

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2003-CA-002561-MR  
AND  
NO. 2003-CA-002638-MR

CHARLES BRADLEY KINDOLL

APPELLANT/CROSS-APPELLEE

v. APPEAL AND CROSS-APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE PAUL W. ROSENBLUM, JUDGE  
ACTION NO. 00-CI-00219

PATRICIA GONTERMAN

APPELLEE/CROSS-APPELLANT

OPINION AND ORDER  
AFFIRMING ON APPEAL,  
DISMISSING CROSS-APPEAL

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BEFORE: COMBS, CHIEF JUDGE; GUIDUGLI AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal and a protective cross-appeal from a judgment dismissing a claim for interference with contractual relations on statute of limitations grounds. We agree with the lower court that the one-year statute of limitations for defamation claims applies in this case and that the appellant/cross-appellee's claim was not brought within the

one-year limitations period. Hence, we affirm on appeal. The protective cross-appeal is thereby rendered moot and dismissed.

Appellant/cross-appellee, Charles Kindoll, was employed with the Kentucky Department of Corrections (the "Department") for over 18 years, most recently as a Stores Operations Manager for the Warehouse at Roederer Correctional Complex ("RCC"). Kindoll's duties as a Stores Operations Manager included distributing, replenishing, and inventorying supplies and merchandise in RCC's warehouse. Appellee/cross-appellant, Patricia Gonterman, was the Fiscal Manager at RCC and Kindoll's supervisor. On February 17, 1999, Gonterman reported to her supervisor, Warden James Grider, that Kindoll had made unauthorized purchases of denim jeans and a computer monitor with his procurement card issued by the Department. As a result of Gonterman's report, Warden Grider initiated an investigation that ultimately resulted in Kindoll's termination on July 12, 1999. On April 28, 2000, Kindoll filed an action against Gonterman individually, alleging defamation and intentional or wrongful interference with past or prospective business relationship. On August 28, 2000, the lower court dismissed the action, ruling that the doctrine of sovereign immunity barred both claims against Gonterman and that the defamation claim was barred by the one-year statute of limitations. In a previous appeal to this Court, this Court vacated and remanded the

dismissal on sovereign immunity grounds, but upheld the dismissal of the defamation claim on statute of limitations grounds. Hence, the remaining cause of action was the claim for intentional or wrongful interference with past or prospective employment relationship.

On the day of trial, the trial court dismissed the remaining claim on statute of limitations grounds, adjudging that the one-year statute of limitations for the defamation claim (KRS 413.140(1)(d)) likewise applied to the claim for interference with employment relationship because the latter claim was based on the allegation that Gonterman defamed him by informing Warden Grider that he made unauthorized purchases. Kindoll now appeals from this order. Gonterman filed the protective cross-appeal herein from an earlier order adjudging that she was not entitled to the protection of sovereign or qualified immunity.

We first address Kindoll's argument that the trial court erred in ruling that the one-year statute of limitations for defamation claims (KRS 413.140(1)(d)) applied to his claim for interference with past and prospective employment relationship. Kindoll maintains that the defamation claim was separate from the interference with employment relationship claim and that the five-year statute of limitations in KRS 413.120(7) applied to the latter claim.

KRS 413.120 establishes a five-year statute of limitations for actions on, among other things, contracts, trespass, fraud, and "for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated." KRS 413.120(7). KRS 413.140 sets forth a one-year statute of limitations for actions based on, among other things, various injuries to the plaintiff's person, conspiracy, and libel or slander (KRS 413.140(d)). There is no specific statute of limitations for interference with a contractual, business or employment relationship. Accordingly, Kindoll argues that the "catch-all" five-year statute of limitations in KRS 413.120(7) for an injury to the rights of the plaintiff not otherwise enumerated should apply.

The lower court relied on the Federal 6<sup>th</sup> Circuit case of Lashlee v. Sumner, 570 F.2d 107 (6<sup>th</sup> Cir. 1978) in determining that the one-year statute of limitations for defamation claims applied. In Lashlee, the plaintiff brought an action against a psychologist hired by plaintiff's employer as a consultant to interview and evaluate certain employees. The complaint alleged that following the interview with the plaintiff, the psychologist sent a written evaluation to the employer which contained libelous statements about the plaintiff. The plaintiff pled not only libel, but also malpractice, interference with contract relations and intentional infliction

of emotional distress. The Court held that the one-year statute of limitations for defamation applied to all the claims, including the interference with contractual relations claim:

The rule is firmly established in Kentucky that a statute of limitations which specifically mentions a recognized tort applies to all actions founded on that tort regardless of the method by which it is claimed the tort has been committed. *Skaggs v. Stanton*, 532 S.W.2d 442 (Ky. 1975). Kentucky also observes the related rule that a specific statute of limitations covers all actions whose real purpose is to recover for the injury addressed by it in preference to a general statute of limitations. *Carr v. Texas Eastern Transmission Corp.*, 344 S.W.2d 610 (Ky. 1961). The underlying wrong which the complaint alleges is defamation by publication of a libelous report, and the claim of injury set out in each count springs from the action of publication. An essential element of each "cause of action" is the publication of an utterly false derogatory report about the plaintiff. The gist of the entire action is the libel, and the district court properly held that the one-year statute of limitations applies to all counts. See *Quigley v. Hawthorne Lumber Co.*, 264 F.Supp. 214 (S.D.N.Y. 1967).

Lashlee, 570 F.2d at 109.

Similarly, in the present case, Kindoll's claim of interference with employment relationship was based on Gonterman's accusation and report to Warden Grider that Kindoll had made unauthorized purchases. Since the claim for interference with employment relationship was rooted in the same conduct underlying the defamation claim, we agree that the

holding in Lashlee is applicable here and the one-year statute of limitations in KRS 413.140(1)(d) applies.

Kindoll next argues that even if the one-year statute of limitations applies, his cause of action was timely filed. Kindoll maintains that his cause of action did not accrue until the date he was terminated from his employment, July 12, 1999, because his injury was not apparent until that time. The action in this case was filed on April 28, 2000, and Gonterman first reported the unauthorized purchases to Grider on February 17, 1999.

Kindoll is essentially arguing that the discovery rule first enunciated in Kentucky in Tomlinson v. Siehl, 459 S.W.2d 166 (Ky. 1970), should apply in defamation cases. The general rule with defamation cases is that the cause of action accrues at the time of publication of the defamatory statement. 50 Am. Jur. 2d, *Libel and Slander*, § 421 (1995); see Lashlee, 570 F.2d at 109. In Kentucky, the discovery rule is applicable only to malpractice claims and tort actions for latent disease caused by exposure to a harmful substance. Rigazio v. Archdiocese of Louisville, 853 S.W.2d 295 (Ky. App. 1993). "Neither the Supreme Court nor the General Assembly has further extended the discovery rule." Id. at 297. In the prior opinion of this Court relative to the defamation claim, this Court adjudged that the defamatory report was made by Gonterman on or before April

13, 1999. That being the law of the case, see Hogan v. Long, 922 S.W.2d 368 (Ky. 1995), we likewise adjudge that the claim for interference with employment relationship was filed more than one year after accrual of the cause of action and, thus, was untimely filed.

Given our opinion above affirming the dismissal of the remaining claim, the protective cross-appeal is rendered moot. For the reasons stated above, the judgment of the Oldham Circuit Court dismissing the claim for interference with employment relationship is affirmed. The cross-appeal is hereby dismissed.

ALL CONCUR.

ENTERED: February 18, 2005

/s/ Wil Schroder  
JUDGE, COURT OF APPEALS

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