Affirmed and Memorandum Opinion filed August 24, 2023.

In The

Fourteenth Court of Appeals

NO. 14-21-00753-CV

MONICA NICOLE TOWNSEND, Appellant

V.

SAIRA VASQUEZ, Appellee

On Appeal from the County Court at Law No. 5
Fort Bend County, Texas
Trial Court Cause No. 19-CCV-066520

MEMORANDUM OPINION

Pro se appellant Monica Nicole Townsend ("Townsend") appeals a judgment in favor of appellee Saira Vasquez ("Vasquez") following a bench trial. In two issues, Townsend argues that (1) the trial court erred "by not including" her claim for intentional infliction of emotional distress ("IIED"), and (2) the trial court erred in granting "summary judgment" to Vasquez based on the statute of limitations defense despite evidence of Townsend's unsound mind. We affirm.

I. BACKGROUND

Townsend filed her original petition against Vasquez in the justice court on September 8, 2016, asserting claims for malicious prosecution, harassment, and emotional distress and seeking damages of $10,000.00. The justice court dismissed Townsend's lawsuit due to a want of jurisdiction, and she perfected an appeal to the county court.

Townsend filed pro se an amended petition in the county court asserting claims for false imprisonment, malicious prosecution, false arrest, and IIED, and requested a no-contact order. Townsend alleged that Vasquez filed a false police report leading to her wrongful arrest, that she suffered extreme emotional distress as a result of her arrest, and requested that the court award her damages. Vasquez filed an answer denying Townsend's claims and asserted the affirmative defense of statute of limitations.

On December 14, 2021, Townsend's lawsuit was tried to the bench, and both Townsend and Vasquez testified at trial. In relevant part, Townsend testified that Vasquez filed a false police report against her on June 20, 2014, causing Townsend to be arrested on September 29, 2014. Townsend asserted the report and false arrest constituted malicious prosecution and was the basis of her IIED claim. Vasquez asserted a statute of limitations defense during trial, testifying that the criminal case against Townsend was dismissed in February of 2015, and the lawsuit filed in September of 2016, more than one year after accrual of her malicious prosecution cause of action.[1]

On December 15, 2021, the trial court signed a judgment ordering that

[1] Malicious prosecution has a one year statute of limitations, which accrues upon dismissal of the criminal cause of action. *See* Tex. Civ. Prac. & Rem. Code Ann. § 16.002(a); *Kaplan v. Clear Lake Water Auth.*, No. C14-91-01344-CV, 1992 WL 383881, at *5 (Tex. App.—Houston [14th Dist.] Dec. 23, 1992, writ denied).

Townsend take nothing on her claims, stating Townsend's claims "are barred by the Statute of Limitations." This appeal followed.

II. STATUTE OF LIMITATIONS

In her first issue, Townsend argues that the trial court erred by "not including" her IIED claim because it is not barred by the statute of limitations. Townsend argues that the statute of limitations began to run on September 29, 2014, when she was arrested, and that she filed her petition within two years of that date on September 8, 2016.[2]

A. STANDARD OF REVIEW & APPLICABLE LAW

When no findings of fact or conclusions of law are filed following a bench trial, the trial court's judgment implies all findings of fact necessary to support it. *See Pharon v. Chambers County*, 922 S.W.2d 945, 948 (Tex. 1996). An appellant may challenge these implied findings by raising both legal and factual sufficiency of the evidence arguments. *See BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002).

When reviewing the legal sufficiency of the evidence, we review the evidence in the light most favorable to the challenged finding and indulge every reasonable inference that would support it. *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). We credit favorable evidence if a reasonable factfinder could and disregard contrary evidence unless a reasonable factfinder could not. *Id.*

Under Texas law, an IIED claim must be brought within two years from the date the cause of action accrued. *See* Tex. Civ. Prac. & Rem. Code Ann. § 16.003. Generally, a cause of action accrues when a wrongful act causes an injury,

[2] We note that Townsend's appellate brief states that she filed a claim for malicious prosecution in her sections titled "Summary of Argument" and "Argument."

regardless of when the plaintiff learns of that injury or if all resulting damages have yet to occur. *Childs v. Haussecker*, 974 S.W.2d 31, 36 (Tex. 1998).

B. ANALYSIS

Here, Townsend provides no argument, standard of review, or citation to authority explaining or analyzing how the trial court erred by implicitly finding that her claim accrued prior to September 8, 2014, and that her claims were barred by the statute of limitations. *See* Tex. R. App. P. 38.1(i) ("The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record."). Although we construe a pro se party's filings liberally, a party's pro se status does not relieve her from the rules of procedure. *See Wheeler v. Green*, 157 S.W.3d 439, 444 (Tex. 2005) (per curiam); *Morris v. Am. Home Mort. Servicing, Inc.*, 360 S.W.3d 32, 36 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (noting that pro se appellant must comply with rules regarding appropriate citation to authorities and to the record); *see also Wade v. Dominion at Woodlands*, No. 14-17-00777-CV, 2018 WL 3354549, at *2 n.4 (Tex. App.—Houston [14th Dist.] July 10, 2018, no pet.) (mem. op.) ("We construe pro se filings and briefs liberally but nonetheless hold pro se litigants to the same standards as licensed attorneys."). To do otherwise would give pro se litigants an unfair advantage over those litigants represented by an attorney. *Canton-Carter v. Baylor Coll. Of Med.*, 271 S.W.3d 928, 930 (Tex. App.—Houston [14th Dist.] 2008, no pet.). Construing Townsend's brief liberally, and in an abundance of caution, we treat her issue as challenging the legal sufficiency of the evidence supporting these findings.

Here, the conduct by Vasquez that Townsend complains of which caused her emotional distress is the filing of a false police report on June 20, 2014. The police report was filed more than two years before Townsend filed her original petition in

the justice court on September 8, 2016.[3] We conclude this is legally sufficient evidence that Townsend's cause of action accrued prior to the filing of her lawsuit on September 8, 2016. Accordingly, we cannot conclude that the trial court erred when it determined that the statute of limitations barred Townsend's IIED claim.

We overrule Townsend's first issue.

III. UNSOUND MIND

In her second issue, Townsend argues that the trial court erred in granting "summary judgment" to Vasquez based on the statute of limitations defense despite evidence of Townsend's unsound mind.

A. APPLICABLE LAW

Limitations is an affirmative defense. *See* Tex. R. Civ. P. 94. In the summary judgment context, a defendant that moves for summary judgment based on this defense bears the burden to prove its elements as a matter of law, including when the plaintiff's claims accrued. *Erikson v. Renda*, 590 S.W.3d 557, 563 (Tex. 2019). When the plaintiff pleads a tolling doctrine as an exception to the defense of limitations, the defendant likewise must conclusively negate the exception. *Id.* A defendant can negate an exception to the defense of limitations in one of two ways: she can conclusively establish that the exception does not apply as a matter of law, *see Schlumberger Tech. Corp. v. Pasko*, 544 S.W.3d 830, 834 (Tex. 2018) (per curiam) (discussing discovery rule), or if the exception applies, then the defendant can conclusively show that the evidence disproves the exception. *Id.*

[3] Townsend did not plead the discovery rule in defense to Vasquez's assertion of the statute of limitations. *See Woods v. William v. Mercer, Inc.*, 769 S.W.2d 515, 518 (Tex. 1988) ("A party seeking to avail itself of the discovery rule must . . . plead the rule, either in its original petition or in an amended or supplemented petition in response to defendant's assertion of the as a matter in avoidance."); *see also Childs v. Haussecker*, 974 S.W.2d 31, 36–37 (Tex. 1998); *S.V. v. R.V.*, 933 S.W.2d 1, 4 (Tex. 1996). We do not express an opinion on whether the filing of the false police report was inherently discoverable.

A person of unsound mind is under a legal disability. Tex. Civ. Prac. & Rem. Code Ann. § 16.001(a)(2). If a person is of unsound mind when a cause of action accrues, then the time during which she is disabled is not included in the limitations period. *Id.* § 16.001(b). But if she becomes of unsound mind after the cause of action accrues, then her legal disability does not suspend the running of limitations. *Id.* § 16.001(d).

In general, unsound mind means insane or mentally incompetent. *Rollins v. Pressler*, 623 S.W.3d 918, 925 (Tex. App.—Houston [1st Dist.] 2021, pet. denied); *Freeman v. Am. Motorists Ins.*, 53 S.W.3d 710, 713 (Tex. App.—Houston [1st Dist.] 2001, no pet.). But tolling of limitations based on the plaintiff's unsound mind is not restricted to those who have been adjudged insane or mentally incompetent. *Rollins*, 623 S.W.3d at 925.

To establish an entitlement to tolling of limitations based on unsound mind, a plaintiff has to either produce specific evidence that shows she did not have the mental capacity to pursue her suit or submit a fact-based expert opinion to this effect. *Id.*; *Gribble v. Layton*, 389 S.W.3d 882, 894 (Tex. App.—Houston [14th Dist.] 2012, pet. denied). A plaintiff lacks the mental capacity to pursue her suit if she is unable to participate in, control, or understand the progression and disposition of the suit. *See Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 755 (Tex. 1993) (op. on reh'g). In assessing a plaintiff's mental capacity, courts should consider, for example, the degree to which she was capable of giving information and testifying. *See id.* at 756.

B. ANALYSIS

In her second issue, Townsend argues that the trial court erred in granting "summary judgment" to Vasquez because Townsend raised a fact issue as to whether she was of an unsound mind. Contrary to Townsend's argument, the trial

court did not grant Vasquez a summary judgment; the trial court but rendered a final judgment following a bench trial. In any event, while Townsend cites case law in support of her second issue, she wholly fails to advance any analysis or discussion applying the facts of this case to the case law cited and explain how she was of an unsound mind when the cause of action accrued, how she lacked the mental capacity to pursue her suit, or what implicit findings by the trial court she is challenging. *See* Tex. R. App. P. 38.1(i). For the foregoing reasons, we overrule Townsend's second issue.

IV. CONCLUSION

The trial court's judgment is affirmed.

/s/ Margaret "Meg" Poissant
Justice

Panel consists of Justices Bourliot, Hassan, and Poissant.