

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

ANGELO LEE CLARK, )  
)  
Plaintiff, )  
) C.A. No. 11C-01-012 MMJ  
v. )  
)  
DELAWARE PSYCHIATRIC )  
CENTER, et al., )  
)  
Defendants. )

Submitted: June 2, 2011  
Decided: August 9, 2011

State's Motion to Dismiss or for Summary Judgment

**ORDER**

Angelo Lee Clark, Plaintiff, *Pro Se*

Ilona Kirshon, Esquire, Department of Justice, Attorney for Defendant State  
of Delaware

**JOHNSTON, J.**

## **FACTUAL AND PROCEDURAL CONTEXT**

Plaintiff Angelo Lee Clark was a patient at Delaware Psychiatric Center (“DPC”), a state facility. Clark filed a complaint on February 7, 2011, alleging that the DPC defamed him and invaded his privacy by releasing his psychiatric records to the law firm of McCarter & English, LLP. Clark claims that, as a result, he suffered personal injuries. Clark alleged that the Delaware Community Legal Aid Society informed him of the release on June 11, 2008. In addition to DPC, Clark named as defendants: McCarter & English, psychiatrist Dr. Praful Desai, attorney Christopher Seltzer of McCarter & English, and “John Doe(s).” In his complaint, Clark explains that John Doe(s) is the unknown person(s) who sent his psychiatric records to McCarter & English.

On April 28, 2011, DPC filed a Motion to Dismiss—or, in the alternative, a Motion for Summary Judgment—Clark’s complaint alleging that defendants defamed him and violated his privacy by releasing his psychiatric records. DPC argues that Clark’s claims: are barred by the applicable two-year statute of limitations periods; fail to state a claim upon which relief can be granted because Clark did not identify a “person” within DPC; and must be dismissed because DPC enjoys sovereign immunity as a state facility. DPC also asserts that Clark’s claims against John Doe(s)

should be dismissed because fictitious name practice is not permitted in Delaware without prior Court authorization.

### **ANALYSIS**

When reviewing a motion to dismiss, the Court must determine whether the plaintiff has a viable cause of action.<sup>1</sup> The plaintiff’s complaint may not be dismissed “unless it appears to a certainty that under no set of facts which could be proved to support the claim asserted would the plaintiff be entitled to relief.”<sup>2</sup> When applying this standard, the Court will accept as true all well-pleaded allegations.<sup>3</sup> If the plaintiff may recover, the Court must deny the motion to dismiss.<sup>4</sup>

#### ***Statute of Limitations***

10 *Del. C.* § 8119 provides, in pertinent part, that “[n]o action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained . . . .” The “time of discovery rule” tolls the statute of limitations if the plaintiff suffers an inherently unknowable injury and the plaintiff is blamelessly ignorant.<sup>5</sup> Clark alleges

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<sup>1</sup> *Proctor v. Taylor*, 2006 WL 1520085, at \*1 (Del. Super.).

<sup>2</sup> *Lord v. Souder*, 748 A.2d 393, 398 (Del. 2000).

<sup>3</sup> *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

<sup>4</sup> *Id.*

<sup>5</sup> *Estate of Buonamici v. Morici*, 2010 WL 2185966, at \*3 (Del. Super.) (citing *Coleman v. Pricewaterhousecoopers, LLC*, 854 A.2d 838, 842 (Del. 2004)).

that he suffered personal injury, and therefore, his defamation and invasion of privacy actions are subject to the Section 8119 two-year statute of limitations.<sup>6</sup>

The Court finds that Clark's defamation and invasion of privacy actions are barred by the Section 8119 two-year statute of limitations. Clark learned of the alleged defamation and invasion of privacy on June 11, 2008. Even assuming that Clark suffered an inherently unknowable injury and was blamelessly ignorant until June 11, 2008, Clark filed his complaint on February 7, 2011, more than two years after he conceded he was on notice of the disclosure.

### ***Clark's Claims against John Doe(s)***

The Court finds that Clark's claims against John Doe(s) should be dismissed. It is well-settled that, except in compelling and unusual circumstances,<sup>7</sup> fictitious name practice is not permitted in the State of Delaware.<sup>8</sup>

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<sup>6</sup> *Hall v. Yacucci*, 1998 WL 473008, at \*4 (Del. Super.) (Defamation is an action for personal injury that must be filed within two years of the injury claimed.) (citing 10 *Del. C.* § 8119, *Shearin v. E.F. Hutton Group, Inc.*, 652 A.2d 578, 584 (Del. Ch. 1994); *Slibeck v. Union Oil Co. of California*, 1986 WL 11542, at \*3 (Del. Super.) (An invasion of privacy action categorized as a personal injury action must be brought within the Section 8119 two-year statute of limitations).)

<sup>7</sup> See *John Yoe #1 v. Catholic Diocese of Wilm., Inc.*, C.A. No. 09C-06-188 (Del. Super. Mar. 15, 2010); Super. Ct. Civ. R. 10(a).

<sup>8</sup> *Haskins v. Kay*, 2007 WL 4662114, at \*5 (Del. Super.) (citing *Hutchison v. Fish Eng'g Corp.*, 153 A.2d 594, 595 (Del. 1959), *appeal dismissed*, 162 A.2d 722 (Del. 1960)).

## CONCLUSION

Clark's claims against DPC are barred by the two-year statute of limitations set forth in 10 *Del. C.* § 8119, and therefore are dismissed. Clark's claims against John Doe(s) are dismissed because fictitious name practice is not appropriate in this case.

**THEREFORE**, Delaware Psychiatric Center's Motion to Dismiss is hereby **GRANTED**.

Because the Court concludes that Clark's claims against DPC are barred by the statute of limitations, the Court need not resolve: whether Clark failed to state a claim upon which relief can be granted because he did not identify a "person" within DPC; and whether DPC enjoys sovereign immunity as a state facility.

**IT IS SO ORDERED.**

/s/ *Mary M. Johnston*  
The Honorable Mary M. Johnston