

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

KEVIN LITTLE,)	
)	
Plaintiff,)	
)	
vs.)	No. 01-2572-V
)	
CORRECTIONS CORPORATION OF)	
AMERICA, INC., RUBY STEIN, in)	
his official capacity as)	
Administrator of Shelby County)	
Training Center, Mayor JIM ROUT,)	
in his official capacity as Mayor)	
of Shelby County, and SHELBY COUNTY)	
GOVERNMENT,)	
)	
Defendants.)	

ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS

Kevin Little filed his original complaint on July 20, 2001 under 42 U.S.C. § 1983, alleging that the defendants, Shelby County, Mayor Rout and Ruby Stein in their official capacities, and Corrections Corporation of America, violated his civil rights under the Eighth and Fourteenth Amendments to the United States Constitution. Little also alleges Tennessee constitutional violations against all defendants and asserts Tennessee common law claims against the individual corrections officers. The parties in this action have consented to trial before the United States Magistrate Judge.

Before the court is the August 7, 2001 motion to dismiss of defendants Mayor Rout and Shelby County Government (collectively

County) and the September 12, 2001 motion to dismiss of defendant Corrections Corporation of America (CCA). All defendants assert that plaintiff Kevin Little's complaint filed against them is time-barred based on the applicable statute of limitations. Little failed to respond to the defendants' motions to dismiss in a timely manner. Hence, on October 17, 2001, this court ordered Little to show cause why the case should not be dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Although Little offered no formal response to the order to show cause, he filed an amended complaint which asserts that Little was a minor and mentally ill at the time of the his incarceration which gave rise to the suit, thus tolling the statute of limitations. As the amended complaint responds to the issue contained in the order to show cause and the defendants' motions, this court will entertain the amended complaint and treat it as a response to the show cause order and the motions to dismiss.

According to his complaint, Little was sentenced to the Shelby County Training Center on December 28, 1998 for thirty days for marijuana possession. (Compl. at ¶ 8.) After the judge handed down Little's sentence, Little's mother allegedly told the judge that her son was on medication and would need the medication while he was serving his sentence at the Shelby County Training Center. (Id.) According to Little's complaint, the next day, Ms. Little called the Training Center and informed the officials at the

facility of her son's medical needs. (Id. at ¶ 9.) She called the next day and left a message with an administrator regarding Little's medication. For the next several weeks, Ms. Little continued to call the Training Center and inform them that without his medication Little could not control his behavior. (Id. at ¶ 10-11.) Little alleges that one of the officials at the Center, F. McMaster, told Ms. Little that her son's behavior was stubbornness, not mental illness. (Id. at ¶ 14.) Because Little did not receive his medication, he disrupted class and was sent to his cell, started fights with other inmates, and his visitation was suspended for thirty days. (Id. at ¶ 12-13.) What began as a thirty-day sentence became six months; Little was ultimately released from the Training Center sometime in June of 1999.¹ (Id. at ¶ 32.) During his six-month confinement, Little alleges that he pulled out four of his teeth, he was put in lockdown, and he was physically and mentally abused by the Training Center staff and inmates. (Id. at ¶ 15-17.) After Little was allowed to see a mental health physician, he was prescribed medication to control his behavior. (Id. at ¶ 18.) Following his release from the Training Center, Little alleges that he continues to suffer from mental illness which has required several stays in mental institutions. These hospitalizations have allowed him to "function in society."

¹ Little's complaint does not specify his exact date of release from the Training Center.

(Compl. at ¶ 19-20.)

The Sixth Circuit has held that when a party files a motion to dismiss alleging that the statute of limitations on a claim has run, the court considers the motion as one for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Rauch v. Day and Night Manuf. Corp.*, 576 F.2d 697, 706 (6th Cir. 1978); *Forest v. United States Postal Service*, 97 F.3d 137, 139 (6th Cir. 1996) (explaining that a statute of limitations question cannot be raised under the guise of a jurisdictional motion to dismiss under F.R.C.P. 12(b)(1), but only as a Rule 12(b)(6) motion for failure to state a claim).

When considering a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted, the court must assume that all of the well-pleaded factual allegations in the complaint are true and must construe those facts in a light most favorable to the plaintiff. *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987). A court should grant the motion to dismiss "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Id.* at 12; see also *Broyde v. Gotham Tower, Inc.*, 13 F.3d 994, 996 (6th Cir. 1994); *Achterhof v. Selvaggio*, 886 F.2d 826, 831 (6th Cir. 1989) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

In actions brought under 42 U.S.C. § 1983, the court must look

to the state statute of limitations that governs personal injuries. *Berendt v. Tennessee*, 956 F.2d 545, 552 (6th Cir. 1986). The statute of limitations applicable to personal injury and civil rights claims is Tenn. Code Ann. § 28-3-104, which states:

28-3-104. Personal tort actions.

(a) The following actions shall be commenced within one (1) year after the cause of action accrued: . . .

(1) . . . personal injuries, false imprisonment . . .

(3) Civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes.

Tenn. Code Ann. § 28-3-104.² However, Tennessee has enacted a savings statute which tolls the statute of limitations for persons who were legally incapacitated at the time the cause of action accrued. The Tennessee Savings Statute for mental and minor incapacity states:

28-1-106. Persons under disability on accrual of right.

If the person entitled to commence an action is, at the time the cause of action accrued, either under the age of eighteen (18) years, or of unsound mind, such person, or such person's representatives and privies, may commence the action, after the removal of such disability, within the time limitation for the particular cause of action, unless it exceeds three (3) years, and in that case within three (3) years from the removal of such disability.

² The one-year statute of limitations also governs Little's other claims for mental anguish, false imprisonment, assault and battery. See *Pera v. Kroger Co.*, 674 S.W.2d 715, 719-20 (Tenn. 1986).

Id. Little submits that he was a minor at the time of his incarceration at the Training Center. In his amended complaint, he provides evidence which proves that he was born July 21, 1982.³ Therefore, the Tennessee Savings Statute, as set forth above, allowed the statute of limitations in Little's action to be tolled until his eighteenth birthday. Little subsequently turned eighteen on July 21, 2000. From that date, the limitations period of one year began to run. Little filed his complaint with the court on July 20, 2001, one day before the expiration of the statute of limitations for his claims. Therefore, Little's complaint was timely and his suit against the defendants is not barred. Based on these facts, the defendants' motions to dismiss are denied.⁴

IT IS SO ORDERED this 31st day of October, 2001.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE

³ Little incorrectly asserts that he was born on August 17, 1982. That date, however, is the date that his birth certificate was filed, not the actual date of Little's birth. (Amended Cmplt. at p.3.)

⁴ Because the court finds that the statute of limitations was tolled due to Little's status as a minor at the time the cause of action accrued, it is not necessary for the court to determine if the statute of limitations was tolled based on Little's alleged mental incapacity.