

[Cite as *Allegretti v. York*, 2017-Ohio-104.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104449

COLLEEN ALLEGRETTI

PLAINTIFF-APPELLANT

vs.

RICHARD YORK

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-852096

BEFORE: Boyle, J., Jones, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: January 12, 2017

ATTORNEYS FOR APPELLANT

John A. Sivinski
Brian J. Smith
Sivinski & Smith, L.L.C.
20545 Center Ridge Road
Suite 215
Rocky River, Ohio 44116

ATTORNEYS FOR APPELLEE

Christopher Ankuda
Paul R. Morway
Ankuda, Stadler & Moeller, Ltd.
1100 Superior Avenue East, Suite 1120
Cleveland, Ohio 44114

MARY J. BOYLE, J.:

{¶1} Plaintiff-appellant, Colleen Allegretti, appeals from the trial court's judgment granting the motion for summary judgment of defendant-appellee, Richard York. Allegretti raises the following single assignment of error:

The trial court erred in granting a motion for summary judgment based on a statute of limitation defense when material facts remained at issue with respect to whether the defendant should be equitably estopped from raising the defense.

{¶2} Finding no merit to the appeal, we affirm.

A. Procedural History and Facts

{¶3} On May 3, 2011, Allegretti and York were involved in a motor vehicle accident, resulting in Allegretti initially filing a lawsuit against York in April 2013, seeking damages as a result of his alleged negligence. On October 30, 2013, the trial court dismissed that action without prejudice for want of prosecution under Civ.R. 4(E) because Allegretti failed to perfect service upon York within six months. Allegretti appealed that decision. On October 9, 2014, this court dismissed the appeal on jurisdictional grounds because the trial court's dismissal was not a final appealable order.

See Allegretti v. York, 8th Dist. Cuyahoga No. 101231, 2014-Ohio-4480. Specifically, this court held that "because Allegretti had the ability to refile her claim within one year of the dismissal, the trial court's order of October 30, 2013, did not deny her effective relief in the future." *Id.* at ¶ 22.

{¶4} Allegretti, however, did not refile her action against York until October 5,

2015. Following the refiling of her complaint, York ultimately moved for summary judgment on the grounds that the action had not been commenced within the applicable statute of limitations. Allegretti opposed the motion on the basis of equitable estoppel, arguing that the statute of limitations should not be applied in this case because York's actions "were clearly designed or were foreseeable to mislead" Allegretti in locating him for purposes of obtaining service. Specifically, Allegretti maintained that "York gave an incorrect address at the scene of the accident with the intent and/or foreseeable result that [Allegretti] would rely on such address for service of process." In support of her brief in opposition, Allegretti attached an affidavit filed in the original action detailing the efforts taken by Allegretti's counsel to locate York for purposes of obtaining service and the need for additional time.

{¶5} The trial court granted York's motion for summary judgment, and this appeal followed.

B. Standard of Review

{¶6} An appellate court reviews a decision granting summary judgment on a de novo basis. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Summary judgment is properly granted when: (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made. Civ.R. 56(C); *State ex rel. Duganitz v. Ohio Adult Parole Auth.*, 77 Ohio St.3d 190, 191, 672 N.E.2d 654 (1996).

C. Equitable Estoppel

{¶7} In her sole assignment of error, Allegretti argues that York should be equitably estopped from asserting the statute of limitations as a defense because he misrepresented his address at the scene of the accident with the intent to avoid service of process. We disagree.

{¶8} “Equitable estoppel prevents relief when one party induces another to believe certain facts exist and the other party changes his position in reasonable reliance on those facts to his detriment.” *State ex rel. Chavis v. Sycamore City School Dist. Bd. of Edn.*, 71 Ohio St.3d 26, 34, 641 N.E.2d 188 (1994). As recognized by the Ohio Supreme Court, “[t]he purpose of equitable estoppel is to prevent actual or constructive fraud and to promote the ends of justice.” *Ohio State Bd. of Pharmacy v. Frantz*, 51 Ohio St.3d 143, 145, 555 N.E.2d 630 (1990). To invoke the doctrine as a bar to statute-of-limitations defense, however, the plaintiff must be able to show that the defendant’s specific actions prevented plaintiff from timely filing the lawsuit. *Doe v. Archdiocese of Cincinnati*, 116 Ohio St.3d 538, 2008-Ohio-67, 880 N.E.2d 892, ¶ 8-9 (defendant cannot be equitably estopped from asserting a defense premised on the expiration of the applicable limitations period when nothing in the complaint suggests that the defendant prevented plaintiff from timely filing suit).

{¶9} Aside from Allegretti failing to submit any Civ.R. 56 evidence to support her claim that York fraudulently misrepresented his address to avoid service of process, this argument only relates to Allegretti’s initial filing of the complaint. Thus, even if

Allegretti had established this, she still fails to account for her failure to take additional action and obtain service through the methods delineated in Civ.R. 4 and her failure to timely refile her complaint after this court dismissed her first appeal. Indeed, after this court's dismissal of her appeal on jurisdictional grounds, Allegretti still had time to refile her action within the savings statute. There is absolutely no evidence, or any allegation, that York prevented Allegretti from refiling her action in a timely fashion. Under such circumstances, the doctrine of equitable estoppel to bar the application of the statute of limitations is not warranted. *See Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, 849 N.E.2d 268, ¶ 45 (plaintiff asserting equitable estoppel as bar to statute-of-limitations defense must establish subsequent and specific actions by defendants that prevented plaintiff from timely filing suit).

{¶10} Based on the record before us, the trial court properly concluded that the doctrine of equitable estoppel did not toll the statute of limitations for Allegretti's claim. Because she failed to timely refile her claim within a year of the trial court's dismissal of the action, the trial court properly granted summary judgment in York's favor.

{¶11} The sole assignment of error is overruled.

{¶12} Judgment affirmed.

It is ordered that appellee recover from appellant 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.

MARY J. BOYLE, JUDGE

LARRY A. JONES, SR., P.J., and
ANITA LASTER MAYS, J., CONCUR