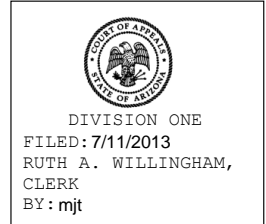


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



LEE WATKINS, an individual,) 1 CA-CV 12-0248
)
Plaintiff/Appellant,) DEPARTMENT T
)
v.) **MEMORANDUM DECISION**
)
SHERIFF JOSEPH M. ARPAIO, in) (Not for Publication -
his individual and official) (Rule 28, Arizona Rules of
capacities as Sheriff of Maricopa) Civil Appellate Procedure)
County,)
)
Defendant/Appellee.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-017980

The Honorable Mark H. Brain, Judge

AFFIRMED IN PART, REVERSED IN PART

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H O W E, Judge

¶1 Watkins appeals the dismissal of his lawsuit against Sheriff Arpaio. For the following reasons, we affirm in part and reverse in part.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In March 2005, Arpaio obtained and executed criminal subpoenas against Watkins and Cactus Towing, a company Watkins founded. In connection with the service of those subpoenas, Arpaio seized Watkins' computers, business records, banking accounts, cash, and trucks. Watkins alleged that Arpaio "orchestrated a media circus" to announce the charges against Watkins and Cactus Towing, and that for years thereafter, Arpaio "continued to make statements that the investigation was ongoing." In October 2010, the County Attorney closed the investigation and declared that he had nothing to prosecute Watkins for. Nearly one year later, in September 2011, Watkins brought suit against Arpaio.

¶3 Arpaio moved to dismiss the complaint for failure to state a claim and also argued that the one-year statute of limitations barred all the claims. The trial court dismissed Watkins' claims as time-barred and entered judgment in Arpaio's favor and did not determine whether Watkins' complaint stated a claim against Arpaio. Watkins appealed. We have jurisdiction

pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1) (West 2013).¹

DISCUSSION

I. Did Watkins Bring His Claims Within the Statute of Limitations?

¶4 Watkins maintains that his claims should not have been dismissed because they are not time-barred. We review de novo questions of law related to the statute of limitations. *Logerquist v. Danforth*, 188 Ariz. 16, 18, 932 P.2d 281, 283 (1996). Arizona law requires that all actions against public employees be brought within one year after the cause of action accrues. See A.R.S. § 12-821. Such a cause of action accrues "when the damaged party realizes he or she has been damaged and knows or reasonably should know the cause, source, act, event,

¹ Watkins named Maricopa County as a defendant in his lawsuit. He filed a notice of appeal after the trial court granted both defendants' motions to dismiss in an unsigned minute entry and signed a formal judgment in Arpaio's favor, but before a signed formal judgment was entered in the County's favor. Watkins appeals only the dismissal of his claims against Arpaio. Watkins' notice of appeal was premature because the signed judgment did not contain Arizona Rule of Civil Procedure 54(b) language and did not finally resolve the claims against the County. Because only the ministerial act of signing the judgment in the County's favor remained, and no motions were pending at the time Watkins filed his notice of appeal, the premature notice of appeal was not a nullity, and this Court has jurisdiction over the appeal. *Compare Hill v. City of Phoenix*, 193 Ariz. 570, 571, ¶ 6, 975 P.2d 700, 701 (1999) (court has jurisdiction over appeal when notice filed after signed final judgment in one defendant's favor but before entry of signed final judgment in other defendant's favor).

instrumentality or condition that caused or contributed to the damage." A.R.S. § 12-821.01(B).

¶15 Arpaio contends that Watkins' claims accrued on March 31, 2005, the date that he executed the search warrant and seized Watkins' assets. On this date, Watkins knew that he had been damaged, and he knew the cause of the damage was Arpaio's service of the allegedly improper warrant and seizure of his property. Watkins argues, however, that his claims accrued on October 20, 2010, the date the County Attorney announced the end of its investigation of Cactus Towing. Watkins claims that the five-year investigation and attendant media attention that Arpaio initiated after the improper search and seizure constitutes a continuing violation, so the claim accrues for statute of limitation purposes on the last date giving rise to the tort claim.

¶16 We need not reach Watkins' "continuing violation" argument, however, because he filed his complaint within one year of Arpaio's alleged commission of the tortious acts. The claims are all premised, at least in part, on Arpaio's alleged media statements about Watkins' criminal wrongdoing. Watkins alleges that Arpaio accused Watkins of criminal wrongdoing in the media "even after the Maricopa County Attorneys' Office indicated that it was discontinuing its prosecution" in October

of 2010. Watkins filed his lawsuit in September of 2011, less than one year later. The trial court erred in holding that the complaint contained no specific allegations about the media coverage within the year before Watkins' complaint. Thus, based on the allegations in the complaint, the one-year statute of limitations does not bar Watkins' tort claims.

II. Did Watkins State Claims For Which Relief Can Be Granted?

¶7 Because Watkins' claims were within the statute of limitations, we must next determine whether those claims otherwise withstand Arpaio's motion to dismiss under Rule 12(b)(6). We review a motion to dismiss de novo. *Coleman v. City of Mesa*, 230 Ariz. 352, 355-56, ¶¶ 7-8, 284 P.3d 863, 866-67 (2012). We uphold dismissal "only if the plaintiffs would not be entitled to relief under any facts susceptible of proof in the statement of the claim." *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346, 922 P.2d 308, 311 (1996). We assume all well-pleaded factual allegations are true and resolve all inferences in favor of the party opposing the motion to dismiss. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7, 189 P.2d 344, 346 (2008). We examine the claims in turn.

A. Intentional Infliction of Emotional Distress

¶8 The elements of the tort of intentional infliction of emotional distress are (1) the defendant committed "extreme and

outrageous conduct"; (2) the defendant either intended to cause emotional distress or recklessly disregarded the near certainty that such distress will result from the conduct; and (3) the conduct caused severe emotional distress. *Ford v. Revlon, Inc.* 153 Ariz. 38, 43, 734 P.2d 580, 585 (1987); *Johnson v. McDonald*, 197 Ariz. 155, 160, ¶ 23, 3 P.3d 1075, 1080 (App. 1999). Although "[t]he trial court determines whether the acts at issue are sufficiently outrageous to state a claim for relief; . . . if reasonable minds could differ about whether the conduct is sufficiently outrageous," a jury should decide the issue. *Johnson*, 197 Ariz. at 160, ¶ 23, 3 P.3d at 1080.

¶19 Watkins alleged in the complaint that Arpaio's conduct was extreme and outrageous. He stated that Arpaio issued press releases and made statements to the media about Watkins' alleged criminal conduct, even after the Maricopa County Attorney's Office indicated that it was discontinuing its prosecution. Watkins further alleged that Arpaio's actions were "designed to cause injury," and that Watkins sustained serious emotional distress as a result. Accordingly, Watkins has stated a claim for emotional distress, and the trial court erred in dismissing this claim.

B. Intentional Interference with Contractual Relations

¶10 To state a valid claim of intentional interference with a contract, Watkins must allege that: (1) a valid contractual relationship existed, (2) the tortfeasor knew of the relationship, (3) the tortfeasor's intentional interference induced or caused a breach, (4) the party whose relationship has been disrupted suffered damages from the breach, and (5) the defendant acted improperly. *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 493, ¶ 74, 38 P.3d 12, 31 (2002).

¶11 Watkins concedes that he did not clearly allege that Arpaio's conduct caused a breach of contract. But he argues that the court can infer this element from allegations that Arpaio acted improperly and that Cactus Towing had contractual relationships with numerous entities. We cannot logically infer that Arpaio's conduct induced or caused a breach of contract simply because contracts existed and Arpaio acted improperly. Watkins has thus failed to state a claim for which relief can be granted, and the trial court did not err in dismissing this claim.

C. False Light Invasion of Privacy

¶12 For a claim for false light invasion of privacy, a plaintiff must allege that (1) he was placed in a false light

before the public, (2) the false light was highly offensive to a reasonable person, and (3) the publisher knew of or acted in reckless disregard to the falsity of the publicized matter and the false light in which the plaintiff was placed. *Godbehere v. Phoenix Newspapers, Inc.*, 162 Ariz. 335, 338, 342, 783 P.2d 781, 784, 788 (1989).

¶13 Watkins' complaint satisfies these elements. He alleged that he was placed in a false light before the public and states facts showing that the false light was highly offensive to a reasonable person. He also alleged that Arpaio was aware of the County Attorney's announcement that it had concluded the investigation, yet he continued to place Watkins in a false light. This satisfies the element that the publisher knew, or acted in reckless disregard to the truth of the matter. Accordingly, Watkins stated a claim for false light invasion of privacy, and the trial court erred in dismissing this claim.

CONCLUSION

¶14 For the foregoing reasons, we affirm the trial court's dismissal with prejudice of Watkins' claim for intentional interference with contract. However, we reverse the dismissal of

Watkins' claims for intentional infliction of emotional distress
and false light invasion of privacy.

 /s/
RANDALL M. HOWE, Judge

CONCURRING:

 /s/
PATRICIA K. NORRIS, Presiding Judge

 /s/
ANDREW W. GOULD, Judge