

[Cite as *Lewis v. Kent State Univ.*, 2010-Ohio-3724.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93727

GREGORY D. LEWIS, ET AL.

PLAINTIFFS-APPELLANTS

vs.

KENT STATE UNIVERSITY, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-690956

BEFORE: Gallagher, A.J., Rocco, J., and Blackmon, J.

RELEASED AND JOURNALIZED: August 12, 2010

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SEAN C. GALLAGHER, A.J.:

{¶ 1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the trial court records, and briefs of counsel.

{¶ 2} Plaintiffs-appellants¹ appeal the judgment of the Cuyahoga County Court of Common Pleas that granted the motions to dismiss of defendants-appellees, Kent State University and Omega Psi Phi Fraternity, Inc.

{¶ 3} Regrettably, countless attempts to resolve this dispute over the years failed to result in a settlement.

{¶ 4} Deciding the case on the merits, for the reasons stated herein, we affirm the determination of the trial court.

{¶ 5} Plaintiffs filed a complaint on April 24, 2009. They alleged that they were admitted as members of Omega Psi Phi Fraternity, Inc., on the campus of Kent State University in April 1983. They further alleged that they were summarily removed and expelled from the fraternity in September 1984, after being accused of having made fraudulent grade changes on transcripts they submitted. They claim that on later dates, two of the plaintiffs were allowed back into the fraternity. They also allege that the fraternity acknowledged in April 2000 that the plaintiffs were wrongfully removed from the fraternity, and further

¹ Plaintiffs-appellants include Gregory D. Lewis, Freddie Day, Anthony R. Hood, George Dial, Anthony Know, Paul O.J. Owens, Gregory Powell, Glenn Cole, and Louis Jefferson (collectively “plaintiffs”).

acknowledged that plaintiffs were not afforded proper process in the proceedings against them. Plaintiffs' complaint raises claims for breach of contract, libel and slander, unjust enrichment, tortious interference with a contract, violation of rights to privacy, and pain and suffering. They sought reinstatement "dated from the original membership date," free lifetime membership, interest for the fee paid plus interest from September 1984, damages in excess of \$25,000, attorney's fees, and other relief.

{¶ 6} In response to the complaint, Kent State University filed a Civ.R. 12(B)(1) motion to dismiss, claiming that the Court of Claims of Ohio had exclusive jurisdiction over the subject matter. This motion was unopposed by plaintiffs. In addition, Omega Psi Phi Fraternity, Inc., filed a Civ.R. 12(B)(6) motion to dismiss, asserting the claims were barred by the applicable statutes of limitations, as well as other grounds supporting dismissal. The trial court granted the motions and dismissed the action.

{¶ 7} Plaintiffs have appealed and have raised two assignments of error for our review that provide as follows:

{¶ 8} "I: The trial court improperly dismissed the case based on a Civ.R. 12(B) motion when there are actionable claims presented. [Plaintiffs] received ineffective assistance of counsel."

{¶ 9} "II. The trial court improperly dismissed this case based on a Civ.R. 12(B) motion where there is no qualified privilege."

{¶ 10} We first consider the dismissal of the case against Kent State

University.

{¶ 11} Civ.R. 12(B)(1) permits dismissal where the trial court lacks jurisdiction over the subject matter of the litigation. The standard of review for a dismissal pursuant to Civ.R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint. *Ferren v. Cuyahoga Cty. Dept. of Children & Family Servs.*, Cuyahoga App. No. 92294, 2009-Ohio-2359, at ¶ 3. (Internal citations omitted.) We review an appeal of a dismissal for lack of subject matter jurisdiction under Civ.R. 12(B)(1) de novo. *Boutros v. Noffsinger*, Cuyahoga App. No. 91446, 2009-Ohio-740, ¶ 12.

{¶ 12} Kent State University is an instrumentality of the state and the Court of Common Claims has exclusive, original jurisdiction over the claims filed against the university in this matter. See R.C. 2743.03(A)(1). Therefore, the Cuyahoga County Court of Common Pleas lacked subject matter jurisdiction over these claims, and dismissal pursuant to Civ.R. 12(B)(1) was proper.

{¶ 13} Next, we consider the dismissal of the case against Omega Psi Phi Fraternity, Inc.

{¶ 14} An order granting a Civ.R. 12(B)(6) motion to dismiss is subject to de novo review. *Perrysburg Twp. v. City of Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. In reviewing whether a motion to dismiss should be granted, we accept as true all factual allegations in the complaint. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192, 532 N.E.2d 753. In order for a complaint to be dismissed under Civ.R. 12(B)(6) as being barred by

the statute of limitations, it must be obvious from the face of the complaint that the action is time-barred. *Steiner v. Steiner* (1993), 85 Ohio App.3d 513, 518-519, 620 N.E.2d 152.

{¶ 15} In this case, the statute of limitations bar for each claim was apparent from the face of plaintiffs' complaint and supported dismissal of the action. The last operative fact upon which the claims are based occurred in 1984. The complaint in this action was not filed until April 2009, more than 24 years after the allegedly wrongful action by the fraternity occurred and well beyond any statute of limitations applicable to the claims. See R.C. 2305.06, 2305.11, and 2305.09.

{¶ 16} We find no merit to plaintiffs' suggestion that their claims did not ripen until they discovered that the defendants were unwilling to settle the dispute through its administrative procedures. We also find that the remaining issues are moot.

Judgment affirmed.

It is ordered that appellees recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

KENNETH A. ROCCO, J., and
PATRICIA A. BLACKMON, J., CONCUR