

[Cite as *Wilkerson v. Hartings*, 2009-Ohio-4987.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

CHUN CHA WILKERSON,	:	APPEAL NO. C-081160
	:	TRIAL NO. A-0804973
Plaintiff-Appellant,	:	
	:	<i>DECISION.</i>
vs.	:	
MICHAEL F. HARTINGS PHD,	:	
	:	
Defendant-Appellee.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 25, 2009

F. Harrison Green Co., L.P.A., and F. Harrison Green, for Plaintiff-Appellant,

Triona, Calderhead & Lockemeyer, Ltd., David C. Calderhead, and Joel C. Peschke,
for Defendant-Appellee.

OHIO FIRST DISTRICT COURT OF APPEALS

Please note: This case has been removed from the accelerated calendar.

SYLVIA S. HENDON, Presiding Judge.

{¶1} Plaintiff-appellant Chun Cha (“Ruby”) Wilkerson appeals from the trial court’s grant of summary judgment to defendant-appellee Michael F. Hartings. Because Wilkerson filed her claims against Hartings beyond the applicable limitations period, the judgment of the trial court is affirmed.

Factual Background

{¶2} In 2002, Wilkerson was involved in divorce proceedings in Butler County with her now ex-husband, Dean Wilkerson. Dean Wilkerson had retained Hartings, a psychologist, as his expert witness in the divorce action. Hartings had reviewed evaluations of both Dean and Ruby Wilkerson that had been completed by a court-appointed psychologist. In April 2002, after reviewing these evaluations, Hartings issued two reports to the Butler County Court of Domestic Relations. Hartings’ evaluation of Ruby Wilkerson was not flattering, and, among other conclusions, stated that Wilkerson suffered from a severe personality disorder of the schizophrenic type. Hartings had never met with Wilkerson before issuing his evaluation. Hartings issued a third report in December of 2002 pursuant to court order.

{¶3} In June 2003, a Butler County magistrate awarded custody of the Wilkersons’ minor child to Dean Wilkerson. Hartings’ reports were cited in the magistrate’s decision. Both the trial court and the Twelfth Appellate District affirmed the magistrate’s decision.

{¶4} Wilkerson filed a complaint against Hartings with the State Board of Psychology, alleging that Hartings had behaved improperly during his involvement

in the Wilkersons' custody dispute. In December 2005, Hartings and the State Board of Psychology entered into a consent agreement concerning the underlying actions alleged in Wilkerson's complaint. In this consent agreement, Hartings acknowledged that his actions had violated the rules that Ohio had adopted to govern psychologists.

{¶5} In May 2008, Wilkerson filed this lawsuit against Hartings, alleging, as relevant to this appeal, claims of intentional infliction of emotional distress, tortious interference with familial relations, false light, and fraud. Hartings filed a motion for summary judgment, arguing that Wilkerson's claims were barred by the applicable statute of limitations. The trial court granted Hartings' motion, and this appeal ensued.

Standard of Review

{¶6} This court reviews a grant of summary judgment de novo.¹ Summary judgment is appropriately granted when there exists no genuine issue of material fact, the movant is entitled to judgment as a matter of law, and the evidence, when viewed in favor of the nonmoving party, permits only one reasonable conclusion that is adverse to the nonmoving party.²

Statute of Limitations

{¶7} In her first assignment of error, Wilkerson argues that the trial court erred in granting summary judgment to Hartings because her claims were filed within the relevant statute of limitations.

{¶8} Under R.C. 2305.09, Wilkerson's claims were subject to a four-year statute of limitations. This time period began to run when the causes of actions first

¹ *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671 N.E.2d 241.

² *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 1994-Ohio-130, 639 N.E.2d 1189.

accrued. But R.C. 2305.09 further provides that “[i]f the action is for trespassing under ground or injury to mines, or for the wrongful taking of personal property, the causes thereof shall not accrue until the wrongdoer is discovered; nor, if it is for fraud, until the fraud is discovered.”

{¶9} Wilkerson first argues that this discovery rule applied to all four of her tort claims and not solely to her claim for fraud. We disagree. The Ohio Supreme Court considered a similar argument in *Investors REIT One v. Jacobs*.³

{¶10} In *Jacobs*, the court concluded that the discovery rule in R.C. 2305.09 did not apply to claims of general negligence. The court specifically stated that “[w]hile expressly providing a discovery rule for certain actions arising under R.C. 2305.09, no such rule was extended to general negligence claims. The General Assembly’s failure to include general negligence claims under the discovery rule set out in R.C. 2305.09 argues strongly that it was not the legislature’s intent to apply the discovery rule to such claims. The legislature’s express inclusion of a discovery rule for certain torts arising under R.C. 2305.09, including fraud and conversion, implies the exclusion of other torts arising under the statute, including negligence.”⁴

{¶11} Pursuant to *Jacobs*, we conclude that the discovery rule did not apply to Wilkerson’s claims for intentional infliction of emotional distress, tortious interference with familial relations, and false light. By expressly providing a discovery rule applicable to the torts of fraud and conversion, the legislature excluded other torts not specifically enumerated in the rule.⁵

³ (1989), 46 Ohio St.3d 176, 546 N.E.2d 206.

⁴ Id. at 181 (internal citations omitted).

⁵ See *Herbert v. Banc One Brokerage Corp.* (1994), 93 Ohio App.3d 271, 275, 638 N.E.2d 161.

{¶12} Accordingly, the statute of limitations for Wilkerson's claims for intentional infliction of emotional distress, tortious interference with familial relations, and false light began to run on the date that these claims accrued. Following our review of the record, we conclude that each of these tort claims accrued upon the issuance of Hartings' reports in 2002.

{¶13} Because Wilkerson failed to file these claims within four years of their accrual, they were barred by the statute of limitations.

{¶14} The discovery rule did apply to Wilkerson's claim for fraud. Accordingly, the four-year statute of limitations for that tort began to run on the date that Wilkerson discovered that the fraud had occurred. Wilkerson asserts that she first discovered the fraud in December of 2005, when Hartings entered into the consent agreement with the State Board of Psychology acknowledging his wrongdoing. Hartings contests this, asserting that Wilkerson discovered the alleged fraud in June 2003, upon issuance of the magistrate's decision that awarded custody to Dean Wilkerson and cited Hartings' reports.

{¶15} Case law guides us in our determination as to when this alleged fraud was discovered. "No more than a reasonable opportunity to discover the misrepresentation is required to start the period of limitations. Information sufficient to alert a reasonable person to the possibility of wrongdoing gives rise to a party's duty to inquire into the matter with due diligence."⁶

{¶16} We believe that Wilkerson most likely discovered Hartings' allegedly fraudulent actions upon the issuance of his reports in 2002. Wilkerson knew then

⁶ *Craggett v. Adell Ins. Agency* (1993), 92 Ohio App.3d 443, 454, 635 N.E.2d 1326.

that Hartings had failed to meet with her and that she disagreed with the conclusions reached in Hartings' reports.

{¶17} But giving Wilkerson the benefit of the doubt, we further determine that had she not discovered the fraud when Hartings issued his reports, the absolute latest that this fraud could plausibly have been discovered was when the magistrate's decision was issued in June 2003. Under either of these dates, Wilkerson failed to file her fraud claim within four years of the date of discovery.

{¶18} Consequently, we conclude that the statute of limitations barred each of Wilkerson's asserted claims. The trial court appropriately granted summary judgment, and the first assignment of error is overruled. Our resolution of the first assignment of error renders Wilkerson's remaining three assignments of error moot.

{¶19} The judgment of the trial court is, accordingly, affirmed.

Judgment affirmed

SUNDERMANN and CUNNINGHAM, JJ, concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.