

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Christy Hostacky,	:	
Plaintiff-Appellant,	:	
v.	:	No. 21AP-349 (Ct. of Cl. No. 2021-203JD)
Ohio Department of Rehabilitation and Correction,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on December 16, 2021

On brief: *The Spitz Law Firm, LLC, Trisha Breedlove, and Sean Costello*, for appellant.

On brief: *Dave Yost*, Attorney General, *Timothy M. Miller*, and *Michelle C. Brizes*, for appellee. **Argued:** *Timothy M. Miller*.

APPEAL from the Court of Claims of Ohio

DORRIAN, P.J.

{¶ 1} Plaintiff-appellant, Christy Hostacky, filed this appeal seeking reversal of the June 16, 2021 decision by the Court of Claims of Ohio granting dismissal in favor of appellee, the Ohio Department of Rehabilitation and Correction, on appellant's claims of employment discrimination, harassment, and retaliation. For the reasons that follow, we affirm.

I. Facts and Procedural History

{¶ 2} On April 14, 2021, appellant filed an action against appellee in the Court of Claims alleging claims, pursuant to R.C. 4112.02, of gender discrimination, sexual harassment, and retaliation. Appellee filed a motion to dismiss, and appellant filed a

memorandum contra. On June 16, 2021, the Court of Claims dismissed appellant's claim pursuant to Civ.R. 12(B)(6) on grounds that the claim was time-barred due to the expiration of the two-year statute of limitations period set forth in R.C. 2743.16(A).

II. Assignment of Error

{¶ 3} Appellant appeals and assigns the following sole assignment of error for our review:

It was error to dismiss an employment discrimination case brought against a State employer under Chapter 4112 based upon the two-year statute of limitations contained in R.C. 2743.16(A) rather than the then-existing six-year statute of limitations applicable to claims in R.C. 2305.07.

III. Analysis

{¶ 4} We review a trial court's grant of a Civ.R. 12(B)(6) motion to dismiss de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶ 5. "A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint." *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992). In order for a trial court to grant a motion to dismiss for failure to state a claim upon which relief may be granted, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling the plaintiff to recovery. *Id.*; *O'Brien v. Univ. Community Tenants Union*, 42 Ohio St.2d 242 (1975), syllabus. In construing a complaint on a Civ.R. 12(B)(6) motion to dismiss, the court must presume the truth of all the allegations of the complaint and make all reasonable inferences in favor of the non-moving party. *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144 (1991).

{¶ 5} Appellant argues that on the date she filed her complaint, the general statute of limitations in effect for employment discrimination claims was the six-year statute of limitations in R.C. 2305.07. Appellant further argues the Court of Claims erred in applying the two-year statute of limitations contained in R.C. 2743.16(A) applicable to claims filed in the Court of Claims.

{¶ 6} Appellant does not challenge the Court of Claims finding that more than two years had passed between the date on which her claims accrued and the date on which she filed her complaint in the Court of Claims. Rather, appellant challenges the Court of Claims

application of R.C. 2743.16(A). Appellant acknowledges, however, that this court has held that the two-year statute of limitations governs discrimination claims against the state under R.C. Chapter 4112 and refers to our precedent in *Williams v. Bureau of Workers' Comp.*, 10th Dist. No. 09AP-1076, 2010-Ohio-3210, and *McFadden v. Cleveland State Univ.*, 10th Dist. No. 06AP-638, 2007-Ohio-298. Nevertheless, appellant asks this court to revisit these decisions and files this appeal to preserve its arguments for further appeal to the Supreme Court of Ohio. Appellant asks this court to apply the logic we set forth in *Senegal v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 93API08-1161 (Mar. 10, 1994), and *Harris v. Ohio Dept. of Adm. Serv.*, 63 Ohio App.3d 115 (10th Dist.1989).

{¶ 7} In *McFadden*, we considered the analysis in *Senegal* and *Harris* and rejected the same. We held:

Appellant's first assignment of error involves the question of which statute of limitations applies to appellant's claims: the two-year statute set forth in R.C. 2743.16(A) or the six-year statute set forth in R.C. 4112.99. The parties have pointed to two conflicting decisions issued by this court. In the first, *Senegal v. Ohio Dept. of Rehab. & Corr.* (March 10, 1994), Franklin App. No. 93API08-1161, we held that the six-year statute of limitations applied. In the more recent case, we specifically declined to follow *Senegal* and held that the two-year statute of limitations applies. *McCoy v. Toledo Corr. Inst.*, Franklin App. No. 04AP-1098, 2005-Ohio-1848.

In both cases, resolution turned on an application of R.C. 2743.02(A)(1), in which the state waived its immunity from liability. The relevant language in that section states that, "To the extent that the state has previously consented to be sued, this chapter has no applicability." In *Senegal*, we concluded that the state was included within the definition of "employer" for purposes of the age discrimination statute, and therefore had consented to be sued prior to the enactment of Chapter 2743. Thus, the two-year statute of limitations in R.C. 2743.16 did not apply, and we concluded that the six-year limitation period for liability established by statute set forth in R.C. 2305.07 was the proper limitation period.

In *McCoy*, we initially rejected an attempt to distinguish *Senegal* on the grounds that *Senegal* involved an age discrimination claim brought under R.C. 4101.17 (since renumbered as R.C. 4112.14) rather than race and gender

discrimination claims under R.C.4112.02. In rejecting this argument, we stated that "our reading of *Senegal* suggests it is factually similar enough that, were it still good law, it would apply here." *McCoy*, *supra* at ¶ 5. We then pointed out that no other decisions had accepted the six-year statute of limitations and, in fact, a number of decisions had specifically applied the two-year statute of limitations. *Id.* at ¶ 6, citing *Ripley v. Ohio Bur. Of Emp. Serv.*, Franklin App. No. 04AP-313, 2004-Ohio-5577; *Hosseini pour v. State Med. Bd. Of Ohio*, Franklin App. No. 03AP-512, 2004-Ohio-1220; *Obasuyi v. Wright State Univ.*, Franklin App. No. 02AP-300, 2002-Ohio-5521; *Schaub v. Div. Of State Hwy. Patrol*, (Mar. 5, 1996), Franklin App. No. 95APE08-1107.

Finally, we noted that R.C. 4112.99 was amended to allow suits for money damages against the state for discrimination in 1987, well after the adoption of Chapter 2743 in 1975. Since no other statutory provisions or cases evidencing the state's consent to be sued for money damages prior to 1975 could be cited, we concluded that the two-year limitations period set forth in R.C. 2743.16 applied. *Id.* at ¶ 9.

Appellant argues that we erred in *McCoy* by failing to recognize that from the time of its enactment in 1959, Chapter 4112 has included provisions for bringing discrimination claims against the state as an employer, and the state therefore did consent to be sued for discrimination prior to the enactment of Chapter 2743. However, this argument misses the point that, while a plaintiff claiming discrimination could bring an action against the state seeking a remedy other than money damages prior to creation of the Court of Claims, money damages were not available as a remedy until the 1987 amendment to R.C. 4112.99. The state could not have consented to waive its sovereign immunity for purposes of a remedy that was not available at the time of that waiver.

We believe *McCoy* more accurately reflects the law applicable to appellant's claim. Therefore, we reiterate the holding from *McCoy* that the two-year statute of limitations in R.C. 2743.16 applies to claims such as appellant's that seek monetary damages for discrimination against the state. To the extent that we did not explicitly overrule *Senegal* in our decision in *McCoy*, we do so now. Consequently, we find the Court of Claims correctly concluded that appellant's claim was not

timely filed, and we overrule appellant's first assignment of error.

McFadden at ¶ 5-10.

{¶ 8} In *McCoy*, *McFadden*, and *Williams*, this court revisited its analysis in *Senegal* and *Harris* and rejected the same. The precedent set forth in *McFadden*, overruling *Senegal*, has been in place since 2007. This court is not persuaded by appellant's argument to revisit the issue once again.

{¶ 9} Accordingly, we find the Court of Claims did not err in dismissing appellant's claims on the grounds that the two-year statute of limitations in R.C. 2743.16(A) applied to appellant's claims filed in the Court of Claims. Appellant's assignment of error is overruled.

IV. Conclusion

{¶ 10} Having overruled appellant's sole assignment of error, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

LUPER SCHUSTER and JAMISON, JJ., concur.
