

[Cite as *Goins v. Attorney Gen.*, 2003-Ohio-2177.]

IN THE COURT OF CLAIMS OF OHIO

DANA GOINS	:	
Plaintiff	:	
v.	:	CASE NO. 2002-02400-AD
ATTORNEY GENERAL	:	<u>ENTRY OF DISMISSAL</u>
Defendant	:	

.....

{¶1} THE COURT FINDS THAT:

{¶2} 1) On February 15, 2002, plaintiff, Dana Goins, filed a complaint against defendant, Attorney General. Plaintiff alleges, in violation of his rights under the Fourth Amendment of the United States Constitution, money in the amount of \$1,800.00 was seized from him and never returned. Plaintiff seeks the return of this money;

{¶3} 2) On September 16, 2002, plaintiff submitted the filing fee;

{¶4} 3) On November 18, 2002, defendant filed a motion to dismiss;

{¶5} 4) In support of the motion to dismiss, defendant stated in pertinent part:

{¶6} “Accepting all of Goins’ allegations as true, there is not a single allegation of fact related in any way to the office of the Ohio Attorney General. The complaint solely relates to the conduct of a local police department; either the Fairfield Police Department or the Hamilton Police Department, and to an order of the Butler County Common Pleas Court. Accordingly, pursuant to Civ. R. 12(B)(6), the Plaintiff has failed to state a claim against the Ohio Attorney General for which relief may be granted.

{¶7} “To the extent that Goins wishes to pursue claims against the Butler County Common Pleas Court, the Hamilton Police Department, or the Fairfield Police Department, this Court lacks subject matter jurisdiction. Pursuant to R.C. 2743.02(A)(1), the “state”

waived its immunity from liability and consented to be sued in the Ohio Court of Claims pursuant to the provisions of the Court of Claims Act, R.C. Chapter 2743.01 *et seq.* And pursuant to R.C. 2743.02(E), the only Defendant in original actions filed in the Court of Claims is the state. The term “state” is defined in R.C. 2743.01(A) as excluding political subdivisions. . . The statute of limitations for actions in the Court of Claims is 2 years. See R.C. 2743.16(A). Taking the allegations in the complaint as true, the seizure took place in November of 1998. Thus, Goins had until November of 2000 to file a complaint in the Court of Claims. However, the complaint in this case was filed on April 12, 2002, well after the expiration of the statute of limitations.”;

{¶8} 5) On November 22, 2002, plaintiff filed a motion for leave to file reply briefs;

{¶9} 6) On December 2, 2002, plaintiff filed a reply brief. In support of the reply brief plaintiff stated in pertinent part:

{¶10} “. . . the Ohio Attorney General’s Office, in their official capacity, must be held liable for the “taking” of private property, since they are the only defendant in an original action in the Ohio Court of Claims and where the state, though not a party to the suit, is the real party which relief is sought. Plaintiff’s suit is nominally against defendant as an individual, but they could operate to control the action of the state or subject it to liability. . .

{¶11} “Plaintiff contends that R.C. §2743.16(A) does not pertain to his claim and that there is nothing in §2743 that gives an indication of the Statute of Limitations for such a claim that he has filed; Recovery of Illegally Seized Private Property. R.C. §2305.09-An action for any of the following causes shall be brought within four years after the cause thereof accrued: (B) For the recovery of personal property or for taking or detaining it.

{¶12} “If a person has four years under this provision, to recover personal property, then he must have equal time to file a claim in this court.”;

{¶13} 7) On December 9, 2002, defendant filed a motion to file reply to plaintiff’s memorandum in opposition to defendant’s motion to dismiss and a reply to plaintiff’s memorandum;

{¶14} 8) In support of the reply, defendant stated in pertinent part:

{¶15} “In 1991, Senate bill 125 eliminated incarceration as a disability which tolled

the statute of limitations. See *Poole v. Reinhart* (November 26, 1996), Franklin App. No. 96APE05-700 (Attached as Exhibit 1). The present version of the statute provides that the statute of limitations is tolled if after the cause of action accrues:

{¶16} “. . . the person entitled to bring the action becomes of unsound mind and adjudicated as such by a court of competent jurisdiction or is confined in an institution or hospital under a diagnosed condition or disease which renders the person of unsound mind’

{¶17} “The statute does not contain a provision that tolls the statute of limitations by virtue of incarceration in a correctional institution. See, *Clark v. Ohio Adult Parole Authority* (April 25, 2002), Franklin App. No. 01AP-1108 (R.C. 2305.16 does not toll the statute of limitations for incarcerated people.)”;

{¶18} 9) On December 23, 2002, plaintiff filed a motion to reply to defendant’s reply. In support of the reply, plaintiff stated in pertinent part:

{¶19} “Accepting the fact that the *Williams* case does not allow tolling for an incarcerated Plaintiff bringing suit against the State and accepting the fact that there is a 2-year statute of limitations for bringing a suit in this court, then it must be taken into consideration that the 2-year time period should still be running since Plaintiff filed a Motion to Return Property in the Common Pleas Court on October 10, 2000, only to never receive a response from that court on the motion. Additionally, even if the 2-year time limits were to be calculated from that date, the time would not expire until approximately October 10, 2002. Since the Plaintiff filed his original petition in this respective court on February 15, 2002, and had it amended and filed on April 24, 2002, this would put those filings well within that 2-yeat [sic] time period.”

{¶20} 10) On February 26, 2003, plaintiff filed a motion for leave of court to file supplement to original claim. Plaintiff wishes this court to consider the Seventh District Court of Appeals holding in *Lynn v. Limbert* (1997), 690 N.E. 2d 102 prior to making a ruling on his case.

{¶21} 11) On March 12, 2003, defendant filed a memorandum in opposition to plaintiff’s motion for leave to file supplement to original claim;

{¶22} 12) In support of the memorandum, defendant stated in pertinent part:

{¶23} “Goins’ motion for leave is merely another attempt to reiterate the same legal position he has previously taken. There is no basis in the civil rules or the rules of the Court of Claims for continuously filing legal memoranda that do nothing more than reargue legal points already made.

{¶24} “If the Court accepts Goins’ latest legal memorandum, the Attorney General’s response remains the same as was presented in its motion to dismiss. Goins’ claim concerns a search conducted by a local police department and a decision by a common pleas court concerning disposition of confiscated property, none of which relates to conduct of the office of the Attorney General. Goins’ case, in actuality, is a claim against a political subdivision and an appeal of a common pleas court order. As set forth in the Attorney General’s motion to dismiss, the Court of Claims Act clearly prohibits this Court from determining claims against political subdivisions. And it is well-established that the Court has consistently refused to sit as an appellate body for the purpose of reviewing a tribunal’s decision. Finally, the Attorney General continues to maintain that Goins’ complaint is time barred by the statute of limitations for the same reasons set forth in the Attorney General’s motion to dismiss and reply to Goins’ memorandum in opposition to that motion;

{¶25} 12) On March 19, 2003, plaintiff filed a reply to defendant’s opposition;

{¶26} 13) In support of the reply, plaintiff stated in pertinent part:

{¶27} “In reply to their claim, Plaintiff respectfully argues that even though the Attorney General is not directly involved in the police seizing his money, they are now responsible for the money for the following reasons.

{¶28} “R.C. 2743.02: the state shall be held liable in the Court of Claims in any action that is timely filed pursuant to §2743.16 of the revised Code and that it is based upon the acts or omissions.

{¶29} “R.C. 2743.02(E): THE ONLY DEFENDANT IN ORIGINAL ACTIONS IN THE COURT OF CLAIMS IS THE STATE.

{¶30} “Pursuant to the provisions of R.C. Ch 2743, the state has consented to be sued and have its liability determined in the Court of Claims . . . *Drain v. Kosydar*, (Ohio 1978) 54 Ohio St.2d 49, 374 N.E.2d 1253, 8 O.O. 3d 65.

{¶31} “(1983) The requirement of R.C. §2743.13(A) that a complaint in the Court of Claims name the state department or agency involved does not make such department or agency a party, the state itself being the only party defendant in an original action in the Court of Claims pursuant to R.C. §2743.02(E): *Scott v. Ohio Dept. of Taxation*, 11 OApp3d 20, 11 OBR 32, 462 NE2d 1234.”

{¶32} THE COURT CONCLUDES THAT:

{¶33} 1) R.C. 2743.02(E) in pertinent part states:

{¶34} “The only defendant in original actions in the court of claims is the state.”;

{¶35} 2) R.C. 2743.16(A) in pertinent part states:

{¶36} “. . . 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.”;

{¶37} 3) “R.C. 2305.16 does not toll the statute of limitations for people who are incarcerated, but applies to people who are minors or who are of unsound mind. R.C. 2305.15(B) works as a tolling statute for persons who wish to sue an imprisoned person. However, the statute does not toll the statute of limitations for inmates who wish to sue others. . . .” *Donald Clark v. Ohio Adult Parole Authority* (April 25, 2002) Franklin App. No. 01AP-1108;

{¶38} 4) In the case at bar, plaintiff seeks to sue the police department or in the alternative, the Common Pleas Court judge, not a state entity;

{¶39} 5) The court of claims lacks jurisdiction to hear a claim to the extent that it asserts constitutional violations. *Gersper v. Ohio Dept. of Hwy. Safety* (1994), 95 OAPP3d 1, 641 NE 2d 1113;

{¶40} 6) The case of *Lynn v. Limbert* (1997), 17 Ohio App. 3d 236, 690 N.E. 2d 102, is relevant as to the merit of the plaintiff’s action not the appropriateness of filing this action in this court against this defendant.

{¶41} IT IS ORDERED THAT:

{¶42} 1) Defendant’s motion to dismiss is GRANTED;

{¶43} 2) Plaintiff’s motion for leave to file a reply brief is GRANTED;

- {¶44} 3) Defendant's motion to file a reply memorandum is GRANTED;
{¶45} 4) Plaintiff's motion to file a reply to defendant's reply is GRANTED;
{¶46} 5) Plaintiff's motion for leave to file supplement to original complaint is GRANTED;
{¶47} 6) Plaintiff's case is DISMISSED;
{¶48} 7) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Plaintiff, Pro se.

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