[Cite as *Cromartie v. Goolsby*, 2010-Ohio-2604.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93438

RONNIE D. CROMARTIE

PLAINTIFF-APPELLANT

vs.

ELEANOR GOOLSBY, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-632167

BEFORE: Blackmon, J., Rocco, P.J., and Stewart, J.

RELEASED: June 10, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant Ronnie D. Cromartie appeals the trial court's award of summary judgment in favor of appellees, Eleanor Goolsby and the Greater Regional Transit Authority ("RTA"). He assigns the following errors for our review:

> **"I. The trial court abused its discretion in denying Mr. Cromartie's motion to strike and for default judgment, instead granting RTA's motion for summary judgment, even though RTA failed to file an answer or demonstrate excusable neglect."**
>
> **"II. The trial court abused its discretion in denying Mr. Cromartie's motion to strike and for default judgment, instead granting Ms. Goolsby's untimely motion to dismiss and accepting her untimely answer, despite her failure to demonstrate excusable neglect."**
>
> **"III. The trial court erred in awarding summary judgment to Ms. Goolsby when there are genuine material issues of fact that can only be decided by a jury."**

{¶ 2} Having reviewed the record and pertinent law, we affirm the trial court's decision. The apposite facts follow.

Facts

{¶ 3} Ronald Cromartie and Eleanor Goolsby were co-employees at RTA. According to Cromartie, Goolsby spread rumors that he was gay because he rejected her sexual advances.

{¶ 4} On August 15, 2005, Cromartie was waiting at an RTA bus stop in Cleveland Heights. When the bus door opened, Cromartie saw Goolsby was the driver. Although the facts surrounding the confrontation are in dispute, Cromartie admits that he told Goolsby to "keep [his] name out of her conversations."

{¶ 5} The Cleveland Heights Police Department responded to the confrontation between the two parties. Goolsby filed a police report in which she stated that Cromartie had been holding a handgun when he confronted her and told her he was going to kill her. Cromartie was charged with aggravated menacing. While the charge was pending, RTA suspended Cromartie without pay. Once he was acquitted after a jury trial on August 4, 2006, he was reinstated with full back pay.

{¶ 6} Approximately one year after his acquittal, Cromartie filed a complaint against Goolsby and RTA alleging claims for libel, slander, fraud, malicious prosecution, and breach of RTA's employee handbook. In response to the complaint, RTA filed a motion to dismiss arguing that the libel, slander, and malicious prosecution claims were barred by the one year statute of limitations, and that he failed to allege an actionable claim for fraud and breach of the handbook.

{¶ 7} Goolsby also filed a motion to dismiss as to the libel, slander, and

malicious prosecution claims because they were barred by the statute of limitations. She also argued Cromartie's fraud claim as to her should be dismissed as the claim was directed at RTA.

{¶ 8} On October 11, 2007, Cromartie filed an amended complaint and set forth claims for misrepresentation, negligent identification, fraud, malicious prosecution, breach of promise and administrative policies and procedures, abuse of process, estoppel, and intentional infliction of emotional distress. On October 29, 2007, RTA filed a motion to dismiss the amended complaint. The court entered an order giving Goolsby until November 23, 2007 to answer the amended complaint.

{¶ 9} On November 30, 2007, a pretrial hearing was conducted where RTA's motion to dismiss was converted to a motion for summary judgment; the court granted RTA leave to file supplemental evidence. At the same hearing, Goolsby was granted leave until December 12, 2007 to either answer the amended complaint or file a motion for summary judgment.

{¶ 10} On February 14, 2008, pursuant to a stipulated order, the court granted Goolsby leave until March 7, 2008 to either file an answer or a motion for summary judgment; the court also gave RTA until March 7, 2008 to submit its supplemental evidence to the converted motion for summary judgment. On March 10, RTA filed its supplemental brief in support of its

motion for summary judgment and Goolsby filed her answer to the amended complaint and a motion to dismiss the malicious prosecution count because the statute of limitations had expired.

{¶ 11} On August 6, 2008, Cromartie filed a motion to strike RTA's untimely supplemental brief and Goolsby's untimely answer. He requested the court to enter default judgment against Goolsby and RTA because they did not file timely answers to the amended complaint. The trial court denied Cromartie's motions, stating in the entry that "It is the policy of Ohio courts to hear cases on the merits of the case." The court also stated that once it ruled on RTA's motion for summary judgment, it would set an answer date for RTA.

{¶ 12} After several pretrials and change in the discovery dates, Goolsby filed a motion for summary judgment on March 2, 2009. The trial court granted Goolsby's and RTA's motions for summary judgment stating they were entitled to summary judgment as a matter of law.

Denial of Motion for Default and Motion to Strike against RTA

{¶ 13} In his first assigned error, Cromartie argues the trial court abused its discretion by refusing to grant his motion for default against RTA, or in the alternative, the trial court erred by denying his motion to strike RTA's supplemental motion for summary judgment.

{¶ 14} Cromartie filed his amended complaint on October 11, 2007. RTA responded to the amended complaint by filing a motion to dismiss on October 29, 2007. The filing of a Civ.R. 12(B)(6) motion to dismiss is an alternative to answering the complaint. *Baker v. Ohio Dept. of Rehab. & Corr.*, 144 Ohio App.3d 740, 754, 2001-Ohio-2553, 761 N.E.2d 667. A defendant who files such a motion does not have to answer the complaint until after the motion is decided; if the defendant prevails on the motion, he or she may never have to answer. Id. Therefore, RTA's motion to dismiss tolled the twenty-eight day period in which it was required to file an answer to the complaint. Civ.R. 12(A).

{¶ 15} Cromartie argues that RTA was required to file an answer because the court converted RTA's motion to dismiss to a motion for summary judgment. Nothing in the language of Civ.R. 12 requires the filing of an answer when a dismissal motion is converted to a summary judgment motion. According to Civ.R. 12(A)(2), no answer is required because RTA timely moved to dismiss the amended complaint within the answer period. In fact, the trial court issued an order stating it would set RTA's answer date after it ruled on RTA's motion for summary judgment.

{¶ 16} Recently, the Ninth District held that a defendant could file a motion for summary judgment prior to filing an answer, even after the

expiration of the answer period and avoid default judgment. The court stated as follows:

> **"Under the plain language of Civ.R. 56(B), an answer need not precede a defendant's motion for summary judgment. * * * While a party that chooses to ignore an answer date in favor of later filing a motion for summary judgment does so at his peril, nothing in the rules requires the filing of an answer as a condition precedent to filing a motion for summary judgment."** *Haley v. DCO Internatl., Inc.*, 9th Dist. No. 24820, 2010-Ohio-1343, at ¶7.

{¶ 17} Moreover, even if RTA had been delinquent in filing an answer, Civ.R. 55 provides that a motion for default is appropriate only when a party against whom relief is sought has "failed to plead or otherwise defend as provided in these rules." The record indicates that RTA has filed several motions since the commencement of the action; therefore, it would not have been appropriate for the trial court to grant a default judgment.

{¶ 18} Cromartie also contends the trial court should have stricken RTA's supplemental brief. The brief was filed on Monday, March 10, 2008, which was beyond the court ordered deadline of Friday, March 7, 2010. Trial courts have inherent power to manage their own dockets and the progress of the proceedings before them. *State ex rel. Charvat v. Frye*, 114 Ohio St.3d 76, 2007-Ohio-2882, 868 N.E.2d 270, ¶23. Whether to grant or deny a motion to extend a court-ordered deadline or a motion to strike an untimely filed motion is a decision committed to the trial court's sound discretion. *Weller v. Weller*

(1996), 115 Ohio App.3d 173, 684 N.E.2d 1284.

{¶ 19} In the instant case, RTA filed its supplemental motion one business day after the filing deadline. RTA, however, served Cromartie with the supplemental motion on the designated date. Under these circumstances, we conclude the trial court did not abuse its discretion by denying Cromartie's motion to strike. Accordingly, Cromartie's first assigned error is overruled.

Denial of Motion for Default and Motion to Strike against Goolsby

{¶ 20} In his second assigned error, Cromartie argues the trial court erred by denying his motion for default against Goolsby and by refusing to strike Goolsby's untimely filed answer.

{¶ 21} The trial court, pursuant to the stipulated motion, ordered that Goolsby file her answer by Friday, March 7, 2008. Goolsby did not file her answer until Monday, March 10, 2008. She did, however, serve Cromartie with an answer on March 7, 2008.

{¶ 22} Moreover, "[u]ntil a motion for default is filed, it is presumed that the complaining party is not entitled to a default judgment, which fact serves to enlarge the discretion of the trial court to allow a delayed responsive pleading." *Marion Prod. Credit Assn. v. Cochran* (1988), 40 Ohio St.3d 265,

272, 533 N.E.2d 325. Cromartie was well aware of the missed filing deadline, but waited until five months after the answer was filed to file his motion for default and motion to strike. In fact, on March 14, 2008, Cromartie, in a joint motion for clarification with Goolsby, requested the response deadline in which to respond to Goolsby's motion to dismiss. In the clarification motion the parties stated that Goolsby filed her answer and motion to dismiss on March 10, 2008. Nowhere in that motion does Cromartie set forth any objection to the late filing of the answer.

{¶ 23} Moreover, this is not a case where the defendant failed entirely to answer the complaint. Goolsby filed an answer, albeit one business day late. This court has held "[w]here a party pleads before default is entered, though out of time and without leave, if the answer is good in form and substance, a default should not be entered as long as the answer stands as part of the record." *Suki v. Blume* (1983), 9 Ohio App.3d 289, 290, 459 N.E.2d 1311.

{¶ 24} Additionally, the law disfavors default judgments. *Baines v. Harwood* (1993), 87 Ohio App.3d 345, 347, 622 N.E.2d 372, citing *Suki v. Blume,* 9 Ohio App.3d at 290. As the trial court noted in its journal entry, the general policy in Ohio is to decide cases on their merits whenever possible. Id., citing *Natl. Mut. Ins. Co. v. Papenhagen* (1987), 30 Ohio St.3d

14, 15, 505 N.E.2d 98. Accordingly, Cromartie's second assigned error is overruled.

Award of Summary Judgment in Goolsby's Favor

{¶ 25} In his third assigned error, Cromartie argues the trial court erred by awarding summary judgment in Goolsby's favor because genuine issues of fact were in dispute.

{¶ 26} We review an appeal from summary judgment under a de novo standard of review. *Baiko v. Mays* (2000), 140 Ohio App.3d 1, 746 N.E.2d 618, citing *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 506 N.E.2d 212; *Northeast Ohio Apt. Assn. v. Cuyahoga Cty. Bd. of Commrs.* (1997), 121 Ohio App.3d 188, 699 N.E.2d 534. Accordingly, we afford no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate. Under Civ.R. 56, summary judgment is appropriate when: (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can reach only one conclusion that is adverse to the non-moving party.

{¶ 27} In the instant case, it is irrelevant whether material facts were in dispute because Goolsby was entitled to judgment as a matter of law. In

Cromartie's original complaint, he alleged claims for libel, slander, and malicious prosecution, which all have one year statute of limitations that had expired by the time Cromartie filed his complaint. RTA and Goolsby responded with motions to dismiss in which they argued dismissal was appropriate because among other things, the statute of limitations had expired. In response, Cromartie filed an amended complaint, in which he reclassified his claims. His amended complaint alleged claims against Goolsby for negligent misrepresentation, negligent identification, abuse of process, and intentional infliction of emotional distress.[1]

{¶ 28} These claims were based on the same grounds he alleged for libel, slander, and malicious prosecution in the original complaint. Cromartie cannot circumvent the statute of limitations period by reclassifying his claims. *Breno v. West*, Cuyahoga App. No. 81861, 2003-Ohio-4051; *Cully v. St. Augustine Manor* (Apr. 20, 1995), Cuyahoga App. No. 67601. When determining which statute of limitation applies, "'it is necessary to determine the nature or subject matter of the acts giving rise to the complaint rather than the form in which the action is pleaded. The grounds for

[1]Cromartie also brought claims against RTA for fraud and breach of the employee handbook, which he reformulated as claims for breach of promise and administrative polices; abuse of process; and estoppel. However, because Cromartie does not appeal the summary judgment entered in RTA's favor, we will not address those claims.

bringing the action are determinative factors, the form is immaterial.'" *Doe v. First United Methodist Church* (1994), 68 Ohio St.3d 531, 629 N.E.2d 402, quoting *Hambleton v. R.G. Barry Corp.* (1984), 12 Ohio St.3d 179, 183, 465 N.E.2d 1298.

{¶ 29} In the instant case, the grounds for the claims raised by Cromartie all concern Goolsby's written report to the police, oral statements to the police, and her bringing charges against Cromartie; therefore, libel, slander, and malicious prosecution form the grounds for Cromartie's claims.

{¶ 30} The statute of limitations for libel or slander is one year. R.C. 2305.11(A). Ohio has held that the statute of limitations for defamation, be it slander or libel, begins to run at the time the words are written or spoken, not when the plaintiff became aware of them. *Lyons v. Farmers Ins. Group of Companies* (1990), 67 Ohio App.3d 448, 587 N.E.2d 362; *Rainey v. Shaffer* (1983), 8 Ohio App.3d 262, 456 N.E.2d 1328; *Singh v. ABA Pub./Am. Bar Ass'n.*, 10th Dist. No. 02AP-1125, 2003-Ohio-2314. Thus, the statute of limitations for Cromartie's claims for libel and slander expired on August 15, 2006, a year after Goolsby's written and oral communications to the police took place. Cromartie did not file his original complaint until August 8, 2007, and his amended complaint was filed on October 11, 2007, well beyond the statute of limitations.

{¶ 31} The statute of limitations for malicious prosecution is also one year. R.C. 2305.11(A). The statute of limitations for a malicious prosecution claim commences on the date the prosecution terminates in favor of the accused. *Froehlich v. Ohio Dept. of Mental Health*, 114 Ohio St.3d 286, 2007-Ohio-4161, 871 N.E.2d 1159; *Francis v. Cleveland* (1992), 78 Ohio App.3d 593, 605 N.E.2d 966. In the instant case, the jury found Cromartie not guilty on August 4, 2006; therefore, his claim for malicious prosecution expired on August 4, 2007, which was four days before his original complaint was filed and approximately two months before his amended complaint was filed. Because the statute of limitations has expired on these claims, the trial court did not err by granting summary judgment in Goolsby's favor.

{¶ 32} Cromartie also claims that the trial court erred by granting judgment in Goolsby's favor regarding his claim for fraud. He claims Goolsby committed fraud by making false accusations against him with the intent to have him arrested and prosecuted. However, if Goolsby did commit fraud, it would have been against RTA and the Cleveland Heights Police Department, whom she allegedly misled, not Cromartie.

{¶ 33} The elements of fraud are: (a) a representation or, where there is a duty to disclose, concealment of a fact; (b) that is material to the transaction at hand; (c) made falsely, with knowledge of its falsity, or with such utter

disregard and recklessness as to whether it is true or false that knowledge may be inferred; (d) with the intent of misleading another into relying upon it; (e) justifiable reliance upon the representation or concealment; and (f) a resulting injury proximately caused by the reliance. *Burr v. Bd. of Cty. Commrs. of Stark Cty.* (1986), 23 Ohio St.3d 69, 491 N.E.2d 1101, paragraph two of the syllabus. Because Cromartie would presumably know Goolsby alleged information that was false, he did not rely on the information Goolsby gave the authorities; therefore, Cromartie does not have standing to bring the fraud claim. Only RTA and the Cleveland Heights Police Department would have standing to pursue the claim. Accordingly, Cromartie's third assigned error is overruled.

Judgment affirmed.

It is ordered that appellees recover from appellant their costs herein taxed. The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to

Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, JUDGE

KENNETH A. ROCCO, P.J., and
MELODY J. STEWART, J., CONCUR