STATE OF MICHIGAN

COURT OF APPEALS

SAVITRI BHAMA, M.D.,

Plaintiff-Appellant,

v

CLINTON VALLEY CENTER MICHIGAN DEPARTMENT OF MENTAL HEALTH,

Defendant-Appellee.

UNPUBLISHED
April 15, 1997

No. 179845
Court of Claims
LC No. 92-014650

Before: Young, P.J., and Corrigan and M.J. Callahan,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the lower court's order dismissing her defamation action against defendant Clinton Valley Center (CVC). We affirm.

I. Factual Background

CVC discharged plaintiff on May 23, 1984 allegedly because she refused to return to work after a medical leave of absence. On December 1988, she returned to work pursuant to an arbitration decision. Before December 1988, plaintiff alleges that she applied for psychiatrist positions with various mental health organizations, including the Oakland County Community Mental Health Services Board ("Board") in June 1987.

When the Board decided not to interview plaintiff, she filed a charge of employment discrimination against the Board with the Equal Employment Opportunity Commission (EEOC). In a letter to the EEOC, dated June 10, 1988, the Board responded that it did not consider plaintiff for the position based on information provided by the Board's then Chief of Adult Services, Dr. V. P. Veluswamy. According to his deposition testimony, Dr. Veluswamy formed an opinion that plaintiff was unqualified for the position based on his personal experience from working with patients shared by the Board and CVC.

* Circuit judge, sitting on the Court of Appeals by assignment.

Evidently, after discovering the contents of this letter, plaintiff sought to hold CVC liable for defamation. Specifically, plaintiff has alleged that CVC supplied defamatory information concerning her qualifications to the Board such that the Board based its decision on the alleged defamation.

II. Procedural Background

In January 1987, plaintiff, acting in pro per, filed several complaints against CVC in the Macomb County Circuit Court, the United States District Court, and the Court of Claims. In each complaint, she alleged violations of the Elliott Larsen Act, MCL 37.2101 et seq; MSA 3.548(101) et seq, including retaliation and discrimination based on gender, age, and ethnicity. The federal action was dismissed by stipulation, and on April 29, 1987, plaintiff's complaint in the Court of Claims was dismissed without prejudice.[1] As a result, plaintiff's complaint with the Macomb Circuit Court was the only pending action remaining.

After retaining counsel, in July 1987, plaintiff filed her first amended complaint in Macomb Circuit Court, adding three additional counts. These included a claim under the Handicappers' Civil Rights Act ("HCRA"), MCL 37.1101 et seq; MSA 3.550(101) et seq, another for intentional infliction of emotional address, and a count for "punitive/exemplary damages". The parties stipulated to dismiss the emotional distress and the punitive damages counts, but defendant moved for summary disposition regarding all plaintiff's remaining claims. The circuit court granted defendant's motions to dismiss on April 1, 1988 regarding the HCRA count, and on September 15, 1988 regarding the Elliott-Larsen counts. On October 1, 1988, plaintiff moved for reconsideration and leave to file a second amended complaint alleging libel and slander and a violation of the Bullard-Plawecki Employee Right to Know Act, MCL 423.501 et seq; MSA 17.62(1) et seq. Although denying the motion for reconsideration, the court granted the plaintiff leave to file her second amended complaint in January 1989. [2] Pursuant to a stipulation, dated June 13, 1991, the libel and slander count was dismissed without prejudice. The Bullard-Plawecki count was mediated on July 6, 1992, and judgment was entered on the mediation award on August 24, 1992.[3] Fifteen months after the stipulation to dismiss her defamation claim, on December 15, 1992, plaintiff filed the instant libel and slander action in the Court of Claims.

CVC filed a motion for summary disposition on March 23, 1993 to dismiss plaintiff's defamation action based upon governmental immunity and expiration of the limitations statute, and in another motion filed on June 17, 1993, argued in addition that plaintiff's complaint failed to state a claim upon which relief could be granted. In response, on July 17, 1993, plaintiff, acting in pro per, filed a motion to "transfer" the matter to Macomb Circuit Court. Because he had no authority to remand the case to Macomb Circuit Court unless that court had a pending action, MCL 600.6421; MSA 27A.6421, Circuit Judge Giddings, acting as a Court of Claims judge, denied the motion to remand in September 1993.

After this, plaintiff retained new counsel to assist her in remanding the case to Macomb Circuit Court. However, on December 1, 1993, plaintiff's counsel's motion to withdraw was granted. In response to her counsel's motion, plaintiff asked Judge Giddings to order counsel to refund the fees that she paid him as she was dissatisfied with his services. Judge Giddings denied her request, explaining

that he was not able to make that determination during counsel's withdrawal hearing. Also, at that hearing, plaintiff renewed her request for the court to remand her case to Macomb Circuit Court, and again Judge Giddings denied the request as Macomb had no pending action. Judge Giddings also allowed plaintiff an additional eight weeks to respond to defendant's summary disposition motion.[4]

Instead, in March 1994, plaintiff again attempted to bring the libel and slander count back to Macomb Circuit Court by filing a motion with that court, but her motion was denied. Plaintiff then unsuccessfully moved for reconsideration, and later appealed the denial of reconsideration to this Court in August 1994. On October 6, 1994, the Court of Claims heard defendant's summary disposition motions. Just two weeks before the defendant's summary disposition hearing in the Court of Claims, plaintiff filed a motion requesting a deferral of the hearing until this Court determined her leave application in the Macomb Circuit matter. At the summary disposition hearing, she renewed this request, and alternatively, asked for an adjournment to file a response to defendant's motions for summary disposition. Judge Giddings refused to adjourn the matter, and granted summary disposition on the basis of governmental immunity and statute of limitations. This Court summarily dismissed plaintiff's Macomb Circuit appeal on November 28, 1994. See Order of the Court of Appeals, issued November 28, 1994 (Docket No. 177751).

II. Summary Disposition

The court of claims granted summary disposition pursuant to MCR 2.116(C)(7), concluding that plaintiff's action was barred by the statute of limitations and governmental immunity. Inasmuch as plaintiff's written responses to defendant's motions for summary disposition concerned mainly her requests to remand the case or defer the hearing, plaintiff now claims that genuine issues of material fact exist even though she failed to present evidence of this to the trial court. See MCR 2.116(G)(4) or MCR 2.116(H). Nevertheless, since plaintiff has appeared in pro per, we will review her claims on the merits to explain the why the lower court properly dismissed her claim.

A. Governmental Immunity

This Court reviews a trial court's grant of summary disposition de novo to determine whether the moving party was entitled to judgment as a matter of law. *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994). If a governmental body or agent moves for summary disposition pursuant to MCR 2.116(C)(7), the court reviews the complaint to see whether facts have been pleaded that would justify a finding that recovery in a tort cause of action is not barred by governmental immunity. *Vermilya v Dunham*, 195 Mich App 79, 81; 489 NW2d 496 (1992). The court must consider all documentary evidence filed or submitted by the parties. *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). The court accepts well-pleaded allegations as true and construes them in a light most favorable to the nonmoving party. *Id*. at 162-163.

The Court of Claims correctly ruled that plaintiff's claim was barred by governmental immunity. Governmental agencies, such as CVC, are generally immune from tort liability when engaged in a governmental function, MCL 691.1407(1); MSA 3.996(107)(1), and plaintiff has presented no

evidence that her claim falls within one the statutorily enumerated exceptions. Clearly, defamation does not fall within the highway, building or motor vehicle exceptions to governmental immunity. MCL 691.1402, 1405, 1406; MSA 3.996(102), (105), (106). Further, CVC, a hospital owned or operated by the Department of Mental Health, is not subject to the hospital exception. MCL 691.1407(4)(b); MSA 3.996(107)(4)(b).[5]

B. Statute of Limitations

When reviewing a motion for summary disposition arguing that the limitations period has passed, a court must accept as true the plaintiff's well-pleaded factual allegations and construe them in the plaintiff's favor. *Huron Tool and Eng'g Co v Precision Consulting Servs, Inc*, 209 Mich App 365, 376-377; 532 NW2d 541 (1995). The court must look to the pleadings, affidavits, or other documentary evidence to determine whether there is a genuine issue of material fact. *Id*. at 377. If no facts are in dispute, and reasonable minds could not differ on the legal effect of those facts, whether the plaintiff's claim is barred by the statute of limitations is a question for the court as a matter of law. *Id*.

Plaintiff filed her original complaint in January 1987, and was granted leave to add the defamation claim in January 1989. Assuming the limitations statute began accruing when she learned of the Board's June 10, 1988 letter to the EEOC,[6] plaintiff's original complaint against CVC may have tolled the filing of the amended complaint that included the defamation count. See MCL 600.5856(b); MSA 27A.5856(b). However, that tolling period ended when the parties stipulated to its dismissal without prejudice on June 13, 1991. *Federal Kemper v Isaacson*, 145 Mich App 179, 183; 377 NW2d 379 (1985). When plaintiff filed her complaint on December 15, 1992, over fifteen months had passed since the stipulation was entered. Given that the one-year statute of limitations for defamation claims expired on June 13, 1992, plaintiff's complaint was not timely filed. MCL 600.5805(7); MSA 27A.5805(7).

Plaintiff now claims variously that she never agreed to the stipulation and insists that her then attorney signed the stipulation without her knowledge or that she understood that stipulation encompassed the parties' agreement to transfer the claim back to circuit court. Irrespective of which claim is true, plaintiff cannot dispute that she had knowledge that the stipulation was entered and that a complaint needed to be filed in the Court of Claims. In fact, she explains that she retained yet another attorney who advised her, erroneously, that the complaint should have been filed by January 1993 in the Court of Claims.

Plaintiff also seeks to hold CVC's counsel responsible for failing to specify in the stipulation that plaintiff's complaint was subject to a time bar. Plaintiff's argument has no merit. A plaintiff is responsible for filing an action within the time prescribed. MCL 600.5805(1); 27A.5805(1). A defendant only has the burden of raising and proving the expiration of the statute of limitations as an affirmative defense. MCR 2.118; *Kuebler v Equitable Life Assurance Society*, 219 Mich App 1 ; 555 NW2d 496 (1996).

III. Remaining Issues

In addition, plaintiff claims that Judge Giddings erred in denying her motion to remand the case back to circuit court and her motion to defer the summary disposition hearing. Lastly, plaintiff claims that Judge Giddings erred in allowing her attorney to withdraw without ordering him to refund her money.

First, plaintiff bases her request to remand the case to circuit court on an alleged agreement between her then counsel and CVC's counsel in June 1991, when the stipulation dismissing her defamation count was entered. Plaintiff's only evidence of an alleged agreement is a letter sent by her then counsel to the *Clerk of the Macomb Circuit Court*. Even if an agreement existed, Judge Giddings could not transfer the case to Macomb. As was repeatedly explained to plaintiff, the exclusive jurisdiction of the Court of Claims is fixed by law, and a case can only be transferred to a circuit court if there is a pending action in that court. See MCL 600.6419, 6421; MSA 27A.6419, 6421. While an employee's statutory civil rights claims against the state must be litigated in circuit court, *Rangel*, *supra*, 157 Mich App at 564-565, a claim seeking only money damages must be filed in the court of claims. *Silverman v University of Michigan, Bd of Regents*, 445 Mich 209, 217; 516 NW2d 54 (1994). Also, even if plaintiff's defamation claim were joined with a pending circuit court action, that claim would be tried without a jury as it would be in the Court of Claims. MCL 600.6421; MSA 27A.6421. *Longworth v Dep't of State Highways*, 110 Mich App 771, 776; 315 NW2d 135 (1981). Thus, contrary to plaintiff's contentions, remanding her case to Macomb Circuit Court would not entitle her to a jury for her defamation claim.

Second, plaintiff cannot show that Judge Giddings' denial of her motion to adjourn was an abuse of discretion. MCR 2.503(D)(1). Plaintiff argues that the hearing should have awaited this Court's decision of her prior appeal because this Court was determining which court could have jurisdiction over her claim. Plaintiff's prior appeal was simply another effort to remand the case back to Macomb Circuit Court. As such, Judge Giddings correctly ruled that because plaintiff's defamation claim against CVC failed as a matter of law, a determination of which court *could* hear this clam was irrelevant. In addition, we also reject plaintiff's daim that she was not given a fair opportunity to respond to defendant's motions for summary disposition given that Judge Giddings did not rule on defendant's motion for over a year after they were filed. *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1992) (denying motion to adjourn is appropriate when movant has failed to exercise due diligence.)

Lastly, Judge Giddings' refusal to consider plaintiff's request for a refund from her counsel in December 1993 was not an abuse of discretion because plaintiff's remedy was a suit against her attorney, not a response to a motion to withdraw. See *Lipton v Boesky*, 110 Mich App 589, 599; 313 NW2d 163 (1981) (attorney owes duty of care to client until discharged by client or court).

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Robert P. Young, Jr.
/s/ Maura D. Corrigan
/s/ Michael J. Callahan

[1] The Court of Claims has no jurisdiction over claims brought pursuant to the Elliott-Larsen Act. See *Littsey v Board of Governors, Wayne State Univ*, 108 Mich App 406, 413-414; 310 NW2d 399 (1981); *Rangel v University of Michigan*, 157 Mich App 563, 564-565 ; 403 NW2d 246 (1987).

[2] CVC then immediately moved for rehearing to dismiss plaintiff's second amended complaint, but this motion was denied ultimately in January 1991.

[3] Defendant CVC explains that it elected to mediate this count after the circuit court denied its motion for summary disposition in April 1992.

[4] Plaintiff did file written answers to defendant's first motion in July 1993, but her answers only concerned her requests to remand the case to Macomb Circuit Court.

[5] Still, plaintiff contends that defendant is not entitled to governmental immunity because it acted "maliciously." Even if proof of malice is an exception to governmental immunity, plaintiff cannot prove malice. Plaintiff has not identified any CVC employee, who allegedly defamed her. Plaintiff instead bases her argument upon her 1988 arbitration award, in which the arbitrator stated that CVC acted "arbitrarily." That statement has no bearing on plaintiff's defamation claim as it only concerned the propriety of plaintiff's discharge in 1987, and has no relationship to her job application to the Board.

Alternatively, plaintiff could not establish her claim of defamation against CVC. Defendant CVC has shown through Dr. Veluswamy's deposition and a CVC's personnel officer's affidavit that CVC never communicated anything to the Board or Dr. Veluswamy regarding plaintiff. Plaintiff has made no showing that a defamatory statement concerning her was published or communicated by a CVC employee to a Board employee. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 77; 480 297 NW2d (1991). Because there is no proof that a CVC employee made the alleged statements, plaintiff has failed to state a claim.

[6] In so assuming, we give plaintiff an advantage in calculating the limitations period which she does not legally enjoy. Generally, the statute begins to run from the time when the defamation is published, even though the person defamed has no knowledge thereof until some time afterward. *Grist v The Upjohn Co*, 1 Mich App 72, 80; 134 NW2d 358 (1965).