

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Derrick L. Beverly,	:	
Plaintiff-Appellant,	:	No. 25AP-735
v.	:	(Ct. of Cl. No. 2025-00578JD)
Ohio State Highway Patrol,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on September 3, 2026

On brief: *Derrick L. Beverly*, pro se.

On brief: [*D. Andrew Wilson*], Attorney General, *Daniel J. Benoit*, and *Maggie Shaver*, for appellee. **Argued:** *Maggie Shaver*.

APPEAL from the Court of Claims of Ohio

DINGUS, J.

{¶ 1} Plaintiff-appellant, Derrick L. Beverly, appeals from a judgment from the Court of Claims of Ohio, which dismissed Beverly’s complaint against defendant-appellee, Ohio State Highway Patrol (“highway patrol”), pursuant to Civ.R. 12(B)(1) and (6). For the reasons that follow, we affirm.

I. Facts and Procedural History

{¶ 2} On June 16, 2025, Beverly filed a pro se complaint against the highway patrol alleging “emotional distortion, nerve and physical damage lost of court cost lawyer fees.” (Sic passim.) (June 16, 2025 Compl. at 2.) Beverly alleged that on January 14, 2024, while Beverly was working as a pizza delivery driver, he had multiple interactions with a highway patrol trooper. During the first interaction, the trooper “held [Beverly] captive and gave [him] a traffic citation.” *Id.* Later in Beverly’s workday, he drove through an intersection

where the same trooper was conducting a traffic stop. After his workday was over, Beverly walked from the pizza shop to a nearby store and encountered the trooper in a parking lot. Beverly alleged that the trooper confronted him about driving near the trooper at the intersection: “[The trooper] says why did you try and kill me . . . I said what are you talking about he said I got close to him and was trying to hit and kill him I told him he was wrong and to make it make sense because I gave him room.” (Sic passim.) *Id.* Beverly declared that he was leaving, went home, and a manager later told him that there was a ticket at the store with Beverly’s name on it. The complaint concluded, “[the trooper] stalked me while he was on the clock harassed me told multiple lies and severed a place of my employment a citation addressed to me without my knowing.” (Sic passim.) *Id.* Beverly sought \$50,000 in damages.

{¶ 3} The highway patrol filed a motion to dismiss, stating that Beverly’s complaint appeared to claim defamation and malicious prosecution, both of which are subject to the one-year statute of limitations under R.C. 2305.11(A). Because the complaint on its face showed that Beverly initiated his action more than one year after the trooper’s alleged conduct, the highway patrol argued that the action was time-barred. Beverly responded that his complaint did not make claims of malicious prosecution and defamation. Instead, he asserted that the allegations in the complaint “concern abuse of state power, retaliation, and violations of due process under color of law” and “are properly constructed as a state-law tort, such as abuse of process, negligent infliction of emotional distress, or official misconduct.” (July 28, 2025 Pl.’s Opp. to Def.’s Mot. to Dismiss at 1, 2.)

{¶ 4} The Court of Claims concluded that Beverly’s “complaint does not allege facts sufficient to sustain any cognizable civil cause of action over which the Court of Claims has jurisdiction.” (Sept. 5, 2025 Entry of Dismissal at 4-5.) The court held that Beverly’s tort claims were either barred by the one-year statute of limitations or were otherwise not reflected in Beverly’s factual allegations. And to the extent that Beverly alleged violations of constitutional rights, the court did not have jurisdiction to vindicate his claims. The court concluded that the tort-related claims must be dismissed under Civ.R. 12(B)(6), and the constitutional claims must be dismissed under Civ.R. 12(B)(1).

{¶ 5} Beverly filed a timely notice of appeal, and the matter is now before this court.

II. Assignments of Error

{¶ 6} Beverly assigns the following three assignments of error for our review:

[I.] The trial court erred in construing Appellant's complaint as asserting only constitutional claims and thereby dismissing for lack of subject-matter jurisdiction under Civ.R. 12(B)(1), when the complaint properly alleged tortious acts of malice, retaliation, and abuse of power within the waiver of sovereign immunity in R.C. 2743.02(A)(1).

[II.] The trial court erred in applying the one-year statute of limitations under R.C. 2305.11(A) to claims sounding in abuse of process, negligent and intentional infliction of emotional distress, and official misconduct, which are subject to the four-year limitations period of R.C. 2305.09(D).

[III.] The trial court failed to construe Appellant's pro se pleadings liberally as required by *State ex rel. Striker v. Cline*, 130 Ohio St.3d 214 (2011) and *Haines v. Kerner*, 404 U.S. 519 (1972), and thus erred in dismissing a complaint that stated a plausible set of facts for relief.

III. Discussion

{¶ 7} In his assignments of error, Beverly disputes the validity of the trial court's decision to dismiss his complaint pursuant to the standards provided in Civ.R. 12(B)(1) and (6).

{¶ 8} Under Civ.R. 12(B)(1), a party may move to dismiss an action or claim based on lack of jurisdiction over the subject matter of the litigation. Subject-matter jurisdiction involves a court's power to hear and decide a case on the merits. *Lowery v. Ohio Dept. of Rehab. & Corr.*, 2015-Ohio-869, ¶ 6 (10th Dist.). A court must dismiss for lack of subject-matter jurisdiction if the complaint fails to allege any cause of action cognizable in the forum. *Brown v. Levin*, 2012-Ohio-5768, ¶ 14 (10th Dist.). An appellate court reviews a trial court's decision to dismiss a complaint for lack of subject-matter jurisdiction under a de novo standard of review. *Pankey v. Ohio Dept. of Rehab. & Corr.*, 2014-Ohio-2907, ¶ 7 (10th Dist.).

{¶ 9} Under Civ.R. 12(B)(6), a party may move to dismiss a complaint for failure to state a claim upon which relief can be granted. A Civ.R. 12(B)(6) motion to dismiss tests the sufficiency of the complaint. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245 (1975). When ruling on a Civ.R. 12(B)(6) motion to dismiss, a court must

construe the complaint in a light most favorable to the plaintiff, presume all factual allegations in the complaint are true, and make all reasonable inferences in favor of the plaintiff. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988); *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144 (1991). The dismissal of a complaint for failure to state a claim is proper when it appears, beyond doubt, that the plaintiff can prove no set of facts entitling him to relief. *Clark v. Grange Ins.*, 2025-Ohio-3243, ¶ 7 (10th Dist.). “Although factual allegations in the complaint are taken as true, ‘unsupported conclusions of a complaint are not considered admitted . . . and are not sufficient to withstand a motion to dismiss.’ ” *Justice v. Jefferson-Pilot Life Ins.*, 1998 Ohio App. LEXIS 6250 (10th Dist. Dec. 24, 1998), quoting *State ex rel. Hickman v. Capots*, 45 Ohio St.3d 324, 324 (1989).

{¶ 10} When reviewing a decision on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted, this court’s standard of review is de novo. *Foreman v. Ohio Dept. of Rehab. & Corr.*, 2014-Ohio-2793, ¶ 9 (10th Dist.); *Cincinnati v. Beretta U.S.A. Corp.*, 2002-Ohio-2480, ¶ 12. De novo review means that an appellate court must independently examine the complaint to determine whether the dismissal was appropriate. *Grubb v. Buehrer*, 2016-Ohio-4645, ¶ 16 (10th Dist.). When reviewing the complaint, we use the same standard that the trial court used and we do not defer to the trial court’s analysis or conclusions. *Hasan v. Franklin Cty. Medicaid Dept.*, 2026-Ohio-1728, ¶ 11 (10th Dist.).

{¶ 11} In his first assignment of error, Beverly asserts that the Court of Claims dismissed the entirety of his complaint based on the holding that all the claims in the complaint were constitutional in nature. But the court did not so hold. The court noted that *in addition* to the tort claims allegedly reflected in the complaint, Beverly argued to the court that his claims included “ ‘violations of due process under color of law.’ ” (Sept. 5, 2025 Entry of Dismissal at 3, 5, quoting July 28, 2025 Pl.’s Opp. to Def.’s Mot. to Dismiss at 1.) An allegation of deprivation of constitutional rights under color of law is a quintessential claim pursuant to 42 U.S.C.S. § 1983. *See 1946 St. Clair Corp. v. Cleveland*, 49 Ohio St.3d 33, 34 (1990), citing *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327, 330-331 (1986). It is well-settled that the Court of Claims lacks subject-matter jurisdiction over Section 1983 claims. *Guillory v. Ohio Dept. of Rehab. & Corr.*, 2008-Ohio-2299, ¶ 12 (10th Dist.). The court

properly dismissed Beverly's specific, purported claim of "violations of due process under color of law" pursuant to Civ.R. 12(B)(1). The court did not provide the same treatment to Beverly's purported tort claims and instead dismissed them pursuant to Civ.R. 12(B)(6). Accordingly, we overrule Beverly's first assignment of error.

{¶ 12} In his second assignment of error, Beverly asserts that the Court of Claims erred in holding that the torts of "abuse of process, negligent and intentional infliction of emotional distress, and official misconduct" were subject to the one-year statute of limitations.¹ (Appellant's Brief at 2.) Again, the court did not so hold. The court held that Beverly's complaint was time-barred to the extent that it could be construed as claiming " 'libel, slander, malicious prosecution, or false imprisonment.' " (Sept. 5, 2025 Entry of Dismissal at 5, quoting R.C. 2305.11(A).) The court otherwise held that it could not discern any cognizable tort claims from the allegations in the complaint. Thus, to the extent that Beverly attempted to allege any tort claims *other* than those listed in R.C. 2305.11(A), the court entered a dismissal based on the failure to articulate a cognizable claim rather than the expiration of any statute of limitations. We therefore overrule Beverly's second assignment of error.

{¶ 13} In his third assignment of error, Beverly asserts that the Court of Claims erroneously dismissed his complaint by making inferences against Beverly's favor instead of liberally construing his pleadings. Beverly does not specify in his brief what inferences should have been drawn in his favor. The highway patrol suggests in its brief that Beverly might be referring to inferences in favor of potential claims for negligent infliction of emotional distress and abuse of process. The highway patrol argues that crucial elements for each of those claims are not reflected anywhere in Beverly's complaint or in his argument against dismissal. We agree.

{¶ 14} Recovery for negligent infliction of emotional distress is only available where (1) the defendant caused physical harm or risk of physical harm to the plaintiff or another person, (2) the plaintiff witnessed or perceived the physical harm or risk of physical harm, (3) the plaintiff suffered severe, debilitating emotional injuries as a result, and (4) such severe emotional injury was the reasonably foreseeable consequence of the defendant's

¹ Although Beverly asserts that his tort claims should have been subject to the four-year statute of limitations under R.C. 2305.09(D), he concedes in his reply brief that the maximum time limit for civil actions against the state is two years under R.C. 2743.16(A).

negligent act. *Paugh v. Hanks*, 6 Ohio St.3d 72 (1983), paragraphs three and four of the syllabus. A plaintiff cannot maintain a claim of negligent infliction of emotional distress outside of “situations such as where the plaintiff was a bystander to an accident or was in fear of physical consequences to his own person.” *Lawyers Coop. Publishing Co. v. Muething*, 65 Ohio St.3d 273, 280 (1992). Nothing in Beverly’s complaint describes or even implies the element of physical harm or risk of physical harm, and for that reason alone the complaint failed to set forth a legally cognizable claim of negligent infliction of emotional distress.

{¶ 15} Recovery for abuse of process is only available where (1) there is a legal proceeding that was initiated in a legitimate way and for legitimate reasons, (2) the proceeding was “perverted to attempt to accomplish an ulterior purpose for which it was not designed,” and (3) the wrongful use of process directly caused damage to the plaintiff. *Yaklevich v. Kemp, Schaeffer & Rowe Co., L.P.A.*, 1994-Ohio-503, paragraph one of the syllabus. A plaintiff does not state a claim of abuse of process by alleging that a defendant maliciously or baselessly initiated a legal proceeding. *Robb v. Chagrin Lagoons Yacht Club, Inc.*, 1996-Ohio-189, ¶ 31-32; *Avco Delta Corp. v. Walker*, 22 Ohio App.2d 61, 65-66 (10th Dist. 1969). Instead, such allegations fit squarely within a claim for malicious prosecution. *Id.* Beverly’s complaint indicates that the highway patrol trooper falsely accused Beverly of attempting to commit vehicular assault, “harassed” Beverly, “told multiple lies,” and issued a citation at Beverly’s workplace when Beverly was not present. (June 16, 2025 Compl. at 2.) Beverly’s complaint does not describe or imply the existence of a legitimately initiated legal proceeding, and he therefore failed to set forth a legally cognizable claim for abuse of process.

{¶ 16} Although we must liberally construe a pro se party’s pleadings and make inferences in the pro se party’s favor, we cannot invent facts in his favor or add elements that are plainly not articulated. *See State ex rel. Karmasu v. Tate*, 83 Ohio App.3d 199, 206 (4th Dist. 1992); *Ashiegbu v. Purviance*, 74 F.Supp.2d 740, 746 (S.D. Ohio 1998); *Beaudett v. Hampton*, 775 F.2d 1274, 1277-1278 (4th Cir. 1985). Under notice pleading standards, a claim does not need to be thoroughly stated or even well stated, but it does need to be stated. *Id.* Apart from tort claims that are barred by the one-year statute of limitations, Beverly’s complaint does not articulate or imply the existence of any cognizable tort claim that could

be pursued at the Court of Claims. Accordingly, he failed to state a claim upon which relief could be granted and otherwise failed to state a claim over which the Court of Claims had subject-matter jurisdiction.

{¶ 17} Finally, we note that within Beverly’s third assignment of error, he argues that the Court of Claims should have allowed Beverly to amend his complaint or conduct discovery instead of granting the highway patrol’s motion to dismiss. Beverly’s argument does not support his assignment of error that the court “failed to construe Appellant’s pro se pleadings liberally.” (Appellant’s Brief at 2.) This court rules only on assignments of error, not mere arguments. *State v. Tarver*, 2025-Ohio-1190, ¶ 25 (10th Dist.). Regardless, the Court of Claims did not err in failing to prompt Beverly to file an amended complaint or in failing to require discovery during the pleadings stage. Discovery is generally not a part of the pleading stage and is not required for a litigant to be able to articulate a cognizable claim as a matter of law. *See York*, 60 Ohio St.3d at 144-145; *Bey v. Patituce & Assocs. L.L.C.*, 2026-Ohio-2941, ¶ 11 (8th Dist.). Under Civ.R. 15(A), Beverly was free to file an amended complaint anytime within 28 days after the highway patrol filed its motion to dismiss, and the Court of Claims was not required to prompt Beverly to file amended pleadings before dismissing the complaint. *See Busy Bee Nursery & Preschool, Inc. v. Ohio Dept. of Job & Family Servs.*, 2018-Ohio-1158, ¶ 20 (10th Dist.).

{¶ 18} Our independent review of Beverly’s complaint reveals that it must be dismissed under Civ.R. 12(B)(1) and (6). We therefore overrule Beverly’s third assignment of error.

IV. Disposition

{¶ 19} Having overruled Beverly’s three assignments of error, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

BOGGS, P.J., and EDELSTEIN, J., concur.
