IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-477

Filed: 6 December 2016

Mecklenburg County, No. 15 CVS 16879

JAMAR SERON RANDALL, Plaintiff,

v.

CLOUD & WILLIAMS, PLLC and CORY A. WILLIAMS, Defendants.

Appeal by plaintiff from order entered 4 February 2016 by Judge Jesse B. Caldwell in Mecklenburg County Superior Court. Heard in the Court of Appeals 18 October 2016.

John M. Kirby for plaintiff-appellant.

Manning Fulton & Skinner, P.A., by Michael T. Medford and Jessica B. Vickers, for defendant-appellees.

BRYANT, Judge.

Where defendant performed his last act giving rise to the cause of action more than three years before the commencement of plaintiff's action seeking damages for legal malpractice, we affirm the trial court order dismissing the action as barred by a statute of limitations imposed pursuant to N.C. Gen. Stat. § 1-15(c) (2015).

On 14 September 2015, plaintiff Jamar Seron Randall filed a civil complaint against defendant law firm Cloud & Williams, PLLC, and defendant Cory A.

Williams, an attorney, in Mecklenburg County Superior Court seeking damages in the amount of $2,400,000.00 on the basis of legal malpractice. In his complaint, plaintiff alleged that he retained the services of defendants to represent him in a criminal case heard in federal court, in the Western District of North Carolina (*United States v. Randall*, No. 3:10-cr-00174-MOC-1). According to allegations in his complaint, plaintiff set out the background for his cause of action as follows. Plaintiff had been charged in federal district court with possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g). The United States offered plaintiff a plea agreement whereby plaintiff would receive two levels of reduction in offense for acceptance of responsibility pursuant to U.S. Sentencing Guidelines Manual § 3E1.1(a) (2010), and the United States would recommend an additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b). But if plaintiff did not accept the plea deal by 15 December 2010, the government would not recommend the reductions pursuant to U.S.S.G. § 3E1.1(b). Plaintiff did not accept the offer. On 3 January 2011, plaintiff accepted a second plea offer, without the additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b). The Federal District Court for the Western District sentenced plaintiff to a term of ninety-two months imprisonment. Plaintiff sought to withdraw his guilty plea and challenged his sentence pursuant to 28 U.S.C. § 2255 contending that he was denied effective assistance of counsel in connection with his plea offers. The District Court denied plaintiff's motions. On 2 April 2014, the Fourth Circuit

affirmed the District Court's denial of plaintiff's motion to withdraw his guilty plea. *United States v. Randall*, 564 F.App'x 701 (4th Cir. 2014) (per curiam) (unpublished). However, the Circuit Court vacated the District Court's denial of plaintiff's motion under 28 U.S.C. § 2255 challenging his sentence and remanded the matter for further proceedings. Upon rehearing, the District Court found that plaintiff's attorney, Cory Williams, provided ineffective assistance of counsel "provid[ing] grossly inaccurate guidelines advice based on failure to review open-file discovery prior to advising a defendant as to the merits of a plea offer." On 2 September 2014, the District Court granted plaintiff's section 2255 motion and directed the government to renew the first plea offer. On 16 October 2014, plaintiff accepted the government's first plea offer, and on 17 February 2015, plaintiff was sentenced to a term of seventy-two months imprisonment followed by three years of supervised release. *United States v. Randall*, No. 3:1-cr-14-MOC-1 (W.D.N.C. Feb. 17, 2015). On 8 April 2015, plaintiff filed suit in Federal District Court in the Eastern District of North Carolina against Cloud & Williams, PLLC, and Cory A. Williams as defendants claiming damages due to legal malpractice. The Federal District Court dismissed the action for lack of subject-matter jurisdiction.

After plaintiff filed his 14 September 2015 state action for legal malpractice, defendants filed a motion to dismiss pursuant to Rule 12(b)(6), arguing that plaintiff's claim was barred by a three-year statute of limitations under General Statutes,

section 1-52. Defendants also asserted that the face of plaintiff's complaint revealed the claim was moot, as the federal courts have "cured the detriment to Plaintiff caused by the allegedly incorrect advice of Defendants." On 4 February 2015, the Superior Court entered an order of dismissal pursuant to Rule 12(b)(6). The court concluded that "Plaintiff's complaint, exhibits to the complaint, and all documents of public record to which the complaint refers establish that Plaintiff's claim for legal malpractice is barred by the statute of limitation set forth [in] Sections 1-52(5) & 1-15(c) of the North Carolina General Statutes which govern malpractice actions." Thus, the trial court dismissed plaintiff's complaint with prejudice.

Plaintiff appeals.

On appeal, plaintiff argues that the Superior Court erred by concluding that plaintiff's cause of action was barred by General Statutes, section 1-15(c) and dismissing the action.

Standard of review

> A complaint is properly subject to dismissal pursuant to N.C. Gen. Stat. § 1A–1, Rule 12(b)(6) when one of the following three conditions is satisfied: (1) the complaint . . . reveals that no law supports the plaintiff's claim; (2) the complaint . . . reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim. As a result, a statute of limitations can be the basis for dismissal on a motion made pursuant to N.C. Gen. Stat. § 1A–1, Rule 12(b)(6) if the face of the complaint discloses

that plaintiff's claim is so barred.

Glynne v. Wilson Med. Ctr., 236 N.C. App. 42, 47–48, 762 S.E.2d 645, 649 (2014) (citations, quotation marks, and brackets omitted), *review dismissed by agreement*, 367 N.C. 811, 768 S.E.2d 115 (2015). "On appeal from an order granting or denying a motion filed pursuant to N.C. Gen. Stat. § 1A–1, Rule 12(b)(6), we review the pleadings *de novo* to determine their legal sufficiency and to determine whether the trial court's ruling on the motion to dismiss was correct." *Id.* at 47, 762 S.E.2d at 649 (citation omitted).

Legal analysis

Plaintiff argues that the trial court erred in concluding that plaintiff's cause of action was barred by General Statutes, section 1-15(c) and dismissing the action. We disagree.

> [S]tatutes of limitations are inflexible and unyielding. They operate inexorably without reference to the merits of plaintiff's cause of action. They are . . . intended to require that litigation be initiated within the prescribed time or not at all.
>
> The purpose of a statute of limitations is to afford security against stale demands, not to deprive anyone of his just rights by lapse of time. In some instances, it may operate to bar the maintenance of meritorious causes of action. When confronted with such a cause, the urge is strong to write into the statute exceptions that do not appear therein. In such case, we must bear in mind Lord Campbell's caution: "Hard cases must not make bad law."

Hackos v. Goodman, Allen & Filetti, PLLC, 228 N.C. App. 33, 43, 745 S.E.2d 336, 342–43 (2013) (citing *Congleton v. City of Asheboro*, 8 N.C. App. 571, 573–74, 174 S.E.2d 870, 872 (1970)).

"N.C. Gen. Stat. § 1–15(c) governs legal malpractice claims, and establishes a three-year statute of limitations and a four-year statute of repose." *Id.* at 36–37, 745 S.E.2d at 339 (citation and quotation marks omitted). Pursuant to General Statutes, section 1-15, "[e]xcept where otherwise provided by statute, a cause of action for malpractice arising out of the performance of or failure to perform professional services shall be deemed to accrue at the time of the occurrence of the last act *of the defendant* giving rise to the cause of action[.]" N.C. Gen. Stat. § 1-15(c) (2015) (emphasis added). "The determination as to the last act giving rise to an action for malpractice is a conclusion of law appropriate for the trial judge to make based on the facts presented, such as the dates of relevant events in the attorney-client relationship." *Hackos*, 228 N.C. App. at 37, 745 S.E.2d at 339.

The dispositive issue on appeal is when the action for malpractice accrued. Here, the last act defendant Williams performed giving rise to the cause of action occurred in December 2010 or January 2011 when plaintiff accepted the federal government's second plea agreement resulting in a sentence of ninety-two months imprisonment. After January 2011, plaintiff proceeded *pro se* or with new counsel. At that point plaintiff had three years in which to bring his claim of malpractice. As

December 2010 and January 2011 preceded the commencement of plaintiff's 15 September 2015 action in Mecklenburg County Superior Court by more than three years, the applicable three-year statute of limitation imposed by General Statutes, section 1-15(c) acts as a bar to plaintiff's claim against defendants Cloud and Williams, PLLC, and Cory Williams for legal malpractice. *See id.* at 43, 745 S.E.2d at 342 ("[S]tatutes of limitations are inflexible and unyielding. They operate inexorably without reference to the merits of plaintiff's cause of action. They are . . . intended to require that litigation be initiated within the prescribed time or not at all." (citation and quotation marks omitted)).

Plaintiff also argues the Superior Court erred by dismissing the action pursuant to North Carolina General Statutes, section 1-15 because defendants did not plead this as a defense. We disagree.

> This Court has found that courts have continuing power to supervise their jurisdiction over the subject matter before them, including the power to dismiss *ex mero motu*. . . . When the complaint fails to allege the substantive elements of some legally cognizable claim, or where it alleges facts which defeat any claim, the complaint must be dismissed.

Tuwamo v. Tuwamo, ___ N.C. ___, ___, ___ S.E.2d ___, ___ (Jul. 19, 2016) (No. COA15-356) (citations and quotation marks omitted). Therefore, whereas here, the face of the complaint discloses facts that necessarily defeat plaintiff's claim pursuant to Rule

1-15, the trial court was within its authority to dismiss the action. Accordingly, we affirm the trial court's order dismissing plaintiff's claim.

AFFIRMED.

Judges CALABRIA and STEPHENS concur.

Report per Rule 30(e).