

[Cite as *Liebling v. Columbus State Community College*, 2015-Ohio-5642.]

PHILIP LIEBLING

Plaintiff

v.

COLUMBUS STATE COMMUNITY
COLLEGE

Defendant

Case No. 2013-00584

Judge Patrick M. McGrath
Magistrate Holly True Shaver

DECISION

{¶1} Plaintiff brought this action of false light and invasion of privacy, and requested an immunity determination of defendant's employees, Brenda Johnson (Dr. Johnson) and Terrance Brown (Dr. Brown). On February 12, 2015, the court conducted an evidentiary hearing on the issue of immunity, and on May 18, 2015, the magistrate issued a decision recommending that Drs. Johnson and Brown are entitled to immunity pursuant to R.C. 9.86 and 2743.02(F), and that the matter, previously dismissed on the basis of the statute of limitations, be set for trial with regard to the merits of plaintiff's claims.

{¶2} Civ.R. 53(D)(3)(b)(i) states, in part: "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i)." On June 1, 2015, defendant filed objections to the magistrate's decision. Plaintiff did not file a response.

{¶3} Plaintiff was a student in defendant Columbus State Community College's veterinary technician program. According to the original complaint, plaintiff met two of his professors, Drs. Johnson and Brown, on February 22, 2011, during which plaintiff was informed that he was being removed from the program. In response to the notification, plaintiff became aggressive, yelling and calling one of the professors an

expletive. After plaintiff left the room, Drs. Johnson and Brown contacted campus security to deactivate plaintiff's ID badge and had a trespass alert issued against plaintiff.

{¶4} The procedural history of this case is a complicated one. Plaintiff originally brought this claim on October 1, 2013, against defendant as well as Drs. Johnson and Brown, individually. Pursuant to R.C. 2743.02(E), the court dismissed the individuals from the case. Plaintiff indicated on his designation form that there were no pending connected actions. On October 15, 2013, defendant filed a motion to dismiss plaintiff's complaint, and on November 15, 2013, plaintiff filed a memorandum contra along with a motion for an immunity determination of Drs. Johnson and Brown. The court granted defendant's motion to dismiss on January 29, 2014, based upon the expiration of the applicable two-year statute of limitations, and also denied plaintiff's motion for an immunity hearing as moot. Plaintiff appealed the decision to the Tenth District Court of Appeals on a sole assignment of error—"In the Court of Claims, a trial court errs as a matter of law by not granting the plaintiff an immunity determination prior to dismissing the case." The Court of Appeals issued a decision sustaining the assignment of error, stating that "[t]he judgment of the Court of Claims of Ohio is vacated and the case is remanded to that court to address the immunity issues." Pursuant to that decision, an evidentiary hearing was held on February 12, 2015, and during the course of the hearing, a discussion took place regarding the incorrect date of the meeting that forms the basis of plaintiff's complaint. In the complaint, plaintiff stated that the meeting at issue took place on February 22, 2011 which was more than two years prior to the date the complaint was filed. During the evidentiary hearing, counsel for plaintiff stated that the meeting took place on February 23, 2012. Plaintiff's counsel also explicitly stated that even with the change in the date of the meeting, there was no intent to file any claims against defendant and that the complaint was filed in the Court of Claims only for the purpose of obtaining an immunity determination regarding Drs.

Johnson and Brown. After the discussion, the magistrate amended paragraph 10 of plaintiff's complaint by interlineation reflecting the 2012 date rather than the 2011 date. Subsequently, the magistrate found that Drs. Johnson and Brown were entitled to immunity and that because the corrected date of the meeting was within the statute of limitations, recommended that the case proceed in this court.

{¶5} Defendant objects to the magistrate's decisions on two grounds. First, defendant contends that the magistrate erred when she found that plaintiff made an oral motion to amend the complaint and that defendant did not object to the motion. Defendant provides portions of the transcript from the hearing to support its contention. The transcript states, in pertinent part:

- a. Mr. Holford: I'd be happy to make a motion under Rule 15 to amend the pleadings to conform to the evidence that's provided today —
- b. Magistrate: Okay.
- c. Mr. Holford: — in order to rectify the difference between 2011 and 2012.
- d. Magistrate: Ms. Brown?
- e. Ms. Brown: Yeah. We would respond to whatever motion he would file.

{¶6} The transcript continues with defendant stating that for the purposes of the immunity determination, the date of the meeting would not be an issue. Plaintiff agreed with defendant's statement and the court then amended the complaint by interlineation to reflect February 23, 2012 as the date on which the meeting occurred between plaintiff and Drs. Johnson and Brown.

{¶7} Upon review of the transcript, the court finds that plaintiff did not actually make a motion to amend the complaint at the hearing, and although defendant did not explicitly object to the notion of amending the complaint, defendant's agreement to file a

response to any motion to amend the complaint was not acquiescing to the amendment. Accordingly, defendant's first objection is SUSTAINED.

{¶8} Defendant also objects to the magistrate's recommendation that plaintiff is entitled to pursue his claims against defendant after his complaint was dismissed previously. Defendant argues that the case was dismissed by the court through its January 29, 2014 entry and that based on the "law of the case" doctrine, the magistrate could not address the statute of limitations dismissal issue during the hearing or in her recommendation because plaintiff did not raise the issue as an assignment of error in his appeal.

{¶9} "[T]he doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels." *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984). Furthermore, App. R. 3(A) states that "[a]n appeal as of right shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4[.]" and App. R. 4(A) states that "[a] party shall file the notice of appeal required by App. R. 3 within thirty days of the later of entry of the judgment or order."

{¶10} Based upon the appellate rules, plaintiff was required to file a notice of appeal on or before February 28, 2014. Plaintiff did timely file a notice of appeal but his only assignment of error was with regard to the immunity determination and not the court's dismissal based on the statute of limitations. Although it is understandable that the magistrate, relying on the Court of Appeals decision language stating that the "judgment of the Court of Claims of Ohio is vacated," considered all issues at the immunity hearing, the court finds that the specifying language remanding the case to this court to address the immunity issues clarifies the intent of the Court of Appeals to vacate the portion of the court's decision only with respect to the immunity issue. Furthermore, the court notes that plaintiff, on multiple occasions, has explicitly conveyed

that his purpose in filing with the Court of Claims was only to obtain an immunity determination for Drs. Johnson and Brown. Even in his appellate brief, plaintiff stated that “his sole purpose of this re-filing was to obtain an immunity determination regarding defendants Brown and Johnson and then pursue those claims in the Court of Common Pleas.” During the hearing, plaintiff’s counsel also stated plaintiff was “not attempting to sue the State of Ohio” and that it was never their “intention to sue the State of Ohio other than the State of Ohio was a necessary party in order to obtain the immunity determination.” Transcript, at p. 8. Plaintiff’s counsel went on to state on the record that plaintiff “would not pursue a trial here. We are not attempting to sue the State of Ohio. We are just seeking an immunity determination as to Drs. Brown and Johnson.” *Id.* at p. 12-13. Just because plaintiff failed to strip Drs. Johnson and Brown of their immunity, plaintiff cannot now decide to pursue a claim against defendant without having followed the proper procedure in preserving the issue in its appeal, especially because plaintiff had knowledge that the actual date of the meeting was not the date stated in the original complaint. Therefore, defendant’s second objection is SUSTAINED.

{¶11} Based upon the foregoing, the court finds that defendant’s objections are well-taken. The only issue for the court upon this case’s return from the Court of Appeals was to determine immunity with respect to Drs. Johnson and Brown. Furthermore, plaintiff waived any appeal regarding the court’s dismissal on the basis of statute of limitations by failing to assign any error with regard to that portion of the decision in its appeal, and plaintiff continued to waive its right to bring a case against defendant in the subsequent proceedings by stating on the record that it had no intention of filing a case against defendant and that the sole purpose of the immunity hearing was to proceed in the court of common pleas against Drs. Johnson and Brown.

PATRICK M. MCGRATH
Judge

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JUDGMENT ENTRY

{¶12} On May 18, 2015, the magistrate issued a decision recommending that Drs. Johnson and Brown are entitled to immunity pursuant to R.C. 9.86 and 2743.02(F) and recommending trial be set in this matter.

{¶13} Civ.R. 53(D)(3)(b)(i) states, in part: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).” Defendant timely filed objections.

{¶14} Upon review of the record, the magistrate’s decision and the objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law with respect to the immunity decision, but erred in her recommendation to set this matter for trial. Therefore, defendant’s objections are SUSTAINED. The court modifies the magistrate’s decision and recommendation consistent with this decision, such that pursuant to the court’s January 29, 2014 entry, plaintiff’s case against defendant is DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH

Judge

cc:

Andrew M. Holford
250 East Broad Street, Suite 200
Columbus, Ohio 43215

Amy S. Brown
Lindsey M. Grant
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

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