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2012 IL App (3d) 110636-U

Order filed August 23, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

GREGORY SIMMONS,) Appeal from the Circuit Court
) of the 10th Judicial Circuit,
Plaintiff-Appellant,) Tazewell County, Illinois,
)
v.) Appeal No. 3-11-0636
) Circuit No. 11-L-35
THE CITY OF PEKIN, ILLINOIS, a)
municipal corporation, TIMOTHY) Honorable
GILLESPIE, JAMES BRECHER, and TED) Stuart P. Borden,
MILLER,) Judge, Presiding.
Defendants-Appellees.	

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment in favor of a police department on a claim for deprivation of employment benefits was upheld because the Tort Immunity Act, under which the plaintiff had a claim, required that the claim be filed within a year that the claim accrued, and the plaintiff failed to file his claim in time.
- ¶ 2 The plaintiff, Gregory Simmons, brought a claim against the defendants, the City of Pekin, the Chief of Police Timothy Gillespie, and Deputy Chiefs James Brecher and Ted Miller,

claiming the city police department deprived him of certain liberties protected by the Illinois Constitution and interfered with his employment with the police department. The trial court granted the defendants' motion to dismiss, finding that the claim was filed outside of the statute of limitations in the Tort Immunity Act (the Act). The plaintiff appealed, arguing that his were constitutional and contractual claims that did not fall under the Act and the statute of limitations did not apply. We affirm.

¶ 3

FACTS

¶ 4 The plaintiff began working as a patrol officer for the Pekin police department in 1995 and continued to work there continuously until March 2006. The plaintiff was assigned to work the third shift, and, in 2003, was elected to represent that shift at committee meetings to address labor and management issues in the department. Gillespie, the Chief of the Department, represented management in the collective bargaining negotiations discussed by the committee. In 2004, negotiations relating to a collective bargaining agreement began, and were submitted to an arbitrator when a conclusion could not be reached. The issues were never resolved and members of the committee, including the plaintiff, refused to sign the agreement.

¶ 5 At the committee meetings, the plaintiff voiced concerns with the command staff, and in early 2006 the possibility of a no-confidence vote against Chief Gillespie was discussed. In March 2006, Gillespie proposed a disciplinary meeting for the plaintiff regarding a letter the plaintiff had written regarding the plaintiff's absences as a result of recently being moved to the day shift. A fitness evaluation was conducted in March 2006, and it was determined that the plaintiff was no longer fit for duty. The plaintiff was first placed on paid administrative leave, and later was placed on unpaid leave. The plaintiff consulted other mental health professionals,

who determined that he was fit for duty. In October 2009, this court reviewed the administrative proceedings and reversed the plaintiff's suspension.

¶ 6 In March 2011, the plaintiff filed a complaint against the city, Gillespie, Miller, and Becher for violating the First Amendment of the Illinois Constitution. The plaintiff alleged that he was deprived of his employment and the benefits that were included with the job because of his speech about the command staff and the discussion of the no-confidence vote.

¶ 7 The defendants filed a motion to dismiss, arguing that the complaint was time-barred by the statute of limitations included in the Act. The trial court granted the motion, finding that the plaintiff's claim were time-barred under the Act and, alternatively, failed to state a cause of action. The plaintiff appealed, arguing the Act did not apply to contractual or constitutional claims, and there was a five year statute of limitations that he did not violate.

¶ 8 ANALYSIS

¶ 9 The plaintiff first argues that the claim he filed was based on a contract claim, thus the Act and its statute of limitations does not apply to his claim. Although a contract claim does not fall under the Act, the plaintiff did not raise the issue of contract claim at the trial court level. Because the contractual issue was not raised at the trial court level, it cannot be raised for the first time on appeal. *L.A. Connection v. Penn-American Ins. Co.*, 363 Ill. App. 3d 259 (2006).

¶ 10 The plaintiff also argues that his complaint alleges a violation of the Illinois Constitution, which is not included in the Act, thus allowing him a five year period to file his claim instead of the one year period as set out in the Act. We review *de novo* the dismissal of a claim on statute of limitations grounds. *Softcheck v. Imesch*, 367 Ill. App. 3d 148 (2006).

¶ 11 In the Act, the statute of limitations applies to all cases involving a civil action including

any action based upon the Illinois Constitution. 745 ILCS 10/8-101(c)(West 2008). Though issues under the Constitution fall under the civil actions covered in the Act, some cases have determined that not all constitutional issues can apply the rule. *E.g., Melbourne Corp. v. Chicago*, 76 Ill. App. 3d 595 (1979). After these cases were decided, the Act was amended to include the definition of an injury in a civil action claim under the Act. 745 ILCS 10/1-204 (West 2008). The definition of injury included any claim based on the State or Federal Constitution. 745 ILCS 10/1-204.

¶ 12 After the Act was amended, other cases held that the Act's statute of limitations did not apply to constitutional cases that were nontortious civil actions, such as an abuse of governmental power. *E.g., Raintree Homes v. Village of Kildeer*, 302 Ill. App. 3d 304 (1999). The holding was not adopted by our state supreme court, which has held that the Act does not automatically exclude nontortious actions, and the plain language of the statute must be observed to determine if the Act must be applied to a certain case. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248 (2004). The plain language of the Act includes any civil action "based upon the common law or statutes, or Constitution of this State," 745 ILCS 10/8-101(c), meaning constitutional claims must be included in the Act.

¶ 13 The case on which the plaintiff focuses his argument, *Melbourne Corp. v. Chicago*, was decided in 1979 and held that the Act was not applicable to a constitutional tort. In 1986, however, the definition of injury was added to the Act, and the definition included any injury alleged in a civil action under both State and Federal Constitutions, so any holding in *Melbourne* regarding constitutional claims and the Act are not reliable. The Act also defines any civil action as any action based on common law, statutes, or the State Constitution, so based on the plain

language of the Act, any constitutional claims that the plaintiff has is covered by the Act under both the definition of a civil action and injuries of the civil action. The plaintiff's claim is based on the Illinois Constitution, thus his case falls under the Act and is subject to its one year statute of limitations.

¶ 14 The plaintiff also contends that his claim did not accrue at the time the defendants have argued, March 2006 when the administrative proceedings began, and it actually accrued in October 2009 when this court reviewed the administrative proceedings and reversed the plaintiff's suspension. Whether the plaintiff's claim accrued in March 2006 or in October 2009, the plaintiff still filed his claim over a year after these dates, and under the statute of limitations set out in the Act, the plaintiff's claim was untimely.

¶ 15 Because the plaintiff's claim falls under the Act and was not filed within the one year statute of limitations set out in the Act, we affirm the trial court's dismissal of the plaintiff's complaint.

CONCLUSION

¶ 16 The judgment of the circuit court of Tazewell County is affirmed.

¶ 17 Affirmed.