

NOT DESIGNATED FOR PUBLICATION

ARNOLD JACKSON * **NO. 2001-CA-1442**
VERSUS * **COURT OF APPEAL**
CITY OF NEW ORLEANS, * **FOURTH CIRCUIT**
NEW ORLEANS POLICE * **STATE OF LOUISIANA**
DEPARTMENT, DETECTIVE *
KEENEN SHIELDS, ABC *
INSURANCE COMPANY AND *
OFFICER JOHN DOE *
* * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 95-4102, DIVISION "J"
Honorable Nadine M. Ramsey, Judge
* * * * *
Judge Dennis R. Bagneris, Sr.
* * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Terri F. Love, and Judge Max N. Tobias, Jr.)

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AFFIRMED

In this appeal, Arnold Jackson seeks review of the trial court's grant of an exception of prescription filed by the City of New Orleans and Detective Kenneth Shields. For the following reasons, we affirm.

Pursuant to an arrest warrant, unidentified members of the New Orleans Police Department (NOPD) arrested Jackson on September 3, 1993. He was brought to the Orleans Parish Prison and remained there in the custody of the Orleans Parish Sheriff's office until his acquittal on March 23, 1994.

On March 23, 1995, Jackson filed a civil lawsuit against Detective Shields, the City of New Orleans, unidentified police officers, and the NOPD. He alleged abuse of process; violation of the constitution, federal statutes, and departmental rules and regulations; maliciousness toward him; and "other acts of negligence" in connection with his arrest and prosecution. Jackson alleged that the NOPD and the City were responsible in damages to him under a theory of respondent superior and that the City did not properly train its police officers.

The City and Detective Shields filed an exception of prescription asserting that Jackson's lawsuit was untimely because his allegation of false

arrest is subject to a one year prescriptive period. The City and Detective Shields also filed a motion for judgment on the pleadings and/or a motion to dismiss based on qualified immunity, the inadequacy of Jackson's allegations, and the lack of evidence supporting his allegations.

On April 24, 2001, the trial court rendered judgment granting the exception of prescription based upon La. Civ. Code Art. 3492 and determining that the motion for judgment on the pleadings and/or the motion to dismiss based on qualified immunity was consequently rendered moot. Jackson appeals this judgment.

In her Reasons for Judgment, the trial court stated:

Under both *Hampton [v. Kroger Company, 27,073 (La.App. 2 Cir. 6/21/95), 658 So.2d 209, writ denied 95-2140 (La. 1/5/96), 666 So.2d 298]* and *Harvey [v. Dixie Graphics, Inc., 593 So.2d 351 (La. 1992)]*, the Court finds that prescription began to run in plaintiff's case on the day he was arrested- September 3, 1993. This is the time that plaintiff first suffered any actual or appreciable harm. The fact that the Sheriff's office choose (sic) to hold him until his trial date and subsequent acquittal has no bearing on when prescription began to run. The Court finds that because this is a delictual action and all delictual actions are subject to a one-year prescriptive period commencing from the day of the injury or damage is sustained, any causes of action that plaintiff may have against the City or Detective Shields, arising from this arrest, would have prescribed on September 3, 1994. The plaintiff's suit was therefore untimely filed on March 23, 1995. Plaintiff's claims against the City and Detective Shields are hereby dismissed with prejudice.

On appeal, Jackson argues in his first assignment of error that the trial court erred by sustaining the exception of prescription because the court unreasonably assumed that his only cause of action was for false arrest. In her Reasons for Judgment, however, the trial court concluded that “any claims” Jackson made against these defendants had prescribed. In this case, all of the allegations contained in the petition are vague at best, and the trial court’s conclusion that Jackson’s most viable cause of action was for false arrest was entirely reasonable considering the way the allegations were stated in the petition.

Moreover, a determination of the causes of action a plaintiff may have implicitly stated requires consideration of which parties the plaintiff sued. For example, for a plaintiff to state claims for malicious prosecution or wrongful imprisonment, he must sue those responsible for his prosecution or imprisonment. Because Jackson only sued those responsible for the investigation leading to his arrest, as well as his arrest and initial detention, the only potential causes of action he would have are ones related to those activities.

The plaintiff describes his claims as one for false arrest/false imprisonment, abuse of process and/or civil rights. Regardless of how Jackson describes his lawsuit, the only claims he asserted against the

defendants he sued stem from his September 3, 1993 arrest. Therefore, as the defendants correctly point out, if “negligent investigation” is a valid claim, the claim would nevertheless have prescribed on September 3, 1994 because the wrongdoing of which Jackson complains resulted in his arrest on September 3, 1993.

Jackson’s purported claim for recovery under federal civil rights statutes is likewise prescribed. Prescription in these types of actions is determined by state limitations statutes. Hampton v. Kroger Co. 27,073, p. 4(La. App. 2 Cir. 6/21/95), 658 So. 2d 209, 212; Nolan v. Jefferson Parish Hosp. Service Dist. No. 2, 01-175 (La. App. 5 Cir. 6/27/01), 790 So.2d 725, 733-734. In Louisiana, such actions are limited by the prescriptive period contained in Civil Code article 3492 -- one year from the time of the alleged wrong. Id. See also McCoy v. City of Monroe, 32,521 (La. App. 2 Cir. 12/8/99), 747 So.2d 1234, 1243, a case cited by Jackson for a proposition not applicable to the case before us. Thus, to the extent that Jackson’s petition can be read as stating any causes of action other than false arrest, these actions have prescribed. This assignment of error has no merit.

In his second assignment of error, Jackson argues that the trial court erred in determining that his claim had prescribed because he could make no plausible argument that he had sustained damages until his acquittal.

La. Civ. Code art. 3492 provides in part, “delictual actions are subject to a liberative prescription of one year. This prescription commences to run from the day injury or damage is sustained.” Under Louisiana law, the prescriptive period for claims of false arrest begin running immediately after the arrest. In the case relied upon by the trial court, Hampton, 27,073 at 3, 658 So, 2d at 211, the court held:

. . . the prescriptive period for both the alleged wrongful detention and alleged unlawful arrest began to run immediately after the date of his alleged wrongful detention, unlawful arrest and release. Prescription begins to run from the date the plaintiff first suffers actual or appreciable damage, even though he may thereafter come to a more precise realization of the damages or may incur further damages as a result of a completed tortious act. *Harvey v. Dixie Graphics Inc.*, 593 So.2d 351 (La.1992).

See also Donahue v. Williams, 01-537, p. 2 (La. App. 5 Cir. 10/18/01), ___So.2d ___, 2001 WL 1241307, in which the plaintiff’s petition asserted personal and professional damages attributable to her wrongful imprisonment, and the court held, “[A]ssuming that there was a cause of action, prescription commenced to run the day [plaintiff] was detained.”

Nevertheless, Jackson argues that prescription did not begin running in this case until his acquittal. He argues that he had no realistic chance to recognize his cause of action until after his acquittal because his suspicions regarding his arrest were unfounded once the trial court determined that

probable cause existed in the case. Jackson, however, points out nothing to show that the defendants prevented or hindered him from determining that his arrest, and the accompanying investigation, had been wrongful.

Moreover, ignorance of one's legal rights under known facts does not prevent the running of prescription. Hampton, 658 So.2d at 212; Lieber v. State, Dept. of Transp. and Development, 28,745 (La.App. 2 Cir. 10/30/96), 682 So.2d 1257, 1262. Although Jackson's argument might have merit if his causes of action related to his prosecution or if he had sued those responsible for his prosecution, his argument in the context of this lawsuit has no merit.

Similarly, Jackson's argument that his claims would have been premature until he was acquitted also has no merit. Again, had Jackson sued other defendants and asserted other causes of action, our finding may have been different. As it is, Jackson's arguments are misdirected and the jurisprudence he cites is not applicable to the factual situation before us.

For these reasons, the judgment sustaining the defendants' exception of prescription is affirmed.

AFFIRMED

