

RENDERED: AUGUST 10, 2012; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2011-CA-001503-MR

MIKE LYON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE  
ACTION NO. 11-CI-003070

SEVEN COUNTIES SERVICES; SANDRA MLINAICIK;  
MOLLY HILL; HOWARD F. BRACCO; AND  
MARSHA WILSON

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND KELLER, JUDGES.

KELLER, JUDGE: On August 15, 2011, the trial court dismissed Mike Lyon's (Lyon) claims against the Appellees because Lyon had not filed his complaint within one year of the date he discovered or should have discovered his injury. On appeal, it appears that Lyon is arguing that his action was based in contract, not

negligence, which means that he should have had fifteen years to file his complaint; and that by filing complaints/grievances under Seven Counties Services' patient's rights policy, he tolled his statute of limitations. The Appellees argue to the contrary. Having reviewed the record, we affirm.

## FACTS

At the outset, we note that Lyon has proceeded *pro se* throughout this litigation. The pleadings filed by Lyon with the circuit court and Lyon's brief and reply brief are somewhat disjointed and difficult to follow. Our recitation of the facts reflects our best understanding of Lyon's claims before the circuit court and this Court. We set forth these facts in a light most favorable to Lyon.

On April 29, 2011, Lyon filed a complaint against the Appellees. In 1973, Lyon began receiving treatment from Seven Counties Services for severe environmental depression. Apparently, Lyon's initial treatment plan called for medication and counseling/therapy. In 1980, Lyon became dissatisfied with the treatment he received, which he described as "insulting & cruel & abusive." Therefore, he requested and received a different treatment plan that provided for "maintenance without treatment," which Lyon indicates meant that he would not receive any counseling/therapy unless he requested it. Lyon did not receive any counseling/therapy for the next fifteen years; however, he continued to receive his medication from Seven Counties Services.

In 1995, Lyon agreed to undergo counseling/therapy again. However, the therapists "became increasingly cruel & abusive - insulting & threatening;"

therefore, in 2006, Lyon demanded their dismissal. Seven Counties Services did not comply with Lyon's demand, and he "made a formal complaint" to a physician and Appellee Molly Hill about "breaches of contract & civil rights." Lyon also demanded that the no counseling/therapy plan be put back into effect. However, personnel at Seven Counties Services ignored his request and Lyon was "forced" to attend therapy sessions "against [his] will in breach of contract & civil rights." In 2007, Seven Counties Services advised Lyon that it would no longer provide treatment.

In addition to alleging that he was treated against his will, Lyon alleged that he was "poisoned . . . with antipsychotic medication with severe radical & life threatening side effects;" that the medication caused him to develop diabetes and other ailments; that his medical records were falsified; that he had been tortured and abused; and that the Appellants "discredited [him] with 35 yrs[.] of malicious [sic] character assassination forced onto the record."

Lyon attached to his complaint a document entitled "Extensions on any & all Statutes of Limitations," which we interpret as a request for relief from the one-year statute of limitations applicable to personal injury claims. In support of that request, Lyon stated, in pertinent part, that: he had requested his medical records on a number of occasions but did not receive any records until the summer of 2008; the records he received were incomplete; he did not learn of the side effects of his medications until the summer of 2008; he never received any response from Seven Counties Services to the complaints/grievances he filed; he

was referred to the wrong agencies with regard to processing those complaints/grievances; and Seven Counties Services hid or refused to produce evidence he requested.

Based on the complaint he filed in circuit court, it appears that Lyon was seeking a court order requiring Seven Counties Services to release his complete medical records and requiring it to begin prescribing his medication without any counseling/therapy. Lyon also requested an order requiring the Board of Social Workers' to disclose all evidence of any investigations it undertook of two Seven Counties Services' employees.<sup>1</sup> Finally, Lyon requested "[a] full and complete Audit of every penny each individual & 7 Counties has made off of me [and] a full accounting of their Billing practices & sources."

On May 19, 2011, the Appellees filed a motion to dismiss Lyon's complaint. In that motion, the Appellees noted Lyon's allegations of mistreatment and stated that only Appellee Molly Hill had actually provided any "clinical services" to Lyon. The other named defendants served in administrative positions at Seven Counties Services and did not provide any direct services to Lyon. Appellees then argued, as they do here, that Lyon's complaint sounds in negligence/personal injury, and that he filed it more than one year after he knew or should have known of his alleged injuries.

In his response to the Appellees' motion, Lyon listed specific allegations against the individual defendants. He also reiterated the reasons he

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<sup>1</sup> We note that the Board of Social Workers has never been a party to this litigation.

gave for initially seeking relief from all statutes of limitations; noted that he had filed grievances/complaints in 2006, which he argued began litigation at that time; and argued that his claims sounded in contract, not negligence, thus entitling him to a fifteen-year statute of limitations.

On August 10, 2011, the circuit court held a hearing on the Appellees' motion.<sup>2</sup> Following that hearing, the court dismissed Lyon's complaint, because he had not filed it within the statutory period.

### STANDARD OF REVIEW

A court should only dismiss a complaint if it appears that the plaintiff "would not be entitled to relief under any set of facts which could be proved in support of his claim." *James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. App. 2002) (footnote and internal quotation marks omitted). In deciding to dismiss a complaint, the court "is not required to make any factual determinations; rather, the question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?" *Id.* Because this is a question of law, we review the circuit court's order *de novo*. *Id.* at 889.

### ANALYSIS

We first address whether the circuit court correctly determined that this is a personal injury and not a contract action.<sup>3</sup> It appears that Lyon believes

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<sup>2</sup> We do not have a copy of either the video recording or a transcript of the hearing in the record before us. However, we are able to address Lyon's appeal without that recording or transcript.

<sup>3</sup> We note that the circuit court did not explicitly make that finding; however, that finding is implicit in the court's application of the one-year personal injury statute of limitations.

that two documents constituted contracts: the treatment plan which indicated that Seven Counties Services would prescribe medication without requiring Lyon to undergo counseling/therapy, and the patient's bill of rights that Seven Counties Services distributes to patients. Neither of these documents created a contractual relationship between Seven Counties Services and Lyon.

The general requirements for any contract are offer and acceptance, full and complete terms, and consideration. *Cantrell Supply, Inc. v. Liberty Mutual Insurance Co.*, 94 S.W3d 381, 384 (Ky. App. 2002). Absent consideration, or a mutuality of obligation, a contract does not exist. *Pace v. Burke*, 150 S.W.3d 62, 65 (Ky. App. 2004). The treatment plan arguably obligated Seven Counties Services to provide Lyon with medication without requiring him to undergo counseling/therapy. However, it did not obligate Lyon to do anything. Likewise, the patient's bill of rights arguably obligated Seven Counties Services to treat Lyon in a certain manner, but did not in any way obligate Lyon. Lyon was free at any time to discontinue treatment with Seven Counties Services, to seek treatment from another provider, or to discontinue treatment altogether. Therefore, because neither document obligated Lyon, we discern no error in the circuit court's implicit finding that Lyon's claim was not contractual.

To determine if Lyon's claim is for personal injury, we look to the non-contract-related allegations in his complaint. Those allegations are related to misdiagnosis, refusal to provide medication, prescription of the incorrect medication, exploitation, failure to warn of potential side effects of medication,

falsification of records, and assault. They arise from personal injury, malpractice, and/or negligence. Therefore, they are governed by the personal injury/malpractice statutes of limitations.

Kentucky Revised Statute (KRS) 413.140(1)(a) provides that "[a]n action for an injury to the person of the plaintiff" shall be brought within one year after "the cause of action accrued." Generally, a cause of action for personal injury accrues when the injury occurs; however, under certain circumstances, a cause of action does not accrue until the plaintiff discovers the injury or reasonably should have discovered it. *Roman Catholic Diocese of Covington v. Secter*, 966 S.W.2d 286, 288 (Ky. App. 1998). Furthermore, any claims against those who render professional services, i.e. malpractice claims, "shall be brought within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured." KRS 413.245.

Construing the record in the light most favorable to Lyon, he discovered that he had been injured no later than the summer of 2008, when he received a copy of his medical records. Therefore, pursuant to KRS 413.140 and/or KRS 413.245, he should have filed his complaint no later than the summer of 2009. Because Lyon did not file his complaint until April 29, 2011, the circuit court correctly determined that Lyon's complaint was not timely filed.

Lyon argues that he should be relieved from the statute of limitations, because the complaints/grievances he filed tolled the running of that statute. This argument is without merit for three reasons. First, Lyon has not filed any evidence

regarding what complaints/grievances were filed, when they were filed, or what issues they addressed. Second, Lyon has not pointed to any authority that violation of the patient bill of rights, under which he ostensibly filed some or all of his complaints/grievances, gives rise to any civil cause of action. Third, Lyon has not pointed to any authority that filing a complaint with an administrative body, such as the board of social work, tolls the statute of limitations for a personal injury claim.

### CONCLUSION

Because Lyon did not file his complaint within the applicable one-year statute of limitations, the circuit court properly dismissed his claim.

Therefore, we affirm.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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