

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2018-CA-00547-SCT

MURPHY BURNETT

v.

HINDS COUNTY, MISSISSIPPI, BY AND THROUGH ITS BOARD OF SUPERVISORS; HINDS COUNTY SHERIFF'S DEPARTMENT; SHERIFF TYRONE LEWIS, OFFICIALLY AND IN HIS INDIVIDUAL CAPACITY; THE STATE OF MISSISSIPPI, EX REL., THE OFFICE OF THE DISTRICT ATTORNEY FOR THE SEVENTH CIRCUIT COURT DISTRICT; THE CITY OF JACKSON, MISSISSIPPI; SERGEANT PATRICIA WILDER, IN HER OFFICIAL AND INDIVIDUAL CAPACITY; AND SERGEANT CEDRIC MYLES, IN HIS OFFICIAL AND INDIVIDUAL CAPACITY

DATE OF JUDGMENT:	03/07/2018
TRIAL JUDGE:	HON. JAMES D. BELL
TRIAL COURT ATTORNEYS:	CHRISTOPHER ANTHONY BAMBACH DREW McLEMORE MARTIN CHUCK McRAE JASON EDWARD DARE J. LAWSON HESTER ROBERT E. SANDERS LASHUNDRA JACKSON-WINTERS E. CLAIRE BARKER
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	CHUCK McRAE BRADLEY S. CLANTON DREW McLEMORE MARTIN
ATTORNEYS FOR APPELLEES:	JASON EDWARD DARE LASHUNDRA JACKSON-WINTERS ROBERT E. SANDERS J. LAWSON HESTER
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY

DISPOSITION:

AFFIRMED IN PART; REVERSED IN PART
AND REMANDED - 10/01/2020

MOTION FOR REHEARING FILED:

MANDATE ISSUED:

BEFORE KING, P.J., COLEMAN AND BEAM, JJ.

KING, PRESIDING JUSTICE, FOR THE COURT:

¶1. Murphy Burnett was arrested and detained for several years. The State eventually moved to nolle prosequi its criminal case against Burnett, and he was released from detention. Burnett filed suit against several governmental entities based on torts connected to his arrest, prosecution, and detention. All the entities filed motions to dismiss based on a failure to file proper notices of claims and based on the statutes of limitation. The trial court granted these motions to dismiss. Because proper notices of claims were not sent, because most of the claims are barred by one-year statutes of limitation, and because Burnett did not specifically raise the remaining claims on appeal, this Court affirms the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY¹

¶2. Murphy Burnett was arrested by the Jackson Police Department (JPD) on July 15, 2010, and charged with sexual battery, rape, kidnapping, and forced armed carjacking. He was held at the Hinds County Detention Center. Burnett requested that DNA samples be

¹The primary issues in this appeal revolve around the statute of limitations and the notices of claims. Many factual details surrounding Burnett's arrest, case, and time in detention will not be discussed for simplicity.

provided and tested. Samples were not submitted for testing until April 20, 2011. The Hinds County District Attorney (the DA) received the results on September 8, 2011. Burnett alleges that the DA did not provide the results to Burnett's defense attorney until April 2012. The DNA evidence was submitted for more advanced testing in August 2012, and in December 2012, that advanced testing showed that the DNA found on the female victim did not belong to Burnett. The State moved, and the trial court ordered, that the case against Burnett be nolle prosequed on April 23, 2013. Burnett was released from jail shortly thereafter.

¶3. In the fall of 2013, Burnett sent several notice of claims letters via certified mail to various entities.² On September 23, 2013, he sent a letter to the Hinds County Board of Supervisors, with attention to its president, Robert Graham. He also sent a letter to the Hinds County Detention Center, with attention to the Public Information Department, on September 23, 2013. On the same day, he likewise sent a letter to the City of Jackson, with attention to Mayor Chokwe Lumumba. He also sent letters to JPD, with attention to Sergeants Wilder and Myles. He further sent a letter to the Hinds County Sheriff's Department, with attention to Sheriff Tyrone Lewis. On October 30, 2013, he sent a letter to the Mississippi Department of Corrections, with attention to Commissioner Christopher Epps.

²The entities do not dispute that they received the letters, although the dates that some were received is not apparent from the record.

¶4. On August 19, 2014, Burnett filed a complaint in the United States District Court for the Southern District of Mississippi against Hinds County, the State of Mississippi by and through the Hinds County District Attorney's Office, the Hinds County Sheriff's Department, Sheriff Tyrone Lewis officially and individually, the City of Jackson, Sergeant Patricia Wilder officially and individually, Sergeant Cedric Myles officially and individually, and John and Jane Does. Burnett alleged several federal civil rights violations surrounding his 2010 arrest and subsequent incarceration and prosecution, as well as state law claims of battery, assault, civil conspiracy, outrage, intentional infliction of emotional distress, and slander. On September 15, 2015, the federal court dismissed Burnett's federal claims with prejudice and dismissed his state law claims without prejudice based on Eleventh Amendment sovereign immunity. On October 14, 2015, Burnett filed the complaint in the instant case, alleging claims of battery, assault, civil conspiracy, outrage, intentional infliction of emotional distress, slander, negligence, and false arrest.

¶5. The Hinds County Defendants (Hinds County, the Hinds County Sheriff's Department, and Sheriff Tyrone Lewis) filed a motion to dismiss, or in the alternative, a motion for summary judgment, arguing that Burnett's claims were barred by the one-year statute of limitations found in the MTCA, that his claims against Hinds County are barred by the inmate exception found in the MTCA, and that Sheriff Lewis is immune from liability in his individual capacity because Burnett's allegations do not allege that Sheriff Lewis was acting outside the course and scope of his employment. The trial court found that, at the

latest, Burnett's claims accrued on April 23, 2013.³ The trial court granted the motion, finding that all claims that fell within the MTCA are barred by the one-year statute of limitations and the inmate exception, that Sheriff Lewis could not be liable in his individual capacity for claims that fall within the MTCA, that Hinds County and the sheriff in his official capacity could not be liable for claims that fall outside the MTCA, and that any claims outside the MTCA against Sheriff Lewis in his individual capacity were barred by the one-year statute of limitations for intentional torts.

¶6. The State of Mississippi "by and through the Hinds County District Attorney's Office" filed a motion to dismiss, arguing that Burnett's claims were barred by several immunity doctrines, as well as several provisions of the MTCA, including the statute of limitations. It also argued that any claims outside the MTCA are barred by the one-year statute of limitations for intentional torts. It noted that it was unclear whether the Hinds County District Attorney's Office was a separate defendant. The State and the DA also argued that Burnett did not file any notices of claims against the State or the DA's office, thus his claims fail. The trial court granted the motion, finding that Burnett failed to send notice to the Office of the DA and that his claims were time barred.

³The trial court's only statement to this effect was in the order regarding the State Defendants, but it seems to have applied it throughout. The trial court did not appear to make a formal finding as to when the statute of limitations accrued, but merely gave Burnett the benefit of the latest possible date for the purposes of the motions to dismiss, stating that "[t]he plaintiff's incarceration ended on April 23, 2013. His various causes of action accrued on that date if not earlier."

¶7. The City of Jackson Defendants likewise filed a motion to dismiss, arguing that Burnett's claims were barred by the statute of limitations and that his notices of claims were deficient. The trial court granted the motion, finding that Burnett's claims were time-barred.

¶8. Burnett appeals, arguing that 1) the claims are not time barred once various tolling provisions are accounted for; 2) the trial court should have permitted discovery regarding notice to the DA; 3) the trial court improperly considered matters outside the record without proper notice converting the motions to dismiss to a motion for summary judgment; and 4) the inmate exception does not apply to wrongfully detained individuals.

ANALYSIS

1. Standard of Review

¶9. This Court reviews a trial court's grant or denial of a motion to dismiss de novo. *Areco v. Tolliver*, 949 So. 2d 691, 694 (Miss. 2006). It also reviews a grant or denial of a motion for summary judgment de novo. *Id.*

2. State of Mississippi/Hinds County District Attorney's Office Defendants

a. Notices of Claims

¶10. Mississippi Code Section 11-46-11(2)(a) provides that

Service of notice of claim shall be made as follows:

....

(ii) If the governmental entity to be sued is a state entity as defined in Section 11-46-1(j), or is a political subdivision other than a county or municipality, service of notice of claim shall be had only upon that entity's or political subdivision's chief executive officer.

Miss. Code Ann. § 11-46-11(2)(a)(ii) (Rev. 2019). It further provides for a one-year statute of limitations which contains provisions for tolling in the event a notice of claim is filed.

Miss. Code Ann. § 11-46-11(3)(a) (Rev. 2019).

¶11. In the complaint, Burnett described the State/DA defendant as follows:

The Defendant, State of Mississippi, by and through the Hinds County District Attorney's Office, is a governmental entity responsible for the prosecution of all felony offenses committed in the State of Mississippi, including the felony offenses of which the Plaintiff was charged. In the instant case, the Hinds County District Attorney's Office acted as an agent for the State of Mississippi in its prosecution of the Plaintiff. The State of Mississippi may be served with process by effecting the same upon the Attorney General, Jim Hood, at 550 High Street, Suite 1200, Jackson, Mississippi.

It is uncontested that Burnett did not send notices of claims directly to the Hinds County District Attorney. Burnett did send notices of claims to Hinds County and to MDOC. Burnett argues that the trial court should have allowed discovery to determine if one of these notices of claims was received by the DA, giving him effective notice. He also argues that the federal complaint served on the Attorney General sufficed as notice.

¶12. This Court has held that subsection 2(a) of Section 11-46-11, providing that the notice of claim "shall" be filed with the political subdivision's chief executive officer, is mandatory with regard to who the recipient must be. *Tallahatchie Gen. Hosp. v. Howe*, 49 So. 3d 86, 91-92 (Miss. 2010). If a complainant is and remains noncompliant with that mandatory provision, the lawsuit must be dismissed. *Id.* at 92. Burnett admits he did not comply with this mandatory provision as to the State of Mississippi, by and through the Hinds County

District Attorney's Office, and no amount of discovery, regardless of whether any such request was properly requested or waived,⁴ would cure his noncompliance. Moreover, the federal complaint was filed more than one year after the claim accrued; given that no previous notices of claims were filed that would toll the one-year statute of limitations, it could not properly constitute the statutorily required notices of claims. Therefore, the trial court properly dismissed the complaint as to the State and the DA.

b. Conversion to Motion for Summary Judgment

¶13. Burnett argues that the trial court considered matters outside the record and therefore improperly converted the motions to dismiss to motions for summary judgment. If, on a motion to dismiss,

matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56

M.R.C.P. 12(b). At the hearing, the court inquired whether discovery in the federal case had answered some of the questions posed, asked about the nature of the DNA evidence in the criminal case, and stated while asking about the criminal case that "I know I'm going outside the record." In each instant, the attorney being questioned either stated that he or she did not know the answer to the question or answered the question with information contained in

⁴The State argues that Burnett did not request discovery in the trial court, thus any request raised for the first time on appeal is waived. Regardless of whether this issue was waived, any such discovery would be futile.

Burnett’s complaint, a pleading. Thus, while the trial court posed a few questions that may have gone outside of the pleadings, matters outside the pleadings were not actually presented to the trial court. Burnett does not point to any matters presented, merely questions that went largely unanswered. Moreover, the trial court did not make any findings of fact outside the pleadings in its order. Indeed, instead of making definitive findings regarding when Burnett’s claims accrued, which would have required facts outside the pleadings, the trial court simply gave Burnett the benefit of the latest possible date of accrual as pled in his complaint for the purposes of deciding the motion to dismiss. Thus, the trial court did not actually consider matters outside the pleadings and made its ultimate determination based on only the pleadings before it. *See Favre Prop. Mgmt., LLC v. Cinque Bambini*, 863 So. 2d 1037, 1043 (Miss. 2004). This issue is without merit. Burnett argues this issue as to all defendants, not only the State/DA, but the same analysis applies to Hinds County and the City of Jackson. The issue is without merit as applied to all defendants.

3. *Hinds County Defendants*

a. Notices of Claims

¶14. The Hinds County defendants argue that the notices of claims were not properly served under the MTCA, barring any claims under the MTCA. The MTCA provides that “Service of notice of claim shall be made as follows: (i) For local governments: 1. If the governmental entity is a county, then upon the chancery clerk of the county sued” Miss. Code Ann. § 11-46-11(2)(a)(i) (Rev. 2019). While Burnett sent notices of claims to various

officials in Hinds County, those officials all fall under the umbrella of Hinds County, and Burnett did not serve the Hinds County Chancery Clerk with a notice of claims. The “shall” in the statute renders the particular recipient mandatory. *Howe*, 49 So. 3d at 91-92. If a complainant is and remains noncompliant with that mandatory provision, the lawsuit must be dismissed. *Id.* at 92. Because Burnett did not file a notice of claims upon the Hinds County Chancery Clerk, all MTCA claims against Hinds County/the Hinds County Defendants in their official capacities must be dismissed. Additionally, because no proper notice was filed, the tolling provisions do not apply, and Burnett’s claims are barred by the one-year statute of limitations.

b. Non-MTCA Claims

¶15. Generally, governmental entities are immune from suit. Miss. Code Ann. § 11-46-3 (Rev. 2019). However, immunity is waived for torts committed by governmental entities or by their employees while acting within the course and scope of their employment. Miss. Code Ann. § 11-46-5(1) (Rev. 2019). Governmental entities have not waived immunity for the conduct of an employee “if the employee’s conduct constituted fraud, malice, libel, slander, defamation or any criminal offense other than traffic violations.” Miss. Code Ann. § 11-46-5(2) (Rev. 2019); Miss. Code Ann. § 11-46-7(2) (Rev. 2019). Further, the MTCA is the exclusive remedy for suing the state government and its political subdivisions:

The remedy provided by this chapter against a governmental entity or its employee is exclusive of any other civil action or civil proceeding by reason of the same subject matter against the governmental entity or its employee or the estate of the employee for the act or omission which gave rise to the claim

or suit; and any claim made or suit filed against a governmental entity or its employee to recover damages for any injury for which immunity has been waived under this chapter shall be brought only under the provisions of this chapter, notwithstanding the provisions of any other law to the contrary.

Miss. Code Ann. § 11-46-7(1) (Rev. 2019). Burnett does not allege that Sheriff Lewis was acting outside the course and scope of his employment; thus, only if he alleges fraud, malice, libel, slander, defamation, or any criminal offense against Sheriff Lewis, would those claims fall outside the MTCA. Hinds County argues that, to the extent the complaint alleges any of those factors against Sheriff Lewis individually, the claims are barred by the one-year statute of limitations provided in Section 15-1-35. Miss. Code Ann. § 15-1-35 (Rev. 2019). That one year statute of limitations applies to “[a]ll actions for assault, assault and battery, maiming, false imprisonment, malicious arrest, or menace, and all actions for slanderous words concerning the person or title, for failure to employ, and for libels” *Id.* The MTCA tolling provisions do not apply to claims outside the MTCA. *See Zumwalt v. Jones Cty. Bd. of Supervisors*, 19 So. 3d 672, 688 (Miss. 2009).

¶16. Burnett’s claims include battery, assault, civil conspiracy, outrage, intentional infliction of emotional distress, slander, negligence, and false arrest. The MTCA does not allow a negligence claim individually against an employee operating within the course and scope of employment. Burnett’s claims of assault, battery, false arrest, and slander, to the extent they allege conduct by Sheriff Lewis that would fall outside of the MTCA, are clearly barred by Section 15-1-35. Intentional infliction of emotional distress is also barred by a one-year statute of limitations. *Jones v. Fluor Daniel Servs. Corp.*, 32 So. 3d 417, 423

(Miss. 2010). The tort of outrage is synonymous with intentional infliction of emotional distress and also subject to the one-year statute of limitations. *Raddin v. Manchester Educ. Found., Inc.*, 175 So. 3d 1243, 1252 (Miss. 2015).

¶17. Regarding his civil conspiracy claim, Burnett does not specifically address the statute of limitations, nor does he cite authority regarding the civil conspiracy statute of limitations. Consequently, this Court need not address that issue. M.R.A.P. 28(a)(3); M.R.A.P. 28(a)(7); *Shavers v. Shavers*, 982 So. 2d 397, 401 (Miss. 2008).

4. *City of Jackson Defendants*

a. *Notices of Claims*

¶18. The City of Jackson concedes that the notices of claims were properly mailed to the city clerk. However, the City argues that the notices were otherwise not proper. A notice of claim “shall”

Contain a short and plain statement of the facts upon which the claim is based, including the circumstances which brought about the injury, the extent of the injury, the time and place the injury occurred, the names of all persons known to be involved, the amount of money damages sought, and the residence of the person making the claim at the time of the injury and at the time of filing the notice.

Miss. Code Ann. § 11-46-11(2)(b)(iii) (Rev. 2019). The City claims that Burnett’s notice does “little” to “inform the City of the dates of his injuries and the place his injuries occurred.” It also argues that the notice fails because it does not contain Burnett’s residences at the time of injury or at the time of the notice. This Court has held that all seven categories of information listed in the statute must be contained in the notice of claim. *Parker v.*

Harrison Cnty. Bd. of Supervisors, 987 So. 2d 435, 440 (Miss. 2008). This Court does not reach the issue of substantial compliance with the statute unless the notice contains some information for each category. *Id.* Substantial compliance is not a substitute for noncompliance. *Fairley v. George Cnty.*, 871 So. 2d 713, 717 (Miss. 2004). This Court has allowed other identifying information to substitute for residence. *Lee v. Mem'l Hosp. at Gulfport*, 999 So. 3d 1263, 1267 (Miss. 2008). However, the name, date of birth, and exact dates of hospitalization “were provided for identification purposes[,]” thus “the information provided [was] in substantial compliance with the statutory requirements.” *Id.* The statute is intended to inform entities of claims against them so that they may investigate and make informed decisions, and whether that has been complied with is fact specific. *Id.* at 1266-67. The Court emphasized that its “holding today should not be interpreted as holding that the required elements do not need to be explicitly stated in the notice of claim.” *Id.* at 1267. In interpreting *Lee*, the Court of Appeals has opined that “[t]he Supreme Court’s opinion seemed to view the information that Lee provided as an imperfect substitute for, or attempt to comply with, section 11-46-11(2)’s sixth and seventh required categories of information, rather than a complete failure to comply with those sub-requirements.” *Lane v. Miss. Dep’t of Transp.*, 220 So. 3d 254, 259 (Miss. Ct. App. 2017). It contrasted *Lee* with *Lane*, noting that Lane’s notice of claim “provides absolutely no identifying information other than . . . the claimant’s name” *Id.*

¶19. Burnett put no information regarding his residence at the time of the arrest, or his residence at the time of filing the notice. Nor does Burnett offer other identifying information other than his name. The lack of residence or any substitute identifying information places Burnett's notices of claims in the realm of noncompliance, rather than necessitating that we examine it for substantial compliance. Because his notices of claims did not comply with the statutory requirements, the trial court did not err by dismissing his MTCA claims. Additionally, because no proper notice was filed, the tolling provisions do not apply, and Burnett's claims are barred by the one-year statute of limitations.

b. Non-MTCA claims

¶20. The same analysis applies to the claims against the City of Jackson Defendants as it does to the Hinds County defendants, thus, these claims fail and we affirm the trial court's order.

CONCLUSION

¶21. Because Burnett did not file proper notices of claims against any of the governmental entities, the trial court properly dismissed his MTCA claims. Further, the majority of his non-MTCA claims, to the extent he pled them, were also properly dismissed as barred by the statute of limitations. We decline to address Burnett's civil conspiracy claims due to a failure to properly address them before this Court.

¶22. **AFFIRMED IN PART; REVERSED IN PART AND REMANDED.**

RANDOLPH, C.J., KITCHENS, P.J., COLEMAN, MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.