

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Rene Mays, et al.

Court of Appeals No. L-14-1230

Appellant

Trial Court No. CI0201403135

v.

Toledo Hospital, et al.

DECISION AND JUDGMENT

Appellees

Decided: May 15, 2015

* * * * *

Rene Mays, pro se.

Kristen A. Connelly and Elizabeth E. Baer, for appellee Toledo Hospital.

Peter N. Lavalette and Chad M. Thompson, for appellee Mercy St.
Anne Hospital.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an accelerated appeal from the judgment of the Lucas County Court of Common Pleas, dismissing appellant's, Rene Mays, complaint for damages relating to the wrongful death of her brother. We affirm.

{¶ 2} This is the fourth time appellant has been before the court on this matter.

The background facts were summarized in an earlier appeal:

Galon Howard, appellant's brother, passed away on March 15, 2011.

On April 19, 2011, appellant, pro se, commenced an action against appellees Toledo Hospital and Mercy St. Anne's Hospital in the Lucas County Court of Common Pleas for medical negligence and wrongful death. Appellant, as the "personal representative" of Galon Howard stated that she was pursuing the claim on behalf of the decedent's "next of kin."

On July 27, 2011, after motions to dismiss were filed, the court dismissed the action, without prejudice, finding that the claims were required to be brought by an attorney and that the complaint lacked an affidavit of merit pursuant to Civ.R. 10(D)(2). Appellant appealed to this court.

On June 28, 2012, appellant, pro se, refiled her action captioning it a "complaint for declaratory judgment" and requesting that the court "declare" that appellees were required to pay "special damages" in the sum of \$3,240,395.02 due to claims arising out of medical negligence, respondeat superior and wrongful death.

Appellees again filed motions to dismiss arguing that appellant could not, in a pro se capacity, assert claims on behalf of the estate or others or maintain a claim for her own damages. Appellant filed a motion for summary judgment and for sanctions. On November 6, 2012, the trial court

stayed its ruling because appellant's appeal on similar issues was pending. Appellant then dismissed her appeal.

On September 19, 2013, the trial court granted appellees' motions to dismiss finding that appellant failed to file an affidavit of merit as required by Civ.R. 10(D)(2). The court further found that pursuant to R.C. 4705.01, appellant was prohibited from maintaining a pro se action.

Appellant then filed a Civ.R. 60(B) motion for relief from judgment arguing that the probate court had already determined that appellant, as the administrator of the decedent's estate, had standing to file a wrongful death action in the general division of the common pleas court. Appellant further argued that her motion was filed within a reasonable time. The motion was opposed. On October 22, 2013, the trial court denied appellant's Civ.R. 60(B) motion. *Mays v. Toledo Hosp.*, 6th Dist. Lucas No. L-13-1233, 2014-Ohio-1991, ¶ 2-6 (affirming the trial court's judgment).

{¶ 3} The present case was initiated on July 11, 2014, when appellant again filed a complaint seeking damages for the wrongful death of her brother. In this complaint, appellant sought damages only for her personal loss, which she claimed was out-of-pocket funeral and burial expenses and loss of property, in the amount of \$23,766.37. Appellee, Toledo Hospital, filed an answer to the complaint, denying the allegations. Subsequently, on August 29, 2014, appellant filed an amended complaint in which she alleged that Toledo Hospital knowingly made a false statement in its answer in criminal

violation of R.C. 2921.13(A)(1).¹ She claimed that, under R.C. 2921.13(G),² she had a private cause of action for damages for criminal falsification, and asked the court to award her \$3,240,395.02 in damages, which she calculated was the amount of the claims arising out of medical negligence, respondeat superior, and wrongful death.

{¶ 4} On September 16, 2014, appellee, Mercy St. Anne Hospital, moved to dismiss the amended complaint pursuant to Civ.R. 12(B)(6), arguing that appellant was unable to pursue claims on behalf of her brother's estate pro se under R.C. 4705.01, appellant failed to support her medical claim with the requisite affidavit of merit, and appellant failed to timely pursue her claims pursuant to R.C. 2305.113 and 2125.02(D). Further, Mercy St. Anne Hospital noted in a footnote that although it was not named as a defendant to appellant's second cause of action for falsification, that claim likewise was without merit because R.C. 2921.13(G) does not provide a private cause of action absent falsification charges and/or conviction. *Hershey v. Edelman*, 187 Ohio App.3d 400, 2010-Ohio-1992, 932 N.E.2d 386, ¶ 29 (10th Dist.). On September 26, 2014, Toledo Hospital also filed a motion to dismiss, entirely incorporating the contents of Mercy St. Anne Hospital's motion.

¹ R.C. 2921.13(A)(1) provides, "No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies: (1) The statement is made in any official proceeding."

² R.C. 2921.13(G) provides, "A person who violates this section is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under this division."

{¶ 5} On October 22, 2014, the trial court granted appellees' motions to dismiss, finding that appellant's claims were barred by the two-year statute of limitations for wrongful death under R.C. 2125.02(D)(1), and the one-year statute of limitations for medical claims under R.C. 2305.113(A). Further, the trial court set the matter for a hearing on November 7, 2014, to determine whether appellant's conduct was frivolous under R.C. 2323.51(B)(2).

{¶ 6} Appellant timely appealed the October 22, 2014 judgment. Thereafter, appellant also filed a total of five motions to vacate the judgment and the scheduled hearing, as well as numerous other motions, each of which were denied by the trial court, and many of which were appealed to this court. Finally, on December 23, 2014, the trial court entered its judgment finding that appellant's conduct was frivolous, and awarding \$3,603.50 to Toledo Hospital and \$5,036.29 to Mercy St. Anne Hospital. Appellant has timely appealed the December 23, 2014 judgment, and has amended her notice of appeal to include all previous judgments.

B. Assignment of Error

{¶ 7} Appellant presents one assignment of error for our review:

The trial court erred in dismissing with prejudice *inter alia* Appellant's amended complaint on October 22, 2014, and abused its discretion in finding that the third filing in 14-3135 constituted frivolous conduct pursuant to R.C. 2323.51 under the facts and circumstances of this case.

II. Analysis

{¶ 8} We review an order granting a Civ.R. 12(B)(6) motion to dismiss de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44.

{¶ 9} In support of her assignment of error, appellant argues that Ohio’s saving statute, R.C. 2305.19, permitted her to bring her cause of action a third time. We disagree.

{¶ 10} “[T]he saving statute may be used only once to refile a case.” *Dargart v. Ohio Dept. of Transp.*, 171 Ohio App.3d 439, 2006-Ohio-6179, 871 N.E.2d 608, ¶ 21 (6th Dist.), citing *Thomas v. Freeman*, 79 Ohio St.3d 221, 227, 680 N.E.2d 997 (1997). “The saving statute cannot be used to keep actions alive indefinitely.” *Id.*, citing *Romine v. Ohio State Hwy. Patrol*, 136 Ohio App.3d 650, 654, 737 N.E.2d 586 (10th Dist.2000). “To allow a plaintiff to use R.C. 2305.19 more than once would ‘frustrate the purpose of the civil rules which are intended to prevent indefinite filings.’” *Id.*, quoting *Hancock v. Kroger Co.*, 103 Ohio App.3d 266, 269, 659 N.E.2d 336 (10th Dist.1995).

{¶ 11} Here, because appellant is attempting to use the saving statute to bring her claims for a third time, we hold that the trial court did not err in finding that the saving statute did not apply and her claims are barred by the statute of limitations. Therefore, we find this argument to be without merit.

{¶ 12} Appellant next argues that “the trial court erred in dismissing her Amended Complaint without discussion of the falsification claim pursuant to Civil Rule 60(B)(1).” Notably, Civ.R. 60(B)(1) provides an avenue for relief from judgment in the trial court,

and is not applicable as a basis for reversal in the court of appeals. Moreover, the trial court did not err in dismissing appellant's claim for falsification because such a claim does not exist independent of a criminal charge and conviction for falsification. *Hershey*, 187 Ohio App.3d 400, 2010-Ohio-1992, 932 N.E.2d 386, at ¶ 29. Here, the record contains no evidence that Toledo Hospital, or its attorney, has been criminally charged or convicted of falsification under R.C. 2921.13(A)(1). Therefore, appellant's second argument is without merit.

{¶ 13} Appellant last asserts that she is permitted to raise the claims of the estate pro se, and that the requirement of an affidavit of merit is unconstitutional. However, because appellant's cause of action is barred by the statute of limitations, we find her arguments to be moot.

{¶ 14} Upon our review of the record, we hold that the trial court did not err in dismissing appellant's third complaint. Furthermore, we find nothing in the record that would demonstrate that the trial court abused its discretion in determining that appellant's actions constituted frivolous conduct under R.C. 2323.51, and awarding costs and attorney's fees to appellees.

{¶ 15} Accordingly, appellant's assignment of error is not well-taken.

{¶ 16} As a final matter, appellant has moved this court for sanctions against Toledo Hospital based on the alleged frivolous conduct of its counsel. Upon due consideration of the record and the arguments raised in appellant's motion, we find the motion to be not well-taken, and it is hereby denied.

III. Conclusion

{¶ 17} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Appellant's motion for sanctions against Toledo Hospital is denied.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
