

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
NOBLE COUNTY

WILLIAM R. WILSON,

Plaintiff-Appellant,

v.

GANNETT CO., INC. et al.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 19 NO 0470

Civil Appeal from the
Court of Common Pleas of Noble County, Ohio
Case No. 219-0054

BEFORE:

Carol Ann Robb, Gene Donofrio, David A. D'Apolito, Judges.

JUDGMENT:

Affirmed.

William R. Wilson, pro se, #757-629, NCCI, P.O. Box 1812, Marion, Ohio 43302 for Appellant-Plaintiff and

Atty. John Greiner, Graydon Head & Ritchey LLP, 1900 Fifth Third Center, 312 Walnut Street, Suite 1800, Cincinnati, Ohio 45202 for Appellee-Defendant.

Dated: June 29, 2020

Robb, J.

{¶1} Plaintiff-Appellant William R. Wilson appeals the decision of the Noble County Common Pleas Court granting Defendants-Appellees Gannett Co., Inc.; Newark Advocate; Robert J. Dickey, President/CEO Gannett Co., Inc.; John Jeffrey Louis III, Chairman for Gannett Co., Inc.; John Merri Weather, Operations Manager for Newark Advocate; and John Does 1-10, Newark Advocate and Gannett Employees Civ.R. 12(B)(6) motion to dismiss. The motion to dismiss was based on the statute of limitations and the trial court granted it on that basis. The issue before this court is whether the complaint is barred by the statute of limitations. For the reasons expressed below, the trial court's decision is affirmed.

Statement of the Case

{¶2} On July 5, 2018 Appellee Newark Advocate, a newspaper, printed an article about a 30 mile pursuit involving Appellant and Lisa Stires. On July 22, 2019 Appellant filed a complaint sounding in defamation, specifically libel, against Appellees. Appellant alleges that certain statements in the newspaper article were incorrect and he incurred damages as a result of those false statements. 7/22/19 Complaint. Attached to the complaint was a letter dated June 26, 2019 addressed to Appellee Newark Advocate. The letter informed Appellee Newark Advocate of Appellant's intent to sue it for libel. On August 5, 2019 Appellant filed an amended complaint.

{¶3} Thereafter, Appellees filed the Civ.R. 12(B)(6) motions to dismiss based on the claims being barred by the statute of limitations. 8/7/19 Motion to Dismiss; 8/15/19 Motion to Dismiss Amended Complaint.

{¶4} Appellant requested and was granted an extension of time to file a reply to Appellees' motions to dismiss. 8/19/19 Motion for Extension of Time; 8/21/19 J.E. Thereafter, Appellant filed motions in opposition to the motions to dismiss. 8/21/19 Motion in Opposition to Motion to Dismiss; 8/23/19 Motion in Opposition to Motion to Dismiss Amended Complaint. Appellant asserted the complaint should have been deemed filed on June 26, 2019, the date on the letter sent to the Advocate where Appellant asserted his intent to sue. 8/21/19 Motion in Opposition to Motion to Dismiss; 8/23/19 Motion in

Opposition to Motion to Dismiss Amended Complaint. He also asserted the civil complaint was mailed on July 1, 2019 and he cannot control the amount of time it takes institution mail to be sent. 8/21/19 Motion in Opposition to Motion to Dismiss; 8/23/19 Motion in Opposition to Motion to Dismiss Amended Complaint. He asserted the complaint should be deemed timely. 8/21/19 Motion in Opposition to Motion to Dismiss; 8/23/19 Motion in Opposition to Motion to Dismiss Amended Complaint.

{¶5} Prior to the trial court ruling on the motion to dismiss and the opposition motion, Appellant filed other motions. Appellant filed two motions asking for certain evidence to be made part of the record. 8/5/19 Disclosure of Evidence to be made part of the Record; 8/9/19 Disclosure of Evidence to be made part of Record. He also filed a motion to appoint a court mediator and requested mediation, and a motion to strike the dismissal motion. 8/19/19 Motion to Appoint Court Mediator and Request for Mediation; 8/19/19 Motion to Strike Defendants' Motion to Dismiss.

{¶6} The trial court granted Appellees' motion to dismiss holding the complaint sounded in libel, it was filed over one year after the publication, and thus, it was time barred. 8/30/19 J.E. The trial court dismissed the complaint with prejudice. 8/30/19 J.E. The trial court did not rule on the other motions.

{¶7} Appellant timely appealed the trial court's decision. 9/20/19 Notice of Appeal.

First, Third, and Fourth Assignments of Error

"Trial court erred by failing to use proper discretion in consideration of Appellant's justifiable and excusable reasons for his civil complaint being filed seventeen (17) days past the statute of limitations."

"Trial court [erred] by not considering fact that Appellee-Plaintiff filed his claim with Defendant-Appellee on or about June 26, 2019 meaning he technically and legally had one (1) year from the date of filing of claim to file his civil complaint."

"Trial court did not require Defendant to show how it would have created a bias or a prejudice nor did trial court point out any bias or prejudice which it would have caused Defendant-Appellee if trial court denied Motion to Dismiss and allowed case to go through or to go forward."

{¶8} These assignments of error address the basis for the trial court’s decision to grant the motion to dismiss. Appellant asserts the trial court should have found the complaint was timely filed for multiple reasons. He contends there was good cause for the delay in filing the complaint and there would be no prejudice to Appellees if the complaint was accepted 17 days late. He claims he mailed the complaint on July 1, 2019 in hopes that it would arrive at Noble County Clerk of Courts on or before July 5, 2019. Appellant contends Appellees did not oppose or object to his reasons for the delay, which he characterized as justifiable and excusable. He further asserts that the notice of intent to sue put Appellees on notice of the complaint and he implies that the intent to sue letter was sufficient to toll the statute of limitations. He additionally argues that his June 26, 2019 intent to sue letter gave him until June 26, 2020 to file the complaint.

{¶9} Appellant does not comply with App.R. 16(A)(7). His brief does not contain any citations to authorities, case law or statutes, supporting his position. This reason would permit this court to affirm the trial court’s decision on that basis alone. *Midkiff v. Kuzniak*, 7th Dist. Mahoning No. 06 MA 66, 2006-Ohio-6243, ¶ 7. However, in the interest of justice, the merits of his argument will still be addressed.

{¶10} We review a judgment granting a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. In reviewing a motion to dismiss for failure to state a claim, we accept as true all factual allegations in the complaint. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). A complaint should not be dismissed unless it appears “beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.” *O’Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. A motion to dismiss based upon a statute of limitations may be granted only when the complaint shows conclusively on its face that the action is time-barred. *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, 2004-Ohio-5717, 816 N.E.2d 1061, ¶ 11; *Velotta v. Leo Petronzio Landscaping, Inc.*, 69 Ohio St.2d 376, 433 N.E.2d 147 (1982), paragraph three of the syllabus.

{¶11} R.C. 2305.11(A) states that an action for defamation must be commenced within one year after the cause of action accrued. The law on defamation, be it libel or slander, is clear; the statute of limitations begins to run at the time words are written or

spoken. *Reed v. Jagnow*, 7th Dist. Mahoning No. 12 MA 201, 2013-Ohio-2546, ¶ 25; *Foster v. Wells Fargo Fin. Ohio, Inc.*, 195 Ohio App.3d 497, 960 N.E.2d 1022, 2011–Ohio–4632, ¶ 15 (8th Dist.); *Singh v. ABA Pub./Am. Bar Ass’n*, 10th Dist. Franklin No. 02AP-1125, 2003-Ohio-2314, ¶ 22.

{¶12} There is no discovery rule for defamation. *Cramer v. Fairfield Med. Ctr.*, 182 Ohio App.3d 653, 914 N.E.2d 447, 2009–Ohio–3338, ¶ 69–70 (5th Dist.); *Lyons v. Farmers Ins. Group of Cos.*, 67 Ohio App.3d 448, 450, 587 N.E.2d 362 (3d Dist.1990). Furthermore, there is no requirement for an intent to sue letter for a defamation action. The intent to sue letter did not extend the time to file the complaint.

{¶13} Statutes of limitation are strictly construed. See 51 Am. Jur. 2d Limitation of Actions, Section 151 (“The tolling provisions in statutes of limitations are to be strictly construed, and cannot be enlarged on the basis of apparent hardship or inconvenience.”). There is no authority for the position that a showing of good cause tolls the statute of limitations and permits the late filing of a complaint. There is also no authority for the position that the trial court should determine if any prejudice would have resulted from the filing of a late complaint and if there was none the complaint should be determined to be timely. Appellant’s assertion that Appellees did not oppose or object to the alleged justifiable and excusable reasons for the late filing is incorrect. The motion to dismiss is the opposition.

{¶14} For those reasons, this court finds the first, third, and fourth assignments of error are meritless.

Second Assignment of Error

“Trial court [erred] by failing to rule on any/all motions filed by Plaintiff-Appellant which were pending before the Court at time of its ruling on Motions to Dismiss filed by Appellee.”

{¶15} Appellant argues the trial court was required to rule on the pending motions prior to ruling on the motion to dismiss.

{¶16} Similar to the other assignments of error, Appellant does not support his argument with citation to authorities. However, the merits of the argument will be addressed.

{¶17} Appellant’s position is not supported by law. The general law in Ohio is if a trial court fails to issue a written ruling on a pending motion, the presumption is the motion was overruled or it was the intention of the trial court to deny the motion. *State ex rel. Fontanella v. Kontos*, 11th Dist. Trumbull No. 2007-T-0055, 2007-Ohio-5213, ¶ 9 (failing to rule prior to issuing a final order indicates it was the trial court’s intention to deny the motion); *Columbus Mortg., Inc. v. Morton*, 10th Dist. Franklin No. 06AP-723, 2007-Ohio-3057, ¶ 66 (failing to rule on a motion creates the presumption that it was overruled). Accordingly, the trial court was not required to rule on the other motions prior to ruling on the motion to dismiss. This assignment of error is meritless.

Conclusion

{¶18} All assignments of error lack merit. The trial court’s decision to dismiss the complaint with prejudice on the basis that it is barred by the statute of limitations is affirmed.

Donofrio, J., concurs.

D’Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Noble County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.