

STATE OF MICHIGAN  
COURT OF APPEALS

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GWENDOLYN COLLINS,

Plaintiff-Appellee,

v

COMERICA BANK and CATHY MASALSKIS

Defendants-Appellants.

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UNPUBLISHED

April 30, 2002

No. 227834

Wayne Circuit Court

LC No. 99-930376

Before: Whitbeck, C.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendants appeal by leave granted<sup>1</sup> from a circuit court order denying defendant's motions for summary disposition and also denying the alternative motion to strike the claims against defendant Cathy Masalskis for lack of service.<sup>2</sup> Because we find that plaintiff's claims against defendants are time barred by the applicable statutes of limitation, we reverse and remand for entry of summary disposition in favor of defendants.

I. Facts and Proceedings

In September 1996, plaintiff was accused of several inappropriate acts in connection with her employment with defendant. Plaintiff was alleged to have accepted cash "tips" from bank customers and signed withdrawal slips and processed withdrawals from a customer account when she was not authorized to do so. Masalskis was assigned to investigate these accusations. Because plaintiff refused to cooperate with Masalskis' investigation, she was suspended with pay on September 5, 1996. On September 18, 1996, Masalskis concluded her investigation and as a result of the investigation findings, plaintiff was "fired" on September 25, 1996.

On September 24, 1999, plaintiff filed her complaint, alleging race and gender discrimination, invasion of privacy, and tortious interference of contractual and business

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<sup>1</sup> *Collins v Comerica Bank*, unpublished order of the Court of Appeals, issued August 2, 2000. While the leave application apparently was filed only by defendant, it is apparent that the application argued on behalf of both defendant and Masalskis. Therefore, we consider the application as being filed by both parties.

<sup>2</sup> For ease of reference, for the remainder of this opinion, "defendant" will refer to Comerica Bank and Cathy Masalskis will be referred to by her last name.

relations.<sup>3</sup> The trial court set a discovery cutoff date of May 5, 1999. Defendant moved for summary disposition, arguing that the complaint was filed after the three-year statute of limitations. Defendant also moved to strike plaintiff's claims against Masalskis because she was never served. On April 5, 2000, the circuit court denied defendant's motion. Defendant filed a motion for reconsideration and stay which was also denied by the circuit court. Defendants then sought leave to appeal to this Court, arguing that plaintiff's claims were filed after the three year statute of limitations, that Masalskis was never served the summons and complaints, and alternatively that at least the tortious interference and invasion of privacy claims must be dismissed because plaintiff did not allege facts in support of those claims. This Court granted defendants leave application, limited to the issues raised in the application for leave.

## II. Standard of Review

Whether a cause of action is barred by a period of limitations is a question of law that we review de novo. *Todorov v Alexander*, 236 Mich App 464, 467; 600 NW2d 418 (1999). If a cause of action is time-barred, then summary disposition is appropriate under MCR 2.116(C)(7). See *McKiney v Clayman*, 237 Mich App 198, 201; 602 NW2d 612 (1999). We also review de novo a trial court's decision to grant or deny summary disposition pursuant to MCR 2.116(C)(7).<sup>4</sup> *Id.* at 200-201, citing *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 681; 599 NW2d 546 (1999). In reviewing whether summary disposition is appropriate under MCR 2.116(C)(7), we consider all the documentary evidence submitted by the parties and accept the plaintiff's well-pleaded allegations, except those contradicted by documentary evidence, as true. Uncontradicted allegations are viewed in favor of the plaintiff. *Novak, supra* at 681-682, citing *Iovino v Michigan*, 228 Mich App 125, 131; 577 NW2d 193 (1998) and *Patterson v Kleiman*, 447 Mich 429, 433-435; 526 NW2d 879 (1994).

## III. Analysis

On appeal, defendants first contend that the circuit court erred by finding that plaintiff's claims were not time-barred by the three year statute of limitations provided by MCL 600.5805(9). We agree.

In *Parker v Cadillac Gage Textron, Inc*, 214 Mich App 288, 290; 542 NW2d 365 (1995), this Court held the following:

A claim of discriminatory discharge accrues on the date the plaintiff was discharged. *The last day worked is the date of discharge*. Subsequent severance or vacation pay does not affect the date of discharge. In this case, plaintiffs filed their case more than three years after the date they were discharged. Despite the

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<sup>3</sup> The tortious interference of contractual and business relations was against Masalskis only.

<sup>4</sup> While defendants summary disposition motion was brought and reviewed under MCR 2.116(C)(8) and (10), we may review the trial court's ruling under the proper subrule. *Limback v Oakland County Bd of County Road Comm'rs*, 226 Mich App 389, 395, n 3, citing *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995).

fact that January 7, 1991, may have been plaintiffs' "effective date" of separation, it is undisputed that the last day they actually worked was December 21, 1990. . . . [T]he three-year statute of limitations bars plaintiffs' suit. [Internal citations omitted; emphasis added; emphasis in original omitted. See also *Womack-Scott v Dep't of Corrections*, 246 Mich App 70, 75-76; 630 NW2d 650 (2001).]

Because plaintiff's last day of work was September 5, 1996, claims of race and gender discrimination were required to be filed on or before September 5, 1999. Since plaintiff's complaint was not filed until September 24, 1999, her discrimination claims were time-barred and the trial court erred when it denied defendant's motion for summary disposition on these claims.

The trial court also erred when it denied summary disposition of plaintiff's claims for both tortious interference of contract and business relations and invasion of privacy, since these claims are also subject to a three-year statute of limitations. See *James v Logee*, 150 Mich App 35, 37-38; 388 NW2d 294 (1986), *Arent v Hatch*, 133 Mich App 700, 702, 705; 349 NW2d 536 (1984), *Meyer v Hubbell*, 117 Mich App 699, 710; 324 NW2d 139 (1982), and MCL 600.5805(9);<sup>5</sup> see also *Johnson v Ventra Group, Inc*, 191 F 3d 732, 746 (CA 6, 1999). Statutes of limitations in tort claims begin to run at the time all elements, including damages, can be alleged in a proper complaint. *Travelers Ins Co v Guardian Alarm Co of Michigan*, 231 Mich App 473, 479; 586 NW2d 760 (1998).

Here, plaintiff's tortious interference claim against Masalskis arose from Masalskis' investigation of plaintiff's alleged misconduct. The elements of this claim accrued no later than September 18, 1996, the date Masalskis concluded her investigation and issued her findings. *Arent, supra*. Accordingly, plaintiff's tortious interference claim is time barred for her failure to bring the claim within three years of the alleged injury, Masalskis' report, and summary disposition under MCR 2.116(C)(7) should have been granted. *Arent, supra*. *Johnson, supra*; MCL 600.5805(9).

For similar reasons, plaintiff's invasion of privacy claims also are time barred. For purposes of invasion of privacy claims, a person is wronged "when the curtain of privacy is lifted." *Arent, supra* at 705, quoting *Hawley v Professional Credit Bureau, Inc*, 345 Mich 500, 514; 76 NW2d 835 (1956). Plaintiff's complaint lists, among other things, the following allegations as support for her invasion of privacy claim:

10. That in mid September 1999 [sic],<sup>[6]</sup> Defendant Masalskis used a Customer Service ruse when she called one of Defendant's 30 year customers in an attempt to elicit and coerce false and disparaging statements against Plaintiff.

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<sup>5</sup> While the cited cases refer to MCL 600.5805(8), we note that MCL 600.5805 was amended by PA 2000, No 2; thus, the appropriate citation would now be to subsection 9 instead of subsection 8.

<sup>6</sup> Plaintiff's exhibits filed in support of her complaint, as well as the underlying facts in this case, make it apparent that this was a typographical error and that plaintiff was referring to 1996, not 1999.

11. That after the Defendant's 30 year customer refused to disparage Plaintiff . . . Defendant Masalskis summarized their conversation in a deceptive, false, disparaging, and misleading manner.

12. Defendant Masalskis and other agents of Defendant falsely accused Plaintiff of accepting cash gifts from one of Defendant's seven year customers.

\* \* \*

14. That after conspiring, concocting, and directing the above false and embarrassing charges against Plaintiff and publishing same so as to put Plaintiff in a false light in the public eye (See Exhibits 3, 4, and 6.), Defendant determined that it could not substantiate said allegations.

15. That Defendant Masalskis attempted to coerce false and disparaging statements about Plaintiff from Defendant's employees and customers so as to put Plaintiff in a false light in the public eye. (See Exhibits 3, 4, and 6.)

\* \* \*

32. That Michigan's [sic] law makes it unlawful to invade Plaintiff's right to privacy and Defendants have invaded Plaintiff's right to privacy by publishing and making public false disclosures, which would be objectionable to a reasonable person under the circumstances, that place Plaintiff in a false light in the public eye, as more particularly described above.

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35. That Michigan's [sic] law makes it unlawful to invade Plaintiff's right to privacy and Defendants have invaded Plaintiff's right to privacy by publishing and making public disclosures, which would be objectionable to a reasonable person with ordinary sensibilities, as more particularly described above.

Giving plaintiff the benefit of all doubt, exhibit four (that plaintiff incorporates into her complaint) indicates that plaintiff first became aware of Masalskis' alleged attempt to place her in a false light on September 4, 1996, when she received a phone call from an individual indicating that Masalskis had contacted him on September 3, 1996. Hence, assuming without deciding that Masalskis' actions amounted to invasion of privacy, it is clear from plaintiff's complaint that the claim accrued as early as September 4, 1996, more than three years before plaintiff's complaint was filed. Thus, plaintiff's invasion of privacy claim was time-barred by the three-year statute of limitations. MCL 600.5805(9); *Arent, supra*.

For the above stated reasons, we reverse the circuit court order denying defendants summary disposition and remand with instructions that the trial court enter an order granting defendants summary disposition pursuant to MCR 2.116(C)(7). We do not retain jurisdiction.<sup>7</sup>

/s/ William C. Whitbeck  
/s/ Kurtis T. Wilder  
/s/ Brian K. Zahra

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<sup>7</sup> Because we find that plaintiff's claims against both defendants are time barred, we need not decide the remaining claims on appeal.