

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Regina M. Ibanez,	:	
Plaintiff-Appellant,	:	
v.	:	No. 11AP-1100
	:	(C.P.C. No. 11CVC-08-10654)
Allen Mosser et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on September 25, 2012

Regina M. Ibanez, pro se.

Mazanec, Raskin & Ryder Co., L.P.A., Robert H. Stoffers, David K. Frank, and Jason R. Deschler, for appellees Allen Mosser, Scott Creed, Irit Levin, Tina Darner, and Dr. Ronald Moomaw.

Lindhorst & Dreidame, and John A. Goldberg, for appellee Sherri Harrell-Lopez.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Plaintiff-appellant, Regina M. Ibanez ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas dismissing her complaint for failure to state a claim.

{¶ 2} Appellant sued defendants-appellees Allen Mosser, Scott Creed, Irit Levin, Tina Darner, Dr. Ronald Moomaw, and Sherri Harrell-Lopez, stating claims for intentional infliction of emotional distress, bodily injury, aggravated assault, and

attempted aggravated murder. All of these claims appear to arise out of mental health treatment or assessment of appellant performed in 2004.

{¶ 3} The trial court dismissed appellant's complaint with prejudice. The court found that appellant had filed substantially the same claims against most of these defendants in a 2009 case, and to the extent that the new complaint was duplicative, it was barred by res judicata based on the outcome of the previous case. The court further found that, to the extent that a single new defendant appeared in this case, all claims against this defendant arising out of events in 2004 were barred by the applicable statutes of limitation. The court rejected appellant's attempt to bring an action under the criminal statutes on her own behalf. Finally, the trial court noted that the complaint, without specifically articulating a claim for defamation, does reference certain allegedly false or defamatory statements made by the defendants in 2009 in connection with the prior litigation. The trial court found both that the statements were privileged and that any defamation claim based on these statements would be time-barred.

{¶ 4} Appellant timely appeals and brings the following sole assignment of error:

The trial court erred by Decision and Entry Denying Plaintiff's Motion for Judgment, Filed November 11th, 2011 Entry Final Judgment Granting Defendants' Motion's To Dismiss and Dismissing Complaint with Prejudice.

{¶ 5} When reviewing a judgment on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted, an appellate court's standard of review is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶ 5. A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992), citing *Assn. for Defense of Washington Loc. School Dist. v. Kiger*, 42 Ohio St.3d 116, 117 (1989). A trial court must presume all factual allegations contained in the complaint to be true and must make all reasonable inferences in favor of the nonmoving party. *Garofalo v. Chicago Title Ins. Co.*, 104 Ohio App.3d 95, 104 (8th Dist.1995), citing *Perez v. Cleveland*, 66 Ohio St.3d 397 (1993), *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190 (1988), and *Phung v. Waste Mgt., Inc.*, 23 Ohio St.3d 100 (1986). "[A]s long as there is a set of facts, consistent with the

plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss." *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 145 (1991).

{¶ 6} The trial court correctly held that, to the extent that the 2011 complaint duplicates the claims disposed of in appellant's 2009 case, they are barred by res judicata. "The doctrine of res judicata bars a litigant from re-litigating an issue that was or could have been raised in an earlier proceeding between the same parties." *State v. Myers*, 10th Dist. No. 05AP-228, 2005-Ohio-5998, ¶ 9.

{¶ 7} We also agree with the trial court that the remaining civil claims, to the extent that they are not subject to res judicata, are time-barred. A party may assert a statute of limitations defense through a Civ.R. 12(B)(6) motion to dismiss if the defense is apparent in the complaint. *Charles v. Conrad*, 10th Dist. No. 05AP-410, 2005-Ohio-6106, ¶ 24; *Stuller v. Price*, 10th Dist. No. 02AP-29, 2003-Ohio-583, ¶ 27. Here, the statute of limitations defense is apparent on the face of appellant's complaint.

{¶ 8} The tort of intentional infliction of emotional distress is governed by the four-year statute of limitations found in R.C. 2305.09. Appellant's claim for "bodily injury," to the extent that it is based upon ordinary negligence, is subject to a two-year statute of limitations for personal injury. R.C. 2305.10(A). To the extent that it is based upon a claim of medical malpractice, it is subject to a one-year statute of limitations. R.C. 2305.113. The allegations in the complaint here allege that the claims arose in December 2004 when appellant was evaluated during a mental health assessment. Appellant has not articulated any circumstance that would toll the statute, and these claims are time-barred upon the face of the complaint.

{¶ 9} Appellant's claim for defamation arises from certain statements made in pleadings or testimony during the course of the 2009 litigation. As such, they are not subject to a defamation claim. A statement in a judicial or quasi-judicial proceeding is privileged and may not form the basis for a defamation action as long as the allegedly defamatory statement is reasonably related to the proceedings. *Hecht v. Levin*, 66 Ohio St.3d 458, 460 (1993). Appellant also characterizes the statements as "perjury." Perjury is a criminal offense and not subject to private prosecution. *Costell v. Toledo Hosp.*, 38 Ohio St.3d 221, 223-24 (1988). Furthermore, any defamation action arising out of either

the 2004 mental health assessment or 2009 litigation is time-barred by the one-year statute of limitations found in R.C. 2305.11(A).

{¶ 10} Finally, we turn to appellant's attempt to state a claim pursuant to the criminal statutes defining aggravated assault and attempted murder, R.C. 2903.01 and 2903.12 respectively. These give appellant no right to pursue an action in her own name: "In the absence of a specific provision to the contrary, criminal statutes generally do not create a private cause of action, but give rise only to a right of prosecution by the state." *George v. State*, 10th Dist. No. 10AP-4, 2010-Ohio-5262, ¶ 32, citing *Lewis v. J.E. Wiggins & Co.*, 10th Dist. No. 04AP-469, 2004-Ohio-6724; *see also Groves v. Groves*, 10th Dist. No. 09AP-1107, 2010-Ohio-4515. Appellant's complaint fails to state a claim under the criminal statutes.

{¶ 11} In summary, we find that the trial court did not err in dismissing appellant's complaint for failure to state a claim pursuant to Civ.R. 12(B)(6). Appellant's sole assignment of error is overruled and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

SADLER and FRENCH, JJ., concur.
