

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-284

Filed: 18 July 2017

Forsyth County, No. 16CVS6864

DR. PETER C. BENEDITH, Plaintiff,

v.

WAKE FOREST BAPTIST MEDICAL CENTER, Defendant.

Appeal by plaintiff from order entered 4 January 2017 by Judge Susan Bray in Forsyth County Superior Court. Heard in the Court of Appeals 10 July 2017.

*Peter C. Benedith, plaintiff-appellant, pro se.*

*Bell, Davis & Pitt, P.A., by Alan M. Ruley and Andrew A. Freeman, for defendant-appellee.*

BERGER, Judge.

Plaintiff, Dr. Peter C. Benedith, appeals from an order dismissing his case with prejudice. We affirm.

On November 2, 2016, Plaintiff filed a complaint in the trial court alleging “interference with civil right[s].” On December 15, 2016, Defendant, Wake Forest Baptist Medical Center, filed an answer and motion to dismiss Plaintiff’s complaint, arguing, in part, Plaintiff’s claim was barred by the statute of limitations. The trial

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court heard Defendant's motion to dismiss on January 3, 2017, and the next day the trial court entered an order dismissing Plaintiff's complaint, with prejudice, pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. On appeal, Plaintiff contends the trial court erred in dismissing his complaint. We disagree.

"An appellate court reviews *de novo* a trial court's dismissal of an action under Rule 12(b)(6)." *Horne v. Cumberland Cnty. Hosp. Sys., Inc.*, 228 N.C. App. 142, 144, 746 S.E.2d 13, 16 (2013). "When reviewing an order of dismissal for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6), we assess the legal sufficiency of the complaint while taking all of the material factual allegations included therein as true." *Charlotte Motor Speedway, LLC v. County of Cabarrus*, 230 N.C. App. 1, 6, 748 S.E.2d 171, 175 (2013) (citation omitted), *disc. review improvidently granted*, 367 N.C. 533, 766 S.E.2d 340 (2014).

"A statute of limitations defense may properly be asserted in a Rule 12(b)(6) motion . . . [where] it appears on the face of the complaint that such a statute bars the claim." *Horton v. Carolina Medicorp., Inc.*, 344 N.C. 133, 136, 472 S.E.2d 778, 780 (1996). Plaintiff's sole claim in his complaint is asserted under N.C. Gen. Stat. § 99D-1, a statute creating a civil cause of action for victims of conspiracies to interfere with constitutional rights. Section 99D-1 does not contain a specific time period within which claims must be brought and, as such, is subject to the three-year statute of limitations set forth in N.C. Gen. Stat. § 1-52(2). N.C. Gen. Stat. § 99D-1

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(2016); *see* N.C. Gen. Stat. § 1-52(2) (2016) (creating a three-year statute of limitations for “a liability created by statute, either state or federal, unless some other time is mentioned in the statute creating it”).

In his complaint, Plaintiff alleged that his cause of action stemmed from a job interview occurring in November 2011. Taking the factual allegations in his complaint as true, Plaintiff’s claim was required to be brought no later than November 2014 so as not to be barred by the statute of limitations. Thus, Plaintiff’s November 2, 2016 complaint was barred by the statute of limitations, and the trial court did not err in dismissing it pursuant to Rule 12(b)(6). The trial court’s order is affirmed.

AFFIRMED.

Judges ELMORE and DIETZ concur.

Report per Rule 30(e).