Mr. and Mrs. Rohm. The matter was investigated, and on January 4, 2006, appellant received from the OVMLB a Notice of Opportunity for Hearing in accordance with R.C. Chapter 119. Appellant was afforded a hearing on July 20, 2006, and on March 2, 2007, the OVMLB issued an adjudication order finding violations of both the Ohio Revised Code and the Ohio Administrative Code and imposing civil penalties. Appellant appealed the order to the Franklin County Court of Common Pleas, which in turn dismissed the appeal due to a pleading deficiency. Appellant sought further review from this court; however, the parties agreed to dismiss the appeal and have the matter remanded back to the OVMLB to re-issue a final order pursuant to *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877. The matter was remanded to the OVMLB on May 21, 2009, and on June 11, 2009, the OVMLB dismissed appellant's case.

{¶3} Appellant filed the present action against appellees in the Court of Claims of Ohio on January 15, 2010, alleging abuse of process, abuse of discretion, and negligence. The complaint sought damages in excess of \$25,000 and contained a claim for punitive damages.¹ Appellees filed a motion to dismiss on February 17, 2010 arguing that: (1) appellant's claims were barred by the two-year statute of limitations contained in R.C. 2743.16(A), (2) all named appellees were entitled to immunity, and alternatively (3) appellant failed to state a claim upon which relief could be granted.

¹ Pursuant to an entry filed on January 20, 2010, the trial court struck the claim for punitive damages.

{¶4} On August 23, 2010, the trial court granted the motion to dismiss finding that appellant's claims were not only barred by the statute of limitations, but also that it lacked subject matter jurisdiction over appellant's claims because the claims consisted of a collateral attack upon the action taken with respect to her license pursuant to R.C. Chapter 119.

{¶5} Appellant filed an appeal and brings the following assignment of error for our review:

The Court of Claims erred in dismissing Plaintiff-Appellants filing for immunity determination for individuals employed by/or are officers with State Departments in the State of Ohio and the departments' responsible for the individuals' actions. The Court of Claims dismissed the Appellant's action on August 23, 2010 for reasons stating the Appellant's claims are 'no more than a collateral attack upon the license action that was subject to the procedures set forth in RC 119' and 'time barred claims' and also because the Court of Claims stated 'it appears beyond doubt she can prove no set of facts entitling her to recovery.' The Appellant alleges these reasons are in error.

{¶6} In this assignment of error, appellant contends (1) the trial court erred in finding her claims consisted of a collateral attack on the actions taken against her license to practice veterinary medicine, (2) the trial court erred in finding her claims were barred by the statute of limitations, and (3) the trial court erred in failing to address her request for an immunity determination. However, appellant does not separately argue the "collateral attack" issue. An appellate court is required to address only those issues that are both assigned as error and briefed, and " 'App.R. 12(A)(2) permits a court of appeals to disregard any issue that is assigned, but not separately argued.' " *Columbus v. Flowers*, 10th Dist. No. 10AP-32, 2010-Ohio-5081, ¶6, quoting *Catalano v. Pisani* (1999),

134 Ohio App.3d 549, 552. Accordingly, we will not address the "collateral attack" issue referenced by appellant in her assignment of error. With respect to the two remaining issues, because it is dispositive, we will first address appellant's arguments made in regard to the statute of limitations.

{¶7} In deciding whether to dismiss a complaint, pursuant to Civ.R. 12(B)(6), for failure to state a claim upon which relief can be granted, the trial court must presume all factual allegations in the complaint are true and construe the complaint in the light most favorable to the plaintiff, drawing all reasonable inferences in favor of plaintiff. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. Before the court may dismiss the complaint, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling the plaintiff to recovery. *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, syllabus. We review de novo the dismissal of a complaint pursuant to Civ.R. 12(B)(6). *Shockey v. Wilkinson* (1994), 96 Ohio App.3d 91, 94.

{¶8} In this case, the trial court determined the applicable statute of limitations bars appellant's complaint. A complaint may be dismissed, pursuant to Civ.R. 12(B)(6), as failing to comply with the applicable statute of limitations if the face of the complaint makes clear that the action is time-barred. *Steiner v. Steiner* (1993), 85 Ohio App.3d 513, 518-19; *Swanson v. Boy Scouts of Am.*, 4th Dist. No. 07CA663, 2008-Ohio-1692, ¶6, quoting *Doe v. Robinson*, 6th Dist. No. L-07-1051, 2007-Ohio-5746, ¶17, citing *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, ¶11. Only where the complaint shows conclusively on its face that the action is time-barred should a Civ.R. 12(B)(6) motion to dismiss based upon the statute of limitations be granted. *Swanson*, quoting *Jackson v. Sunnyside Toyota, Inc.*, 175 Ohio App.3d 370, 2008-Ohio-687, ¶15.

{¶9} The applicable statute of limitations is found in R.C. 2743.16(A), which provides, in relevant part, "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." "Ordinarily, a cause of action accrues and the statute of limitations begins to run at the time the wrongful act was committed." *DiNozzi v. Ohio State Dental Bd.*, 10th Dist. No. 08AP-609, 2009-Ohio-1376, ¶15, quoting *Collins v. Sotka* (1998), 81 Ohio St.3d 506, 507, 1998-Ohio-331 (internal quotation marks omitted). The trial court found that based on appellant's complaint, her claims accrued at the very latest on March 2, 2007, rendering her January 15, 2010 complaint untimely.

{¶10} Appellant's asserted causes of action concern the Notice of Opportunity for Hearing issued on December 29, 2005, the R.C. Chapter 119 hearing held on July 20, 2006, the adjudication order issued on March 2, 2007, and the notification of November 21, 2007, wherein the OVMLB informed appellant that it would not re-issue an adjudication order and instead was dismissing the matter. Utilizing any one of these dates as the date in which appellant's causes of action accrued, it is clear that appellant's January 15, 2010 complaint is time-barred for failing to be filed within two years of the date of accrual. Though appellant makes the conclusory statement in her appellate brief that she was not able to file a complaint in the court of claims until June 11, 2009, she offers neither factual nor legal support as to why this is so.

{¶11} After review, we find it is clear from the complaint that appellant's claims were filed beyond the statute of limitations set forth in R.C. 2743.16, as they were not filed

within two years of their accrual date. Consequently, we find the trial court did not err in dismissing appellant's complaint pursuant to Civ.R. 12(B)(6).

{¶12} Appellant also contends the trial court erred in dismissing this matter without addressing her request for an immunity determination. Appellant's complaint lists five state entities as defendants, and we have concluded that the trial court was correct in its determination that appellant's claims against those five state entities are barred by the applicable statute of limitations. Because appellant's claims against the named defendants are time-barred, we find no error in the trial court's failure to address immunity with respect to those defendants.

{¶13} For the foregoing reasons, appellant's assignment of error is overruled, and the judgment of the Court of Claims of Ohio is hereby affirmed.

Judgment affirmed.

BRYANT, P.J., and DORRIAN, J., concur.
