

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Darek Lathan,	:	
Plaintiff-Appellant,	:	
v.	:	No. 11AP-710 (C.C. No. 2011-07621)
Department of Rehab[ilitation] & Corr[ection],	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on March 22, 2012

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*Darek Lathan, pro se.*

*Michael DeWine, Attorney General, Mark R. Wilson, and  
Amy S. Brown, for appellee.*

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APPEAL from the Court of Claims of Ohio.

SADLER, J.

{¶ 1} Plaintiff-appellant, Darek Lathan, appeals from a judgment of the Court of Claims of Ohio granting the motion to dismiss of defendant-appellee, Department of Rehabilitation and Correction.

{¶ 2} Appellant presents a single issue for our review:

Whether [sic] the court of claims err [sic] by not tolling the time limit of one year from the date that arbitration concluded on 6/10/10.

{¶ 3} Appellant, an inmate at the Mansfield Correctional Institution at all times relevant to this action, filed a complaint on May 18, 2011 in the Court of Claims of Ohio against appellee alleging that he was assaulted by Corrections Officer Andre Battle on September 20, 2009. Arguing that the court of claims lacked jurisdiction to consider appellant's constitutional claim of retaliation and that appellant's claim was time-barred, appellee moved for dismissal pursuant to Civ.R. 12(B)(1) and (6), respectively. The court of claims concluded appellant's claim was barred by the applicable statute of limitations and granted appellee's motion to dismiss on that basis.

{¶ 4} We review de novo the dismissal of a complaint pursuant to Civ.R. 12(B)(6). *Cole v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 10AP-1163, 2011-Ohio-3164, ¶ 7, citing *Shockey v. Wilkinson*, 96 Ohio App.3d 91, 94 (4th Dist.1994). When considering a motion to dismiss pursuant to Civ.R. 12(B)(6), the court must accept the allegations raised in the complaint as true and make all reasonable inferences in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190 (1988). Dismissal pursuant to Civ.R. 12(B)(6) is only appropriate when it is "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245 (1975), quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99 (1957).

{¶ 5} Pursuant to facts raised in appellant's complaint, his claim of assault occurred on September 20, 2009. Appellant filed his complaint in the Court of Claims of Ohio on May 18, 2011, nearly 20 months after the assault occurred. Because the claim was not within one year of the assault, the court of claims determined it was not timely filed and was barred by the statute of limitations.

{¶ 6} R.C. 2743.16(A) provides:

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.*

(Emphasis added.)

{¶ 7} R.C. 2305.111(B) provides, in relevant part:

[A]n action for assault or battery shall be brought within one year after the cause of the action accrues.

{¶ 8} According to appellant, the applicable statute of limitations was tolled due to Corrections Officer Battle exercising his union rights by choosing to utilize the administrative appeal process and engaging in arbitration, and, therefore, the statute of limitations did not begin to run until the arbitration concluded on June 10, 2010. Appellant argues that the action of Corrections Officer Battle constituted delay which cannot be counted against appellant. Appellant's argument is not well-taken.

{¶ 9} Appellant's cause of action occurred on September 20, 2009, the date of the assault. Because appellant's complaint was not filed until May 18, 2011, it is outside the one-year statute of limitations applicable for assault cases. Thus, the court of claims appropriately determined appellant's claim was barred by the one-year statute of limitations.

{¶ 10} Accordingly, appellant's single assignment of error is overruled, and the judgment of the Court of Claims of Ohio is affirmed.

*Judgment affirmed.*

TYACK and DORRIAN, JJ., concur.

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