Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-038

MAY TERM, 2003

James W. Quinn, III v. John Gorczyk, et al. and Jeannette Bassman Shea	}	APPEALED FROM: Bennington Superior Court DOCKET No. 136-4-02 Bncv Trial Judge: Hon. John P. Wesley

In the above-entitled cause, the Clerk will enter:

Plaintiff James W. Quinn, III, appeals pro se from the trial court' s dismissal of his personal injury complaint. He argues that the trial court erred in dismissing his complaint on statute of limitations grounds because: (1) he was not aware of the extent of his injuries until thirteen months after the slip-and-fall accident; alternatively, (2) the statute of limitations was tolled because he was on furlough status at the time of his accident and was thus " imprisoned" within the meaning of 12 V.S.A. § 551. We affirm.

On October 25, 1998, while living in the community on furlough status, Quinn slipped and fell down the stairs while exiting his field supervisory unit apartment (FSU). He was treated at the emergency room for his injuries. On September 20, 2001, Quinn filed a complaint alleging that defendants John Gorczyk, et al., and FSU apartment owner Jeannette Bassman Shea, were jointly and severally liable for his injuries. On January 31, 2002, the court dismissed Quinn' s complaint for failure to complete service. Quinn did not appeal this decision. On April 25, 2002, Quinn filed a second complaint against the same defendants. The court dismissed Quinn' s complaint because it had not been filed within the three-year statute of limitations period. See 12 V.S.A. § 512(4). Quinn filed a motion for reconsideration, which the court denied. Quinn then filed a continued motion for reconsideration, arguing that he was " imprisoned" within the meaning of 12 V.S.A. § 551 at the time his cause of action accrued. The court denied Quinn' s motion, and this appeal followed.

In reviewing the court' s decision to grant a motion to dismiss, we " accept as true all well-pleaded factual allegations in the complaint." Powers v. Office of Child Support, 173 Vt. 390, 392 (2002). A motion to dismiss should not be granted " unless it is beyond doubt that there exist no facts or circumstances that would entitle [a party] to relief." Id. at 395. Our review of the trial court' s conclusions of law is non-deferential and plenary. Daniels v. Vt Ctr. for Crime Victims Servs., 173 Vt.521, 522 (2001) (mem.).

First, we note that Quinn makes several arguments concerning the first complaint that he filed. Quinn did not appeal the court' s dismissal of this complaint, however, and these issues are not properly before us. Therefore, we do not address them.

As to the dismissal of his second complaint, Quinn argues that his complaint was timely filed because his cause of action did not accrue until he realized the full extent of his injuries thirteen months later. This claim is without merit. " A cause of action is generally deemed to accrue at the earliest point at which a plaintiff discovers an injury and its possible cause." Earle v. State, 170 Vt. 183, 190 (1999) (emphasis omitted). Quinn was aware of his injuries and their

cause on October 25, 1998, the day that he fell. Therefore, the trial court correctly determined that Quinn' s cause of action began to accrue on October 25, 1998, and his complaint was untimely filed.

Quinn next argues that the statute of limitations was tolled under 12 V.S.A. § 551(a) because he was " imprisoned" at the time his injuries occurred. Section 551(a) provides that a person who is " imprisoned" at the time a cause of action accrues may bring his action within the proper time period after the disability is removed. Quinn argues that under Conway v. Cumming, 161 Vt. 113 (1993), he is more like a prison inmate than a parolee, and thus he should be entitled to benefit from the tolling provision. We disagree. In Conway, we addressed whether an inmate' s due process rights were violated when his furlough status was terminated without a hearing. In the context of plaintiff' s due process claim, we stated that an inmate' s status under furlough " more closely resembles that of an inmate seeking a particular right or status within an institution, rather than that of a parolee." Id. at 116. Conway does not address whether an offender on furlough status who is living in the community should be considered " imprisoned" for purposes of Section 551(a), and we find Quinn' s reliance on Conway unavailing. At the time his cause of action accrued, Quinn was not incarcerated in a correctional institution; he was living in the community, and therefore his ability to utilize the court system was not impaired. Quinn has not established that he was " imprisoned" within the meaning of Section 551(a), and we therefore conclude that the trial court properly dismissed his complaint.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned