RENDERED: November 2, 2001; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001018-MR

FRANCIS J. MURRAY — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 99-CI-01740

COVINGTON POLICE DEPARTMENT
S. H. GIBSON, M. D.; AND
CITY OF COVINGTON — APPELLEES

AND: NO. 2000-CA-002003-MR

FRANCIS J. MURRAY — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 99-CI-01740

COVINGTON POLICE DEPARTMENT;
S. H. GIBSON, M. D.;
OTHER PERSONS AND ORGANIZATIONS
UNIDENTIFIED-UNKNOWN; AND
CITY OF COVINGTON — APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: GUIDUGLI, HUDDLESTON AND JOHNSON, JUDGES.

GUIDUGLI, JUDGE. Francis J. Murray ("Murray") appeals from orders of the Kenton Circuit Court dismissing his actions against the City of Covington and Dr. Smith H. Gibson ("Gibson"). We affirm.

The record indicates that on September 1, 1999, Murray filed a pro se complaint in Kenton Circuit Court against the City of Covington and Gibson. The complaint alleged in relevant part that the City of Covington violated Murray's civil rights on July 23, 1998, when he was falsely arrested and imprisoned.[1] He further alleged that in a separate incident on April 6, 1999, Covington police officers informed a "Dr. Dennison" that Murray's vehicle was not registered, thus resulting in the doctor's office having the vehicle towed.[2] On September 3, 1999, Murray filed a pleading styled "Corrected Filing of Docoment [sic]", which changed the name "Dr. Dennison" to Dr. S.H. Gibson.

On September 15, 1999, the City of Covington moved for a judgment on the pleadings and/or summary judgment. As a basis for the motion, it argued that the false imprisonment and civil rights allegations were not brought within the one-year statute of limitations. The City further contended that the portion of the complaint relating to Murray's vehicle being towed failed to

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[1]The facts relating to this incident are not contained in the record. They were addressed in a criminal proceeding (98-M-3656) to which the parties made reference in their circuit court pleadings.

[2]The parties do not directly address the facts relating to this incident. An affidavit contained in the record states that Murray was given permission to leave his vehicle on Gibson's lot for one week. When the vehicle had not been removed three weeks later, Gibson had the vehicle towed away.

state a cause of action upon which relief could be granted. It appears from the record that the circuit court did not rule on this motion.

On November 29, 1999, Gibson filed an answer and sought a judgment on the pleadings. He argued therein that the complaint failed to make any allegation against him which constituted a cause of action. On March 1, 2000, he sought summary judgment. The latter motion was granted via an order rendered on March 20, 2000.

Lastly, on June 28, 2000, the City of Covington moved for summary judgment. The memorandum in support of the motion again raised the issue of Murray's failure to bring the action within the statutory period. Upon considering the matter, the circuit court rendered an order on July 20, 2000 granting the motion for summary judgment. This appeal followed.

Murray has filed a two page pro se appellate brief. As best we can tell, it appears that Murray now argues that the trial court erred in dismissing the action against the City of Covington and Gibson. Though his brief is difficult to decipher, Murray apparently takes issue with the circuit court's reliance on Gibson's affidavit as a basis for dismissing the claims. Murray also argues that he complied with the appropriate statutes of limitation, and that the circuit court erred in failing to so find.

We have closely examined the facts, the law, and the briefs, and cannot conclude that the circuit court erred in granting summary judgment in favor of the City of Covington and

Gibson. Summary judgment shall be granted if the record shows that there is no genuine issue of material fact and that the movant is entitled to a judgment as a matter of law. CR 56.03. It should be granted only where it appears that it would be impossible for the non-movant to produce evidence at trial warranting a judgment in his or her favor. Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991).

In the matter at bar, the issues raised in the complaint are 1) false arrest/imprisonment, and 2) liability of the City of Covington because the police told Gibson that Murray's vehicle was improperly registered, causing it to be towed. The circuit court properly entered summary judgment in favor of the City of Covington on both counts. As for the false arrest/imprisonment issue, the arrest occurred on July 23, 1998, and the complaint was not filed until September 1, 1999. This filing clearly was after the expiration of the one-year statute of limitations set forth in 413.140(c). Summary judgment on this issue was appropriate.

On the issue of the City's alleged liability for telling Gibson that Murray's vehicle was unregistered, we must agree with the City that this allegation is not a viable cause of action. As the City notes in its argument, Gibson stated in an affidavit that he, rather than the City, had Murray's vehicle removed from his property. Gibson further stated that the vehicle was towed not pursuant to the authority of the Covington

police, but under the authority of KRS 189.725.[3] We are aware of no recognized cause of action under these facts upon which Murray could sustain an action against the City or prevail at trial. The circuit court did not err in so finding.

Lastly, the summary judgment in favor of Gibson clearly was required. Murray's complaint does not allege any liability as against Gibson, and asserts no recognizable cause of action. The circuit court acted properly in rendering a summary judgment in his favor. Steelvest, supra.

For the foregoing reasons, we affirm the summary judgments of the Kenton Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT PRO SE:

Francis J. Murray
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BRIEF FOR APPELLEE, CITY OF COVINGTON:

Stephen T. McMurtry
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BRIEF FOR APPELLEE, S. H. GIBSON, M.D.:

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[3]KRS 189.725(1) states, "[A]ny owner or attendant of a privately owned parking lot may have removed from the lot any unauthorized vehicle parked and any person engaged to remove such vehicle shall have a lien on the vehicle in accordance with KRS 376.275.