

[Cite as *Rankin v. Rosolowski*, 2016-Ohio-7490.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104079

JAMES RANKIN

PLAINTIFF-APPELLANT

vs.

BENJAMIN ROSOLOWSKI

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-852543

BEFORE: Celebrezze, J., Keough, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: October 27, 2016

ATTORNEYS FOR APPELLANT

John A. Sivinski
Brian J. Smith
Sivinski & Smith, L.L.C.
20545 Center Ridge Road, Suite 215
Rocky River, Ohio 44116

ATTORNEYS FOR APPELLEE

Walter H. Krohngold
Christine N. Farmer
Ritzler, Coughlin, & Paglia, Ltd.
1360 East Ninth Street
1000 IMG Center
Cleveland, Ohio 44114

FRANK D. CELEBREZZE, JR., J.:

{¶1} Appellant, James Rankin, appeals the dismissal of his personal injury complaint against appellee, Benjamin Rosolowski. Rankin claims the trial court erred in dismissing the complaint because it relied on matters outside of the four corners of the complaint, essentially converting the motion to dismiss to a motion for summary judgment without providing notice. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶2} On March 19, 2012, Rankin and Rosolowski were involved in a motor vehicle accident. To recover compensation for injuries to person and property, Rankin alleges that he filed suit against Rosolowski in the Cuyahoga County Common Pleas Court on July 26, 2013. Rankin further alleges that his complaint was dismissed without prejudice pursuant to his request on October 8, 2014.

{¶3} The record in the present case indicates a complaint was filed by Rankin on October 13, 2015. Later that month, Rosolowski filed a motion to dismiss, arguing that the statute of limitations barred suit. The trial court granted Rosolowski's motion dismissing the complaint.

{¶4} Appellant filed the instant appeal assigning two errors for review:

I. The trial court erred in granting a motion to dismiss that relied upon facts and events outside of the complaint.

II. The trial court erred in effectively converting appellee's motion to dismiss into a motion for summary judgment without notifying the parties of the conversion.

II. Law and Analysis

A. Motion To Dismiss

{¶5} Rankin argues that the trial court improperly considered matters outside of the complaint when ruling on the motion to dismiss, and was thus required to convert the motion to one for summary judgment. Rankin goes on to argue that the trial court never provided the parties with notice that it was converting the motion to dismiss to one for summary judgment.

{¶6} “In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted [under Civ.R. 12(B)(6)], it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.” *O'Brien v. Univ. Community Tenants Union*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975). In deciding a Civ.R. 12(B)(6) motion, a trial court's factual review is confined to the four corners of the complaint. *Grady v. Lenders Interactive Servs.*, 8th Dist. Cuyahoga No. 83966, 2004-Ohio-4239, ¶ 6. This court applies a de novo standard of review to decisions granting Civ.R. 12(B)(6) motions. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5, citing *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, 768 N.E.2d 1136.

{¶7} Here, the trial court dismissed the complaint without setting forth any reasons. However, the only grounds argued in Rosolowski's motion was that Rankin's complaint was time-barred.

{¶8} "A complaint may not be dismissed under Civ.R. 12(B)(6) for failing to comply with the applicable statute of limitations unless the complaint on its face conclusively indicates that the action is time-barred." *Harris v. Pro-Lawn Landscaping, Inc.*, 8th Dist. Cuyahoga No. 97302, 2012-Ohio-498, ¶ 7, citing *Ohio Bur. of Workers' Comp. v. McKinley*, 130 Ohio St.3d 156, 2011-Ohio-4432, 956 N.E.2d 814. "When a motion to dismiss for failure to state a claim upon which relief can be granted presents matters outside the pleading and such matters are not excluded by the court, the motion shall be treated as a motion for summary judgment and disposed of as provided in [Civ.R.] 56." *Gallagher v. Stonegate Mtge. Corp.*, 8th Dist. Cuyahoga No. 99684, 2013-Ohio-5747, ¶ 14. A trial court's failure to exclude evidence outside of the complaint or provide notice of conversion constitutes reversible error. *Id.* at ¶ 15.

{¶9} Here, the trial court did not need to consider matters outside the complaint in order to conclusively determine that Rankin's claims were barred by the applicable statute of limitations. This case is very similar to *Kennedy v. Heckard*, 8th Dist. Cuyahoga No. 80234, 2002-Ohio-6805. There, Kennedy filed suit against Heckard to recover for injuries that resulted from a motor vehicle accident. *Id.* at ¶ 2. The complaint was dismissed and refiled. Heckard then moved to dismiss based on the expiration of the statute of limitations, and the trial court granted the motion without explanation. *Id.*

Kennedy appealed, arguing that dismissal under Civ.R. 12(B) was inappropriate because the trial court considered matters outside of the complaint to conclude that the statute of limitations and savings statute had expired. *Id.* at ¶ 3-4.

{¶10} This court disagreed. Because Kennedy’s complaint did not state that it was refiled, this court examined the complaint and determined that the applicable statute of limitations for injuries sustained in a motor vehicle accident had passed by the time the complaint was filed:

On the face of [Kennedy’s] complaint, it is clear that it was filed outside the statute of limitations. The complaint states that the accident in question occurred “[on] or about July 10, 1998.” The time stamp on the complaint reads April 25, 2001. [Kennedy] had two years to bring her cause of action for personal injury. R.C. 2305.10. Because [Kennedy’s] complaint clearly was filed more than two years after the accident, on its face it is time-barred.

Id. at ¶ 10. This court addressed the same savings statute argument that Rankin now advances, and rejected it based on the failure of the plaintiff to note that the complaint was a refiled complaint. “The majority of the courts, including this district, consistently has held that a motion to dismiss pursuant to Civ.R. 12(B)(6) is appropriate when the plaintiff failed to state in the complaint that the case had been previously dismissed without prejudice and the savings statute used.” *Id.* at ¶ 12. *See also Garfield Hts. ex rel. Kozelka v. Garfield Hts.*, 8th Dist. Cuyahoga No. 92511, 2009-Ohio-5009, ¶ 29-31.

{¶11} Here, Rankin's complaint does not reference any earlier filed complaint. The facts as alleged in the complaint are that the motor vehicle accident that resulted in injury to Rankin occurred on March 19, 2012. The date stamp on the complaint indicates it was filed on October 13, 2015. This is more than two years after the alleged accident occurred, and thus outside the statute of limitations set forth in R.C. 2305.10. Therefore, based on the facts as alleged in the complaint, Rankin's claims are time-barred, and the trial court did not err when granting the motion to dismiss. The court also did not need to provide notice of conversion to a motion for summary judgment as Rankin alleges in his second assignment of error because the court did not need to consider matters outside the complaint to determine that it was time-barred.

{¶12} Therefore, both assignments of error are overruled.

III. Conclusion

{¶13} The trial court did not need to rely on information outside the four corners of the complaint to find that Rankin's claims against Rosolowski were time-barred. Therefore, the trial court did not err in granting Rosolowski's motion to dismiss.

{¶14} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court find there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

KATHLEEN ANN KEOUGH, P.J., and
SEAN C. GALLAGHER, J., CONCUR