

[Cite as *Nachowitz v. Miami Univ.*, 2021-Ohio-3245.]

MARC NACHOWITZ

Plaintiff

v.

MIAMI UNIVERSITY

Defendant

Case No. 2021-00192JD

Judge Patrick E. Sheeran  
Magistrate Scott Sheets

ENTRY GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

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{¶1} On May 24, 2021, defendant moved for summary judgment on the basis that the two-year statute of limitations contained in R.C. 2743.16(A) bars plaintiff's complaint. The motion has been fully briefed. For the following reasons, the court GRANTS defendant's motion for summary judgment.

{¶2} Ohio Civ.R. 56(C) states, in part:

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 summary 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.

The party seeking summary judgment "bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of material fact on a

material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). To meet this initial burden, the moving party must be able to point to evidentiary materials of the type listed in Civ.R. 56(C). *Id.* at 292-293.

{¶3} If the moving party meets its initial burden, the nonmoving party bears a reciprocal burden outlined in Civ.R. 56(E), which states, in part:

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.

In seeking and opposing summary judgment, parties must rely on admissible evidence. *Keaton v. Gordon Biersch Brewery Rest. Group*, 10th Dist. No. 05AP-110, 2006-Ohio-2438, 2006 Ohio App. Lexis 2287, ¶18.

## Facts

{¶4} Defendant's motion and the evidence submitted with it establish the following material facts. Plaintiff Marc Nachowitz (plaintiff) is Jewish and a former Assistant Professor at Defendant Miami University. On April 9, 2021, he filed his complaint alleging he was denied tenure in 2018-2019 due to his religion, a violation of Ohio Revised Code § 4112.02. He claims various damages and requests reinstatement and promotion to a tenured faculty position. (Complaint ¶¶ 2; 13; 17).

{¶5} At Miami University, the University Promotion and Tenure Committee makes the recommendation to grant or deny tenure. Pursuant to the University's policy manual, a written statement is issued to a tenure applicant with the Committee's reasons for deciding against recommending tenure. The Committee issued its letter declining to recommend Nachowitz for tenure on January 9, 2019. (Affidavit of Dr.

Jason Osborne, ¶¶ 3-5; Exhibit B thereto). Of note, in responding to defendant's motion, plaintiff does not argue that any of these facts are in dispute.

### **Law and Analysis**

{¶6} R.C. 2743.16(A) provides, "civil actions against the state \* \* \* 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." Further, in *McFadden v. Cleveland St. Univ.*, 10th Dist. No. 06AP-638, 2007 Ohio 298, ¶ 10, the Tenth District upheld this court's dismissal of a discrimination claim based on the application of R.C. 2743.16(A). In so doing, the court stated, "we reiterate \* \* \* 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." Further, as defendant points out, though subsequent proceedings addressed issues related to en banc proceedings, McFadden's determination regarding the application of R.C. 2743.16 to discrimination claims remains the law. See *McFadden v. Cleveland St. Univ.*, 120 Ohio St.3d 54, 2008-Ohio-4914; *McFadden v. Cleveland St. Univ.*, 10th Dist. No. 06AP-638, 2009-Ohio-362. Thus, the court finds plaintiff's assertion that the six-year statute of limitations, which normally governs discrimination claims brought pursuant to R.C. 4112, et seq, applies here is incorrect as a matter of law. Instead, the court finds that R.C. 2743.16(A) applies to plaintiff's claims.

{¶7} Further, plaintiff does not dispute, and the court finds that plaintiff's claims accrued when defendant issued plaintiff the tenure denial letter on January 9, 2019. See *Kozma v. AEP Energy Services*, 10th Dist. No. 04AP-643, 2005-Ohio-1157, ¶ 38. Having filed his complaint on April 9, 2021, the court finds that plaintiff's complaint is untimely per R.C. 2741.16(A).

{¶8} For the reasons stated herein, the court finds that there are no genuine issues of material fact regarding the date plaintiff's claims accrued or the date plaintiff filed his complaint. The court further finds that defendant is entitled to judgment as a

matter of law because the statute of limitations bars plaintiff's claims. Reasonable minds could only reach this conclusion. Defendant's motion for summary judgment is GRANTED and judgment is hereby rendered in favor of defendant. 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.

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PATRICK E. SHEERAN  
Judge

Filed July 28, 2021  
Sent to S.C. Reporter 9/17/21