

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-6

Filed: 21 February 2017

Wake County, No. 15 CVS 1783

OLLIE WILLIAMS JR., Plaintiff,

v.

RAMON ROJANO (both personally and in his role of former Director of Human Services); REGINA Y. PETTEWAY (interim director of Wake County Human Services); PATRICIA BAKER (both personally and in her role as Social Services Director); LOUIS JACKSON; TOMIKO HICKS; WAKE COUNTY; WAKE COUNTY DEPARTMENT OF HUMAN SERVICES; WAKE COUNTY DIVISION OF SOCIAL SERVICES; and SYSTEMS & METHODS, INC., d/b/a NORTH CAROLINA CENTRALIZED COLLECTIONS, Defendants.

Appeal by plaintiff from order entered 13 July 2015 by Judge G. Bryan Collins Jr. in Wake County Superior Court. Heard in the Court of Appeals 24 May 2016.

*Kisala Watkins Law Group, PLLC, by Andrew J. Kisala, for plaintiff-appellant.*

*Office of the Wake County Attorney, by County Attorney Scott W. Warren and Senior Assistant County Attorney Allison Pope Cooper, for defendant-appellees Ramon Rojano, Regina Y. Petteway, Patricia Baker, Louis Jackson, Tomiko Hicks, Wake County, Wake County Department of Human Services, and Wake County Division of Social Services.*

*Batten Lee PLLC, by Arienne P. Blandina for defendant-appellee Systems & Methods, Inc., d/b/a North Carolina Centralized Collections.*

BRYANT, Judge.

Where the trial court did not err in dismissing plaintiff's claims for constructive fraud/breach of fiduciary duty, trespass to chattels, conversion, negligence, violations of the N.C. Constitution, as well as section 1983 claim, as barred by the statute of

limitations, we affirm. Where plaintiff failed to obtain a ruling after an objection at trial, we decline to review the issue plaintiff attempts to appeal.

Plaintiff Ollie Williams, Jr., is the biological parent of a child who has since attained the age of majority. On 19 September 2001, a child support action was commenced against plaintiff by Lenoir County and an order of support was entered on 3 March 2002. Pursuant to the order, plaintiff agreed to a monthly child-support payment in the amount of \$284.00, \$50.00 of which would be applied toward arrears. Plaintiff also agreed to pay \$15,052.00 in arrears at the rate of \$50.00 per month as reimbursement for public assistance paid on behalf of his daughter.

On 7 September 2007, part of the initial \$15,052.00 obligation was transferred to defendant Wake County for enforcement by Wake County Child Support enforcement. A year later, a hearing was held in Wake County wherein the trial court found that plaintiff was in arrears in the amount of \$7,273.00. Plaintiff was held in civil contempt for failure to comply with the support order and thereafter ordered to be imprisoned in the Wake County jail until purge payments of \$250.00 in total were made. The court then set plaintiff's child support obligation at \$309.00 per month, consisting of \$284.00 in ongoing support and \$25.00 applied to arrears.

On 5 January 2009, defendant Wake County initiated income withholding against monies earned by plaintiff through employment with the City of Raleigh for the full amount of his monthly support obligation (\$309.00), including arrears. On 3

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*Opinion of the Court*

September 2010, defendants<sup>1</sup> initiated income withholding against monies plaintiff earned through employment with Penske Logistics. In 2011, plaintiff's tax refunds totaling \$4,138.30 were also intercepted.

Pursuant to an order dated 12 April 2011, plaintiff's case was closed. However, defendant Wake County continued to enforce the unpaid arrearages through April 2013, at a rate of garnishment of \$618.00 per month. In April 2013, when plaintiff's attorney contacted defendant Louis Jackson, a Wake County Child Support Enforcement employee, defendant Jackson stopped the garnishment of plaintiff's wages.

On 9 February 2015, plaintiff filed this action in Wake County Superior Court to recover monies taken from him in excess of the amount authorized by law. Specifically, plaintiff alleged that in 2010, his wages were garnished at double the rate allowable by the court's order. Plaintiff alleged that the approximate amount of \$31,233.07 was taken from him, exceeding the amount he was legally required to pay in child support in arrears (\$15,981.12) by approximately \$15,241.95.

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<sup>1</sup> As pled by plaintiff, defendants include the following individuals and entities: Ramon Rojano, the director of Wake County Department of Human Services for the time period relevant to this complaint; Regina Y. Petteway, current interim-director of Wake County Department of Human Services; Patricia Baker, current director of Wake County Division of Social Services; defendant Tomiko Hicks, the Child Support Program Manager; Louis Jackson, a Wake County Child Support Enforcement employee; and Systems and Methods, Inc., a corporation with a business operation in Raleigh, North Carolina, d/b/a North Carolina Centralized Collections ("SMI/Centralized Collections").

Defendants filed motions to dismiss which were heard in Wake County Superior Court on 29 June 2015. On 13 July 2015, the trial court entered an order dismissing with prejudice plaintiff's claims against all defendants and finding that plaintiff's complaint in its entirety failed to state a claim upon which relief could be granted. The trial court determined the claims for violation of the Fourteenth Amendment of the U.S. Constitution; Violation of Article I, Section 19 of the N.C. Constitution; Violation of 42 U.S.C. § 1983; Trespass to Chattels; Conversion; and Negligence, were all barred by the applicable statute of limitations. Plaintiff's claims for constructive fraud/breach of fiduciary duty were dismissed for failure to state a claim upon which relief can be granted. Plaintiff appeals.

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On appeal, plaintiff contends the trial court erred by (I) granting defendants' motion to dismiss (A) plaintiff's U.S. constitutional and section 1983 claims, (B) plaintiff's N.C. constitutional claims, (C) plaintiff's claims for trespass to chattels, conversion, and negligence, (D) plaintiff's claims for constructive fraud/breach of fiduciary duty, and (E) the complaint in its entirety by finding it failed to state any claim upon which relief could be granted; and (II) considering allegations of counsel and evidence not contained or supported in the pleadings.

*I*

Plaintiff argues the trial court erred by granting defendants' motion to dismiss plaintiff's claims for (A) violation of the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983, (B) violation of Article 1, Section 19 of the N.C. Constitution, and (C) claims for trespass to chattels, conversion, and negligence by finding that such claims were barred by the applicable statutes of limitations. Plaintiff further argues the trial court erred (D) in dismissing plaintiff's breach of fiduciary duty/constructive fraud claim for failure to state a claim and (E) in finding that the complaint in its entirety failed to state any claim upon which relief could be granted. We disagree.

*Standard of Review*

"This Court must conduct a *de novo* review of the pleadings to determine their legal sufficiency and to determine whether the trial court's ruling on the motion to dismiss was correct." *Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 400, 580 S.E.2d 1, 4 (2003).

The motion to dismiss under N.C. R. Civ. P. 12(b)(6) tests the legal sufficiency of the complaint. In ruling on the motion the allegations of the complaint must be viewed as admitted, and on that basis the court must determine as a matter of law whether the allegations state a claim for which relief may be granted.

*Robinson v. Wadford*, 222 N.C. App. 694, 696, 731 S.E.2d 539, 541 (2012) (quoting *Stanback v. Stanback*, 297 N.C. 181, 185, 254 S.E.2d 611, 615 (1979)). "The complaint must be liberally construed, and the court should not dismiss the complaint unless it

appears beyond a doubt that the plaintiff could not prove any set of facts to support his claim which would entitle him to relief.” *Sain v. Adams Auto Grp.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 781 S.E.2d 655, 659 (2016) (quoting *Holleman v. Aiken*, 193 N.C. App. 484, 491, 668 S.E.2d 579, 584–85 (2008)).

A statute of limitations defense may properly be asserted in a Rule 12(b)(6) motion to dismiss if it appears on the face of the complaint that such a statute bars the claim. Once a defendant raises a statute of limitations defense, the burden of showing that the action was instituted within the prescribed period is on the plaintiff. A plaintiff sustains this burden by showing that the relevant statute of limitations has expired.

*Bissette v. Harrod*, 226 N.C. App. 1, 7, 738 S.E.2d 792, 797 (2013) (citations omitted) (quoting *Horton v. Carolina Medicorp, Inc.*, 344 N.C. 133, 136, 472 S.E.2d 778, 780 (1996)).

A. Federal Claims (Fourteenth Amendment and 42 U.S.C. § 1983)

“The three year statute of limitations as set forth in N.C.G.S. § 1-52 applies to 42 U.S.C. § 1983 actions brought in the North Carolina court system.” *Faulkenbury v. Teachers’ & State Emps.’ Ret. Sys. of N.C. (Faulkenbury I)*, 108 N.C. App. 357, 367, 424 S.E.2d 420, 424 (1993) (citing *Nat’l Advert. Co. v. City of Raleigh*, 947 F.2d 1158, 1162 n.2 (4th Cir. 1991)). A cause of action accrues, and the applicable statute of limitations begins to run, as soon as the right to institute and maintain a suit arises. *Penley v. Penley*, 314 N.C. 1, 20, 332 S.E.2d 51, 62 (1985).

In the instant case, plaintiff's claims accrued in 2010, when plaintiff alleges his wages were first garnished at double the rate allowed by the contempt order, or at the latest in April 2011, when plaintiff claims there was no longer legal authority to garnish his wages. *See id.* Thus, applying the latest possible accrual date of April 2011, the three-year statute of limitations would have run as of April 2014, nearly one year prior to plaintiff's filing of the instant action on 9 February 2015. Plaintiff's complaint alleged the following:

56. Defendants garnished Plaintiff's wages at double the rate allowable by the Court's Order.
57. Pursuant to Order dated April 12, 2011, the case was closed.
58. Despite closure of the case, Defendants continued to garnish Plaintiff's wages at double the rate allowable by the Court's Order prior to closure of the case, which totaled \$618.00 per month.
59. Defendants continued to garnish Plaintiff's wages until approximately April 2013, when Plaintiff's attorney contacted Defendant Jackson.
60. On or about 2011, Plaintiff's tax refunds were intercepted totaling approximately \$4,138.30.
61. Upon information and belief, throughout the period between August 2008 and January 2011 additional amounts of money were withheld from Plaintiff by tax intercept totaling approximately \$1,746.77.
- ....
64. At Plaintiff's rate of garnishment of \$618.00 per

month, Plaintiff had paid all amounts legally owed, and satisfied all existing judgments and Orders on or before April 2011.

65. There was no legal authority to collect funds from Plaintiff after April 2011.

Plaintiff, however, argues that the “continuing wrong” doctrine applies. “The continuing wrong doctrine is an exception to the general rule that a cause of action accrues as soon as the plaintiff has the right to sue.” *Stratton v. Royal Bank of Canada*, 211 N.C. App. 78, 86, 712 S.E.2d 221, 229 (2011) (citations omitted). In order to determine whether the “continuing wrong” doctrine applies, “[t]he particular policies of the statute of limitations in question, as well as the nature of the wrongful conduct and harm alleged must all be considered.” *Ocean Acres Ltd. P’ship v. Dare Cnty. Bd. of Health*, 707 F.2d 103, 106 (4th Cir. 1983) (quoting *Cooper v. United States*, 442 F.2d 908, 912 (7th Cir. 1971)). “For the continuing wrong doctrine to apply, the plaintiff must show ‘[a] continuing violation’ by the defendant that ‘is occasioned by continual unlawful acts, not by continual ill effects from an original violation.’” *Marzec v. Nye*, 203 N.C. App. 88, 94, 690 S.E.2d 537, 542 (2010) (quoting *Babb v. Graham*, 190 N.C. App. 463, 481, 660 S.E.2d 626, 637 (2008)). Compare *Faulkenbury I*, 108 N.C. App. at 368–69, 424 S.E.2d at 425–26 (holding that the continuing wrong doctrine did not apply where plaintiffs “suffer[ed] from the continuing effects of the defendants’ original action of amending a statute” for calculating plaintiffs’ retirement benefits), with *Amward Homes, Inc. v. Town of Cary*,



206 N.C. App. 38, 57, 698 S.E.2d 404, 418 (2010) (holding that acceptance of illegal fees by the Town was a continuing wrong as each violation was the result of “continual unlawful acts” where “[e]ach time a builder-plaintiff applied for a permit and paid the fee to the town, the Town perpetuated its ‘custom’ . . . under ‘color of . . . ordinance’ to unlawfully deprive the builders of their money”).

“When this doctrine applies, a statute of limitations does not begin to run until the violative act ceases.” *Amward Homes, Inc.*, 206 N.C. App. at 56, 698 S.E.2d at 418 (quoting *Williams v. Blue Cross Blue Shield of N.C.*, 357 N.C. 170, 179, 581 S.E.2d 415, 423 (2003)). “The tolling of the statute of limitations for section 1983 claims is governed by state law unless the state law is inconsistent with ‘either § 1983’s chief goals of compensation and deterrence or its subsidiary goals of uniformity and federalism[.]’ ” *Id.* at 57, 698 S.E.2d at 418 (alteration in original) (quoting *Hardin v. Straub*, 490 U.S. 536, 539, 104 L. Ed. 2d 582, 588–89 (1989)).

But this Court has previously declined to accept an almost identical argument put forth by plaintiffs facing a statute of limitations defense to their class action claim for unpaid retirement benefits. *See Faulkenbury I*, 108 N.C. App. at 363, 368, 424 S.E.2d at 422, 425 (“Our research uncovered no state cases in North Carolina where the continuing wrong doctrine was applied in a section 1983 case in which the statute of limitations had been raised as a defense.”). Because we hold that the continuing wrong doctrine does not apply, *see infra* section C, and because we are persuaded that

plaintiff was aware or had reason to know of the alleged violation when he received his first wage-garnished paycheck from his second place of employment, Penske Logistics, in September 2010, we overrule plaintiff's argument.

**B. N.C. Constitutional Claim**

The statute of limitations for claims made under Article I, Section 19 of the North Carolina Constitution is three years. *See Staley v. Lingerfelt*, 134 N.C. App. 294, 297, 517 S.E.2d 392, 395 (1999). However, “[a] direct cause of action to enforce the rights contained in Article I of the North Carolina Constitution is permitted in circumstances where there is an ‘absence of an adequate state remedy.’” *Amward Homes, Inc.*, 206 N.C. App. at 58, 698 S.E.2d at 419 (citation omitted) (quoting *Davis v. Town of S. Pines*, 116 N.C. App. 663, 675, 449 S.E.2d 240, 247 (1994)). Here, there are adequate state remedies which were, in fact, pled by plaintiff: trespass to chattels, conversion, and negligence. *See infra* Section C. Accordingly, we affirm the trial court’s dismissal of plaintiff’s N.C. Constitutional claim.

**C. Trespass to Chattels, Conversion, and Negligence Claims**

A claimant has three years from the date of accrual to bring their claims for trespass to chattels, conversion, and negligence. N.C. Gen. Stat. § 1-52(1) (2015). As stated previously, a cause of action accrues and the statute of limitations begins to run as soon as the right to institute and maintain a suit arises. *Penley*, 314 N.C. at 20, 332 S.E.2d at 62. Plaintiff also argues the “continuing wrong” doctrine applies to

toll the statutes of limitations for his claims for trespass to chattels, conversion, and negligence. We disagree.

In the instant case, plaintiff alleged that defendants initiated income withholding against monies earned by him at employment with the City of Raleigh and Penske Logistics on 5 January 2009 and 3 September 2010, respectively. Plaintiff alleged that “[d]efendants continued to garnish Plaintiff’s wages until approximately April 2013[.]” As a plaintiff has three years from the date of accrual to bring their claims for trespass to chattels, conversion, and negligence, *see* N.C.G.S. § 1-52(1), plaintiff’s claims are barred, absent a tolling of the statute of limitations. Plaintiff’s relevant allegations as to these claims are as follows:

**[TRESPASS TO CHATTELS]**

99. Defendants interfered with Plaintiff’s right to exclusive use and possession by garnishing the wages from Plaintiff when they had no legal right, authority, or justification to do so in the following ways:
- a. By interrupting Plaintiff’s physical possession of the monies;
  - b. By interrupting Plaintiff’s making ordinary use of the monies;
  - c. By interrupting Plaintiff’s benefit of the use of the monies;

....

**[CONVERSION]**

104. The Defendants' pursuit, enforcement, collection and disbursement of monies in excess of Plaintiff's legal obligation constitute a conversion, as it was an unauthorized assumption and exercise of the right of ownership over the property belonging to the Plaintiff, to the exclusion of the Plaintiff's ownership rights.

....

**[NEGLIGENCE]**

113. The Defendants owed a duty to all obligors, including Plaintiff, to enforce the State's Child Support Enforcement Program in accordance with federal and state law.
114. The Defendants breached this duty owed to the Plaintiff as follows:
- a. By collecting money from Plaintiff by garnishment for the full amount from each of Plaintiff's two (2) jobs at double the rate and in violation of all existing Order and judgments in this case.
  - b. By intercepting tax refunds due to Plaintiff at a rate and amount in excess of any Order of Judgment in this case.
  - c. By refusing to return said funds to Plaintiff after these errors were discovered.
  - d. By failing to adopt adequate procedures to ensure that funds were not being taken from obligors against whom they initiated and enforced actions at rate and/or amount in excess of existing Orders and Judgments.

- e. by failing to exercise their authority to obtain information from other departments in the State pursuant to N.C. Gen. Stat. §§ 110-128 et. seq. to determine the obligor's required amount and rate of payment.

. . . .

- 115. These multiple breaches proximately caused the Plaintiff's wages to be garnished, and his tax refunds to be intercepted, and forced the Plaintiff to make payments to SMI/Centralized Collections.

As stated previously, “in order for the continuing wrong doctrine to toll the statute of limitations, the plaintiff must show ‘[a] continuing violation’ by the defendant that ‘is occasioned by continual unlawful acts, *not by continual ill effects from an original violation.*” *Stratton*, 211 N.C. App. at 86, 712 S.E.2d at 229 (alteration in original) (quoting *Marzec*, 203 N.C. App. at 94, 690 S.E.2d at 542). In *Stratton*, this Court held that “the continued deprivation of shareholder rights and nonpayment of dividends were not continual violations, but rather ‘continual ill effects’ of the conversion” of the plaintiff's stock. *Id.* at 87, 712 S.E.2d at 230. Furthermore, this Court characterized the conversion of the plaintiff's stock as a “discrete occurrence—not a cumulative one—that should have been discovered through reasonable diligence.” *Id.* at 87, 712 S.E.2d at 229.

We believe the alleged double garnishment of plaintiff's wages that took place each month until April 2013 did not constitute “continual violations, but rather ‘continual ill effects’ ” of the original garnishment, instituted in order to collect

plaintiff's child support obligation. *See id.* at 87, 712 S.E.2d at 230. Similar to this Court's characterization in *Stratton*, the garnishment of plaintiff's wages in the instant case was also a "discrete occurrence," despite the arguably cumulative effect of the garnishment (plaintiff alleges he overpaid by approximately \$15,241.95). *See id.* at 87, 712 S.E.2d at 229. Certainly the alleged double garnishment was discoverable to plaintiff as soon as defendants initiated income withholding (\$309.00/month) from plaintiff's second place of employment, Penske Logistics, on 3 September 2010, for a total of \$618.00 garnished from plaintiff's total combined wages each month.

Lastly, in looking to "[t]he particular policies of the statute of limitations in question, as well as the nature of the wrongful conduct and harm alleged," *id.* at 86, 712 S.E.2d at 229 (quoting *Williams*, 357 N.C. at 179, 581 S.E.2d at 423), applying the continuing wrong doctrine under these facts would allow plaintiffs to bring claims decades after their accrual in order to contest any alleged wrongful wage garnishment in child support actions. In this case, the "continuing wrong" doctrine does not apply, and plaintiff's argument is overruled.

#### D. Constructive Fraud/Breach of Fiduciary Duty Claim

Plaintiff next argues the trial court erred in granting defendants' motion to dismiss plaintiff's claims for constructive fraud/breach of fiduciary duty by finding that plaintiff's complaint failed to state a claim upon which relief could be granted.

Specifically, plaintiff contends a fiduciary relationship existed between plaintiff and defendants. We disagree.

“A claim for breach of fiduciary duty requires the existence of a fiduciary relationship.” *White v. Consol. Planning, Inc.*, 166 N.C. App. 283, 293, 603 S.E.2d 147, 155 (2004).

In general terms, a fiduciary relation is said to exist “[w]herever confidence on one side results in superiority and influence on the other side; where a special confidence is reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing the confidence.”

*Id.* (quoting *Vail v. Vail*, 233 N.C. 109, 114, 63 S.E.2d 202, 206 (1951)).

Regarding the connection between breach of fiduciary duty and constructive fraud, “[t]o survive a motion to dismiss, a cause of action for constructive fraud must allege (1) a relationship of trust and confidence, (2) that the defendant took advantage of that position of trust in order to benefit himself, and (3) that plaintiff was, as a result, injured.” *Id.* at 294, 603 S.E.2d at 156 (citing *Sterner v. Penn*, 159 N.C. App. 626, 631, 583 S.E.2d 670, 674 (2003)). “The primary difference between pleading a claim for constructive fraud and one for breach of fiduciary duty is the constructive fraud requirement that the defendant benefit himself.” *Id.*

In the instant case, plaintiff alleged in his verified complaint as follows:

118. By virtue of the Defendants’ dealings with the Plaintiff as more particularly described herein, as well as the duty and obligation to work with all

parties subject to a child support action, the Defendants created a fiduciary relationship and responsibility to the Plaintiff.

119. The Defendants took advantage of their position of trust to the detriment of the Plaintiff, and thus breached their fiduciary duty.
120. The Defendants breached this fiduciary duty owed to the Plaintiff as follows:
  - a. by continuing to collect funds from Plaintiff through garnishment after all amounts legally owed had been paid and satisfied.
  - b. By collecting funds from Plaintiff through garnishment in a rate and amount exceeding what Defendants could lawfully collect pursuant to Judgment or Order.
  - c. by failing to adopt adequate procedures to ensure that the obligors against whom they initiated and enforced actions seeking support still owed the money being collected through garnishment[.]

....

121. Upon information and belief, the Defendants took advantage of their position of trust by the collection of child support payments, and as a result, the Plaintiff has been damaged as herein alleged.

However, plaintiff has cited to no authority which would support his conclusion that defendants owed plaintiff a fiduciary duty. To the contrary, North Carolina courts have declined to find that a fiduciary relationship exists where the relationship between the parties is that of debtor-creditor. *See Sec. Nat'l Bank of Greensboro v.*



*Educators Mut. Life Ins. Co.*, 265 N.C. 86, 95, 143 S.E.2d 270, 276 (1965) (“There was no fiduciary relationship; the relation was that of debtor and creditor.”); *Branch Banking & Trust Co. v. Thompson*, 107 N.C. App. 53, 61, 418 S.E.2d 694, 699 (1992) (“[T]he mere existence of a debtor-creditor relationship between [the parties does] not create a fiduciary relationship.” (second alteration in original) (citations omitted)).

A fiduciary relationship arises when, due to considerations of law and equity, a fiduciary must set aside his or her own best interests in favor of the beneficiary’s best interests. *Dallaire v. Bank of Am., N.A.*, 367 N.C. 363, 367, 760 S.E.2d 263, 266 (2014). Here, the relationship between plaintiff and defendants was adversarial in nature; defendants were charged with enforcing the support orders from the court, and in doing so, were authorized to institute wage withholding against plaintiff. Thus, this relationship is more akin to that of debtor-creditor, a relationship that has not been recognized as a fiduciary one. *See Sec. Nat’l Bank of Greensboro*, 265 N.C. at 95, 143 S.E.2d at 276.

Further, plaintiff does not allege that this relationship parallels any special relationship our courts have found to constitute a fiduciary one. *See, e.g., Eubanks v. Eubanks*, 273 N.C. 189, 195–96, 159 S.E.2d 562, 567 (1962) (husband-wife); *Fox v. Wilson*, 85 N.C. App. 292, 299, 354 S.E.2d 737, 742 (1987) (attorney-client). Plaintiff’s mere allegation that defendants had an “obligation to work with all parties subject to [the] child support action,” does not give rise to a fiduciary duty. Accordingly, because

no fiduciary relationship existed between plaintiff and defendants, the trial court did not err in dismissing plaintiff's claim for breach of fiduciary duty/constructive fraud. Plaintiff's argument is overruled.

E. Failure to State a Claim

As we have determined that the respective statutes of limitations bar plaintiff's section 1983 claims and claims for trespass to chattels, conversion, negligence, and state constitutional violations, and that the trial court did not err in dismissing plaintiff's claim for breach of fiduciary duty/constructive fraud, we also affirm that portion of the trial court's order dismissing plaintiff's claim in its entirety for failure to state a claim.

*II*

Next, plaintiff contends the trial court improperly considered allegations of counsel and/or evidence not contained or supported in the pleadings. As such, plaintiff argues, the trial court's order dismissing plaintiff's complaint should be reversed and this matter remanded for further proceedings. However, as plaintiff did not receive a ruling on his objection below, this issue is not properly preserved for our review.

In order to properly preserve error, "a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from

the context.” N.C. R. App. P. 10. (2015). “[I]t is also necessary for the complaining party to obtain a ruling upon the party’s request, objection, or motion.” *Id.*

Reviewing the record and transcript on appeal, the only time plaintiff’s counsel objected throughout the proceeding was when counsel for defendants discussed the issue of improper service on an individual not related to plaintiff’s case. Plaintiff’s attorney objected, stating, “I’m going to object to this. I believe [counsel] is testifying as to something that has no basis at all in evidence.” Notably, the trial court did not render a ruling in response, but merely stated, “I’m going to let you talk when it’s your turn to talk.” Accordingly, having failed to obtain a ruling at the lower court, *see id.*, we decline to review plaintiff’s issue on appeal.

In conclusion, we hold the trial court did not err in dismissing plaintiff’s claims for constructive fraud/breach of fiduciary duty, violation of the N.C. Constitution, as well as plaintiff’s section 1983 and tort claims. The order of the trial court is

AFFIRMED.

Judges TYSON and INMAN concur.