STATE OF MICHIGAN

COURT OF APPEALS

GARY JAMES QUILL,

Plaintiff-Appellant,

v

WILLIAMS INTERNATIONAL CORP., DONALD A. DUMAS, JOAQUIN M. HAILEY, WILLIAM P. SCHIMMEL, KENNETH C. SEITZ, and THOMAS BEM,

Defendants-Appellees.

UNPUBLISHED
October 20, 1998

No. 194412
Oakland Circuit Court
LC No. 93-463540 NZ

Before: Hoekstra, P.J., and Cavanagh and O'Connell, JJ.

PER CURIAM.

Plaintiff initiated this multi-count action against his former employer and coworkers, and defendants moved for summary disposition, arguing in part that plaintiff's claims were barred by the applicable statute of limitations. The trial court disagreed and granted defendants only partial summary disposition because it found that there remained genuine issues of material fact. The case was subsequently reassigned to another judge. After reassignment, defendants filed a motion in limine. The court granted defendants' motion and dismissed plaintiff's remaining claims because they were barred by the statute of limitations. Plaintiff moved for reconsideration, but the court denied the motion. Plaintiff now appeals as of right to this Court. We affirm.

Plaintiff first argues that the judge to whom the case was reassigned was without authority to enter the instant order dismissing his claims because the first judge had already considered dismissal. Plaintiff asserts that in determining his claims were barred by the statute of limitations, the second judge violated MCR 2.613(B), which states

> A judgment or order may be set aside or vacated, and a proceeding under a judgment or order may be stayed, only by the judge who entered the judgment or order, unless that judge is absent or unable to act. If the judge who entered the judgment or order is absent or unable to act, an order vacating or setting aside the judgment or order or

staying proceedings under the judgment or order may be entered by a judge otherwise empowered to rule in the matter.

See, e.g., *Wilson v Romeos,* 387 Mich 664, 672, 677-678; 199 NW2d 208 (1972) (addressing an earlier version of the court rule); *Totzkay v DuBois (After Remand),* 140 Mich App 374, 379; 364 NW2d 705 (1985).

This case is distinguishable from the previous decisions of this Court and our Supreme Court because the policy reasons behind the court rule and its predecessor are not implicated. The policies of the rule "are to refer a motion to the judge most qualified to decide the motion and to prevent forum shopping." *Liberty v Michigan Bell Telephone Co,* 152 Mich App 780, 783; 394 NW2d 105 (1986) (addressing an earlier version of the court rule). Here, there is no evidence of judge shopping. The chief judge had the authority to reassign the case. MCR 8.110(C)(3)(g). Moreover, the policy behind reassignment – the efficient administration of justice – would be thwarted if only the original judge could dispose of the case. See, e.g., *People v Watkins,* 178 Mich App 439, 448-449; 444 NW2d 201 (1989), overruled on other grounds, 438 Mich 627; 475 NW2d 727 (1991). Accordingly, we conclude that the second judge did not violate MCR 2.613(B) by ruling on defendants' motion in limine.

Having determined that the lower court had authority to act on defendant's motion, we next decide whether the court properly concluded that plaintiff's claims were barred by the statute of limitations. We find that the conclusion was correct. The parties do not dispute that the period of limitation applicable to plaintiff's claims is three years. MCL 600.5805(8); MSA 27A.5805(8). Normally, the defendant bears the burden of proof to establish facts demonstrating that the period of limitation has expired. *Warren Consolidated Schools v WR Grace & Co,* 205 Mich App 580, 583; 518 NW2d 508 (1994). "However, where it appears that the cause of action is prima facie barred, the burden of proof is upon the party seeking to enforce the cause of action to show facts taking the case out of the operation of the statute of limitations." *Id.* Because plaintiff's complaint fails to identify any specific dates for any of the alleged incidents, we agree that plaintiff bore the burden of proof.[1]

In general, a claim accrues at the time the wrong upon which the claim is based was done, regardless of when damage results. *Nelson v Ho,* 222 Mich App 74, 85; 564 NW2d 482 (1997), citing MCL 600.5827; MSA 27A.5827. However, in some instances, a plaintiff may not realize his injury for some time. In such cases, courts have sometimes applied the discovery rule to toll the statute of limitations. See *Lemmerman v Fealk,* 449 Mich 56, 65-66; 534 NW2d 695 (1995). When the discovery rule applies, a plaintiff's cause of action accrues when he discovers, or by exercising reasonable diligence should have discovered, that he has a possible cause of action. *Nelson, supra* at 86.

Unfortunately, the parties in this case do not adequately address whether the discovery rule applies to plaintiff's tortious interference claims and intentional infliction of emotional distress claims, nor did the first judge determine whether the rule actually applied. There is apparently no authority in Michigan for applying the discovery rule to a claim of intentional infliction of emotional distress, *Nelson, supra* at 86, and we find it unnecessary to determine whether the rule applies to plaintiff's claims

because even if the rule applies, there is no genuine issue of material fact concerning when plaintiff discovered or should have discovered his claims. The record reveals evidence of plaintiff's complaints in the 1980s. Similarly, many of the cartoons, caricatures, and other documents reflect a date of 1989. During the month of August 1990, plaintiff sent his supervisor two memos describing the friction surrounding his relationship with the company.[2] Even accepting August 1990 as the earliest date upon which plaintiff was aware of his cause of action, the discovery rule does not save plaintiff's claim because his complaint was untimely filed in October 1993.

Plaintiff also argues that the continuing violation doctrine applies to toll the statute of limitations. However, that doctrine has been given limited application in trespass, nuisance, and civil rights cases, see *Horvath v Delida*, 213 Mich App 620, 627; 540 NW2d 760 (1995), and plaintiff fails to cite any authority which supports applying the doctrine to plaintiff's claims of tortious interference and intentional infliction of emotional distress. A party may not leave it to this Court to search for authority to sustain or reject the party's position. *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996).

Last, plaintiff argues that his insanity tolled the statute of limitations. However, this assertion is legally incorrect. A person who is insane at the time the claim accrues "shall have 1 year after the disability is removed through death or otherwise, to make the entry of the action although the limitations period has run." MCL 600.5851(1); 27A.5851(1). This Court has stated that this provision "does not toll the running of the statute of limitations, but instead exempts certain claims from the bar of the statute." *Honig v Liddy*, 199 Mich App 1, 4; 500 NW2d 745 (1993). In any event, the argument correctly stated is without merit.

Claims of insanity have generally been treated as questions of fact unless it is incontrovertibly established either that the plaintiff did not suffer from insanity at the time the claim accrued or that he had recovered from any such disability more than one year before he commenced his action. MCL 600.5851(3); MSA 27A.5851(3); *Lemmerman*, *supra* at 71. The term "insane" in this context means "a condition of mental derangement such as to prevent the sufferer from comprehending rights he or she is otherwise bound to know and is not dependent on whether or not the person has been judicially declared to be insane." MCL 600.5851(2); MSA 27A.5851(2). Apart from stating that he has received psychiatric treatment, plaintiff relies on conclusory allegation to establish that he suffered from mental derangement. In contrast, defendants have offered documentary evidence that at the time the claim accrued, plaintiff was not unable to comprehend his rights. For example, in both August memoranda written by plaintiff, plaintiff employs legal terms such as "hostile work environment" and "constructive discharge." Further, plaintiff requested layoff separation so that he would be entitled to severance benefits. Last, the time period during which plaintiff claims he was unable to understand the effect of defendants' conduct or his rights is the same time that plaintiff attended and graduated from law school and passed the bar exam. We cannot conclude that the insanity grace period saves plaintiff's claim.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Peter D. O'Connell

[1] We note here that the bulk of plaintiff's complaint consists of conclusory statements. Conclusory statements, unsupported by allegations of fact, are insufficient to state a cause of action. *Allegheny Ludlum Corp v Dep't of Treasury,* 207 Mich App 604, 605; 525 NW2d 512 (1994).

[2] Plaintiff asserts by way of an affidavit from his wife that this letter was written on his behalf by the attorney for whom his wife worked. However, it does not appear that this affidavit was part of the lower court record because the brief to which it was attached was not received by the lower court until after a claim of appeal was filed. Accordingly, we will not consider it because the record may not be expanded on appeal. MCR 7.210(A); *Long v Chelsea Community Hosp,* 219 Mich App 578, 588; 557 NW2d 157 (1996).