

[Cite as *Cummins v. Madison Corr. Inst.*, 2011-Ohio-1608.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Michael E. Cummins,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 10AP-769
v.	:	(C.C. No. 2010-01999)
	:	
Madison Correctional Institution,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on March 31, 2011

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*Michael DeWine*, Attorney General, and *Stephanie D. Pestello-Sharf*, for appellee.

*Michael E. Cummins*, pro se.

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APPEAL from the Court of Claims of Ohio

KLATT, J.

{¶1} Plaintiff-appellant, Michael E. Cummins, appeals from a judgment of the Court of Claims of Ohio granting summary judgment to defendant-appellee, Madison Correctional Institution. For the following reasons, we affirm that judgment.

**Facts and Procedural History**

{¶2} On January 29, 2010, Cummins re-filed a complaint in the trial court in which he claimed that the appellee falsely imprisoned him and threatened him. Cummins originally asserted these same claims in a 2007 complaint but eventually dismissed that complaint. Appellee moved for summary judgment, arguing that it was entitled to judgment as a matter of law on both of Cummins' claims. Specifically, appellee alleged

that the statute of limitations barred the claims and that the claims failed as a matter of law. The trial court granted summary judgment to appellee, concluding that the statute of limitations barred Cummins' claim for false imprisonment and that his intentional infliction of emotional distress claim<sup>1</sup> failed as a matter of law.

{¶3} Cummins appeals and assigns the following error:

DID THE COURT OF CLAIMS IMPROPERLY FIND THAT  
THERE WERE NO GENUINE ISSUES OF MATERIAL  
FACT?

### **First Assignment of Error- Grant of Summary Judgment**

{¶4} Cummins contends in his assignment of error that the trial court improperly granted summary judgment. We disagree.

{¶5} Appellate review of summary judgment motions is de novo. *Andersen v. Highland House Co.* (2001), 93 Ohio St.3d 547, 548. " 'When reviewing a trial court's ruling on summary judgment, the court of appeals conducts an independent review of the record and stands in the shoes of the trial court.' " *Abrams v. Worthington*, 169 Ohio App.3d 94, 2006-Ohio-5516, ¶11 (quoting *Mergenthal v. Star Banc Corp.* (1997), 122 Ohio App.3d 100, 103). Civ.R. 56(C) provides that a trial court must grant summary judgment when the moving party demonstrates that (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) 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. *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶6.

{¶6} Cummins' argument in his assignment of error focuses on the merits of his claims. However, the statute of limitations bars both of Cummins' claims. Pursuant to

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<sup>1</sup> The trial court construed Cummins' allegation that appellee threatened him to be a claim for intentional

R.C. 2743.16(A), civil actions against the state in the Court of Claims "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." We address each claim individually.

### **False Imprisonment**

{¶7} A claim for false imprisonment must be brought within one year after the cause of action accrues. R.C. 2305.11(A); *Haddad v. Dept. of Rehab. & Corr.*, 10th Dist. No. 01AP-1130, 2002-Ohio-2813, ¶21. Because false imprisonment claims between private parties are subject to a one-year statute of limitations, Cummins' false imprisonment claim in the Court of Claims is also subject to that statute of limitations. See *Bell v. Ohio State Bd. of Trustees*, 10th Dist. No. 06AP-1174, 2007-Ohio-2790, ¶19.

{¶8} A false imprisonment claim generally accrues upon release from confinement. *Robinson v. Dept. of Rehab. & Corr.*, 10th Dist. No. 10AP-550, 2011-Ohio-713, ¶14. Here, appellee presented undisputed evidence that it released Cummins from prison on November 4, 2001. Therefore, Cummins' false imprisonment claim accrued on November 4, 2001 and had to have been asserted by November 4, 2002. Cummins did not originally file this complaint until June 20, 2007, almost six years after the accrual of his cause of action. Accordingly, the one-year statute of limitations in R.C. 2305.11(A) bars Cummins' claim for false imprisonment.

### **Intentional Infliction of Emotional Distress**

{¶9} The statute of limitations for an intentional infliction of emotional distress claim is four years. R.C. 2305.09(D); *Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369,

375, abrogated on other grounds by *Welling v. Weinfeld*, 113 Ohio St.3d 464, 2007-Ohio-2451. Because that period is longer than two years, Cummins' claim for intentional infliction of emotional distress in the Court of Claims is subject to the R.C. 2743.16(A) two-year statute of limitations. *Bell*.

{¶10} A cause of action for intentional infliction of emotional distress does not accrue until the tort is complete, that is, at the time the injury is incurred and the emotional impact is felt. *Id.* at ¶22; *Biro v. Hartman Funeral Home* (1995), 107 Ohio App.3d 508, 514. Cummins alleged that the threatening conduct that formed the basis of his claim occurred two days before his scheduled release from prison, which would have been on November 2, 2001. Accordingly, Cummins' claim accrued at the latest on November 2, 2001 and had to have been asserted by November 2, 2003. Cummins did not originally file this complaint until June 20, 2007, almost six years after the accrual of his cause of action. Accordingly, the two-year statute of limitations in R.C. 2743.16(A) bars Cummins' claim for intentional infliction of emotional distress.

{¶11} Because the statute of limitations bars both of Cummins' claims, the trial court did not err when it granted summary judgment. Accordingly, Cummins' assignment of error is overruled and we affirm the judgment of the Court of Claims of Ohio.

*Judgment affirmed.*

FRENCH and CONNOR, JJ., concur.

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