

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Brandt Cook et al.,	:	
Plaintiffs-Appellants,	:	
v.	:	No. 12AP-489
	:	(C.P.C. No. 10 CVC 12 18194)
Scott Elliot Smith et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on January 31, 2013

Jeffery K. Lucas, for appellants.

Isaac, Brant, Ledman & Teetor, LLP, Mark Landes and James M. Young; John P. Mazza, for appellees Scott Elliot Smith and Scott Elliot Smith, LPA.

Reminger Co., LPA, Michael Romanello and Melvin J. Davis, for appellees Todd Collis and Collis, Smiles & Collis, LLC.

Organ Cole + Stock, LLP, Shawn J. Organ, Jonathon K. Stock and Erik J. Clark, for appellee Janet Phillips.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Brandt Cook and related parties are appealing from the dismissal of his lawsuit against his former attorneys. Four errors are assigned for our consideration:

[I.] The trail [sic] court commits error in granting a motion to dismiss pursuant to Civ. R. 12(B)(6) when the cause of action has as an element of the claim the resolution of an underlying proceeding and the underlying litigation will not be resolved until after the statute of limitations has expired.

[II.] The trail [sic] court commits error in granting a motion to dismiss pursuant to Civ. R. 12(B)(6) relying upon their conclusion that the claim is a violation of Civ. R. 13(A).

[III.] The trial court committed error in granting a Motion to Dismiss pursuant to Civ. R. 12(B)(6) finding that there were insufficient operative facts when the Complaint contained the necessary operative facts to support each claim.

[IV.] The trial court commits error in granting a Motion to Dismiss pursuant to Civ. R. 12(B)(6) finding that the claims are barred by the applicable statute of limitations.

{¶ 2} Cook filed a complaint and amended complaints which included allegations that his former counsel had been guilty of professional negligence in the handling of a lawsuit which was still pending at the time Cook filed his complaint and amended complaints. The trial court judge assigned to the case felt that the legal malpractice case could not be resolved without knowing the outcome of the case in which counsel had represented Cook and his related entities. As a result, the trial judge ordered dismissal of that claim without prejudice to it being refiled at a later date. The trial court could have simply deactivated the case, but did not abuse its discretion in ordering dismissal until such time, if ever, the claim fully accrued.

{¶ 3} The first assignment of error is overruled.

{¶ 4} Other portions of Cook's complaints were dismissed for failure to state a claim. *See* Civ.R. 12(B)(6). The failure to state a claim was based at least in part on a theory that Cook had a duty to pursue compulsory counterclaims against the parties who sued him at the start of litigation.

{¶ 5} The plaintiff in the first complaint, which named Cook as a defendant, was listed as Scott Elliot Smith LPA f/k/a Smith Phillips & Associates Company LPA. When Cook filed his first complaint he named Scott Elliot Smith as a party. Since Smith personally was not a party to the lawsuit filed against Cook, Cook did not need to pursue a compulsory counterclaim against Smith personally.

{¶ 6} Cook did need to pursue a compulsory counterclaim against Scott Elliot Smith, LPA if one existed. Scott Elliot Smith, LPA was the named plaintiff in the lawsuit against Cook.

{¶ 7} Cook did not need to pursue a compulsory counterclaim against Smith Phillips & Associates Company LPA. The way that entity was named in the initial complaint filed against Cook indicated that that LPA no longer existed or had no existence

separate from Scott Elliot Smith LPA. Under the circumstances, there was no other separate entity for Cook to pursue via a compulsory counterclaim.

{¶ 8} The trial court, however, does not seem to have relied on the compulsory counterclaim issue in resolving any of the theories of liability. Therefore, the trial court's mention of Scott Elliot Smith personally and Smith Phillips & Associates Company LPA was of no consequence.

{¶ 9} The second assignment of error is overruled.

{¶ 10} Turning to the fourth assignment of error, obviously by the time Scott Elliot Smith, LPA filed suit against Brandt Cook, the attorney-client relationship between the various Smith entities and the various Cook entities had broken down completely. That lawsuit, with Cook as a named defendant, was filed on January 27, 2010. The lawsuit filed by the Cook entities against the Smith-related entities was first filed on December 14, 2010. This timing raised the question of how long before the filing of the lawsuit against Cook had the relationship ended and a claim for legal malpractice accrued. Cook's initial complaint gave no specifics as to such a date. Eventually, the trial judge in Cook's suit ordered Cook to provide a more definite statement as to the claims he and his entities were pursuing, with an admonition that failure to do so could result in dismissal of the lawsuit. The more definite statement was not provided.

{¶ 11} The burden is on the plaintiff to plead a justiciable claim. The plaintiffs here did not provide a pleading which would enable the trial court to tell if any of the claims, especially the legal malpractice claim, was viable or pursued within that allowed by the applicable statute of limitations. Under the circumstances, the trial court was within its discretion to dismiss the complaint as to the Smith entities because of the failure to provide a more definite statement of the claims.

{¶ 12} The fourth assignment of error is overruled.

{¶ 13} The remaining assignment of error is the third assignment of error. This assignment of error attacks the trial court's finding that a more definite statement was required. As to the legal malpractice claims, the need for a more definite statement has been addressed above. The fact that the claim for malpractice appeared to be barred by the applicable statute of limitations and the various complaints filed on behalf of the Cook

entities consistently failed to identify a time frame for the activity alleged to be the basis for liability, the trial court was correct to order a more definite statement.

{¶ 14} The third assignment of error is overruled.

{¶ 15} All four assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.
