

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-19

Filed: 6 August 2019

Durham County, No. 18 CVS 1500

CRYSTAL GAIL MANGUM, Plaintiff.

v.

MARIANNE BOND – Officer Durham Police Department, and DURHAM DISTRICT ATTORNEY’S OFFICE, Defendants.

Appeal by plaintiff from judgment entered 15 August 2018 by Judge Carolyn J. Thompson in Durham County Superior Court. Heard in the Court of Appeals 8 May 2019.

*Crystal Mangum, pro se.*

*Office of the City Attorney, by Deputy City Attorney Kimberly M. Rehberg, for defendant-appellee Marianne Bond.*

*Attorney General Joshua H. Stein, by Assistant Attorney General Anna M. Davis, for defendant-appellee Durham District Attorney’s Office.*

BERGER, Judge.

Crystal Gail Mangum (“Plaintiff”) appeals from an August 20, 2018 order that granted motions to dismiss filed by Marianne Bond and the Durham County District Attorney’s Office (“Defendants”). The trial court determined Plaintiff’s lawsuit was

barred by the applicable statute of limitations. Plaintiff asserts thirteen issues on appeal. However, because the trial court did not err, we need not address each of her arguments.

Factual and Procedural Background

On April 3, 2011, Plaintiff argued with her boyfriend Reginald Daye (“Daye”), and she eventually stabbed Daye with a steak knife. Plaintiff then fled the scene. On April 4, 2011, Durham Police Officer Marianne Bond (“Bond”) interviewed Daye at the hospital. During the interview, Daye told her that he had been stabbed by Plaintiff during an argument, and also that he wanted two money orders Plaintiff had taken returned to him so that he could pay his rent. Two cashier’s checks were returned to Daye on April 6. Daye ultimately died in the hospital, and an autopsy revealed his death was caused by secondary complications from a stab wound to his chest.

On April 18, 2011, Plaintiff was indicted for one count of first degree murder for her role in Daye’s death and two counts of larceny of a chose in action for her alleged taking of the two cashier’s checks. On November 22, 2013, Plaintiff was convicted of second degree murder and acquitted for the two counts of larceny. Plaintiff was sentenced to 14 to 18 years in prison.

On January 2, 2018, Plaintiff filed a *pro se* complaint against Defendants for malicious prosecution. Plaintiff asserted in her complaint that (1) the State had only

MANGUM V. BOND

*Opinion of the Court*

offered Bond as the single witness for the larceny charges, and that Bond knew Plaintiff was innocent of these charges; (2) the jury had reached a favorable outcome for Plaintiff, finding Plaintiff not guilty of the larceny charges; and (3) the State's prosecution evidenced malice because of Plaintiff's role in the Duke Lacrosse Case.

On May 22, 2018, Defendants filed a motion to dismiss Plaintiff's complaint for failure to state a claim and because it was barred by the three-year statute of limitations. The trial court granted Defendants' motion, and entered a gatekeeper order that enjoined Plaintiff from filing any future legal action against Defendants.

Plaintiff appeals, contending that the statute of limitations for her malicious prosecution claim had not expired at the time she filed her complaint on January 2, 2018. In addition, she claims that N.C. Gen. Stat. § 1-52(9) is an "exemption" to the statute of limitations for "fraud or mistake," and that the statute of limitations was tolled because of purported ineffectiveness of her counsel. According to Plaintiff, her cause of action accrued on January 17, 2017, and her January 2, 2018 complaint was filed within the three-year statute of limitations. We disagree.

Analysis

Statutes of limitations are inflexible and unyielding. They operate inexorably without reference to the merits of plaintiff's cause of action. They are statutes of repose, intended to require that litigation be initiated within the prescribed time or not at all.

The purpose of a statute of limitations is to afford security against stale demands, not to deprive anyone of

his just rights by lapse of time. In some instances, it may operate to bar the maintenance of meritorious causes of action. When confronted with such a cause, the urge is strong to write into the statute exceptions that do not appear therein. In such case, we must bear in mind Lord Campbell's caution: "Hard cases must not make bad law."

*Congleton v. City of Asheboro*, 8 N.C. App. 571, 573-74, 174 S.E.2d 870, 872 (1970) (*purgandum*). This is not a hard case.

Defendants in a cause of action are vested with the right to rely on the statute of limitations as a defense. *Staley v. Lingerfelt*, 134 N.C. App. 294, 299, 517 S.E.2d 392, 396 (1999) (citation omitted). Further, a "trial court has no discretion when considering whether a claim is barred by the statute of limitations." *Id.* (citation omitted).

The statute of limitations for malicious prosecution is three years. *Barnette v. Woody*, 242 N.C. 424, 431, 88 S.E.2d 223, 227 (1955); *see also* N.C. Gen. Stat. § 1-52(5) (2017). "Ordinarily, the period of the statute of limitations begins to run when *the plaintiff's right to maintain an action for the wrong alleged accrues*." *Raftery v. Wm. C. Vick Constr. Co.*, 291 N.C. 180, 184, 230 S.E.2d. 405, 407 (1976) (citation omitted); *see also* N.C. Gen Stat. § 1-15(a) (2017) ("Civil actions can only be commenced . . . after the cause of action has accrued . . ."). "Generally, a cause of action accrues to an injured party so as to start the running of the statute of limitations when he is at liberty to sue . . ." *Raftery*, 291 N.C. at 182, 230 S.E.2d. at 407 (citation omitted). "In no event can a statute of limitations begin to run until a plaintiff is entitled to

institute action.” *Id.* A plaintiff is entitled to institute an action for malicious prosecution after the underlying criminal case has terminated by verdict. *See Brinkley v. Knight*, 163 N.C. 194, 195, 79 S.E.2d 260, 260 (1913) (“It is the well[-]established position that, before an action for malicious prosecution can be instituted it is necessary that the proceedings upon which it is based should have been properly terminated.”); *Welch v. Cheek*, 125 N.C. 353, 354-55, 34 S.E. 531, 532 (1899) (“It is a settled rule that before an action [for malicious prosecution] can be maintained, the criminal action must have terminated in some way, either by *nol pros*, verdict, or quashing, etc.”). Thus, the statute of limitations for a malicious prosecution claim begins to run upon entry of the verdict in the underlying criminal case.

Here, the criminal trial that served as the basis for Plaintiff’s malicious prosecution complaint terminated by verdict entered on November 22, 2013. The three-year statute of limitations began to run at that time. Plaintiff had until November 22, 2016 to file her cause of action. However, she did not file her complaint for malicious prosecution until January 2, 2018, more than one year after the statute of limitations had expired.

Plaintiff argues that fraud or mistake by her attorneys tolled the statute of limitations. She asserts that N.C. Gen. Stat. § 1-52(9) creates an exception to the statute of limitations. Section 1-52(9) simply states that a claim for relief based upon fraud or mistake is subject to the three-year statute of limitations from the date of

MANGUM V. BOND

*Opinion of the Court*

discovery of the fraud or mistake. This neither creates a new cause of action nor does it grant an exception to the statute of limitations.

Plaintiff filed her malicious prosecution claim after the three-year limitation period, and Section 1-52 does not extend this period. The trial court did not err when it dismissed Plaintiff's complaint, and we affirm.

AFFIRMED.

Judges DILLON and ZACHARY concur.

Report per Rule 30(e).