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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1172

Filed 6 August 2024

Pitt County, No. 23 CVS 1789

MICHAEL BILBRO, Plaintiff,

v.

ECU HEALTH, Defendant.

Appeal by plaintiff from order entered 19 September 2023 by Judge Jeffery B. Foster in Pitt County Superior Court. Heard in the Court of Appeals 28 May 2024.

Michael Bilbro, plaintiff-appellant pro se.

K&L Gates LLP, by Terrence M. McKelvey and Daniel D. McClurg, for defendant-appellee.

THOMPSON, Judge.

Plaintiff appeals from the trial court's order granting defendant's motion to dismiss. On appeal, plaintiff argues that the trial court erred in granting defendant's motion to dismiss because plaintiff's complaint stated claims for relief. After careful review, we affirm.

I. Factual Background and Procedural History

BILBRO V. ECU HEALTH

Opinion of the Court

Plaintiff is a former employee of defendant and brought this action pro se. On 14 June 2023, plaintiff filed a complaint (initial complaint) against defendant in Beaufort County Superior Court,¹ seeking one claim for relief, “[p]unitive damages . . . in the amount of \$333,000 for defamation of character, libel and civil tort.” On 14 July 2023, defendant filed a motion to dismiss plaintiff’s initial complaint, stating that plaintiff had failed to state any cognizable claim in his complaint, and to the extent plaintiff asserted a claim for defamation, the statute of limitations barred that claim. On 1 August 2023, plaintiff filed a “Response and opposition” to defendant’s motion to dismiss, along with a supporting affidavit (plaintiff’s affidavit) arguing that defendant’s motion to dismiss should be denied.

That same day, plaintiff filed an amended complaint in Pitt County Superior Court, incorporating the allegations of his initial 14 June 2023 complaint and requesting the court conclude that he suffered personal injury resulting in significant financial loss due to defendant’s actions. Plaintiff made no further amendments to his initial complaint beyond these allegations of “personal injury” and “financial loss” due to defendant’s actions; at all times, plaintiff stated that he learned of defendant’s alleged defamation “shortly after dropping a book off in May 2021” and when he gave defendant “ample time to resolve[,] into the Fall of 2021.”

¹ The initial complaint and the amended complaint, although filed in different counties, refer to this same cause of action, 23 CVS 1789.

On 11 August 2023, defendant filed another motion to dismiss, again contending that plaintiff's only claim, "punitive damages," was not a standalone cognizable claim and that if plaintiff intended to state a claim for defamation, that claim was time-barred by the statute of limitations. The matter came on for hearing on 19 September 2023 in Pitt County Superior Court, and by order entered that same day, the trial court granted defendant's motion to dismiss and dismissed plaintiff's complaint with prejudice. On 19 October 2023, plaintiff filed timely written notice of appeal.

II. Discussion

A. Standard of review

"The standard of review for an order granting a Rule 12(b)(6) motion to dismiss is well established[;] [a]ppellate courts review de novo an order granting a Rule 12(b)(6) motion to dismiss." *Taylor v. Bank of Am., N.A.*, 382 N.C. 677, 679, 878 S.E.2d 798, 800 (2022). "The appellate court, just like the trial court below, considers whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory." *Id.* (internal quotation marks and citation omitted).

Dismissal of an action pursuant to "Rule 12(b)(6) is appropriate when the complaint fails to state a claim upon which relief can be granted." *Arnesen v. Rivers Edge Golf Club & Plantation, Inc.*, 368 N.C. 440, 448, 781 S.E.2d 1, 7 (2015) (internal quotation marks, brackets, and citation omitted). The North Carolina "system of

notice pleading affords a sufficiently liberal construction of complaints so that few fail to survive a motion to dismiss.” *Wray v. City of Greensboro*, 370 N.C. 41, 46, 802 S.E.2d 894, 898 (2017) (internal quotation marks and citation omitted). However, “[w]hen the complaint on its face reveals that no law supports the claim, reveals an absence of facts sufficient to make a valid claim, or *discloses facts that necessarily defeat the claim*, dismissal is proper.” *Arnesen*, 368 N.C. at 448, 781 S.E.2d at 8 (emphasis added).

B. Defamation

On appeal, plaintiff argues that he “has stated enough [in his complaint] to provide the substantive elements of at least some legally recognized claim” to overcome defendant’s motion to dismiss. We do not agree, because the statute of limitations bars plaintiff’s sole cognizable claim for relief.

“In order to recover for defamation, a plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff’s reputation.” *Taube v. Hooper*, 270 N.C. App. 604, 608, 840 S.E.2d 313, 317 (2020). However, defamation claims have a one-year statute of limitations. N.C. Gen. Stat. § 1-54(3) (2023). A claim for defamation begins to “accrue[] at the date of the publication of the defamatory words” *Gibson v. Mutual Life Ins. Co. of N.Y.*, 121 N.C. App. 284, 287, 465 S.E.2d 56, 58 (1996) (emphasis and citation omitted).

Here, plaintiff's complaint alleged that the defamatory words were the publication of "pictures of plaintiff in hospital areas" which, as noted above, occurred "shortly after [plaintiff] dropp[ed] a book off in May 2021" and when plaintiff gave defendant "ample time to resolve [his grievances][.] into the Fall of 2021." However, even after considering the allegations of plaintiff's complaint against defendant and its employees, treated as true, we hold that plaintiff "disclose[d] facts that necessarily defeat[ed] the claim, [and] dismissal is proper." *Arnesen*, 368 N.C. at 448, 781 S.E.2d at 8.

Plaintiff filed his initial complaint on 14 June 2023 and his amended complaint on 1 August 2023. Both filings were well outside of the one-year statute of limitations for defamation, because, according to plaintiff's complaint, the cause of action began to toll—at the absolute latest—in "the Fall of 2021." For this reason, we conclude that the trial court did not err in granting defendant's motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

C. Plaintiff's affidavit

Finally, plaintiff contends that the trial court erred by "limit[ing] [its] review of the facts of the case to the original [c]omplaint and [a]mended [c]omplaint" without considering plaintiff's affidavit. We do not agree, nor does our caselaw, which "has consistently treated submission of affidavits as a matter outside the pleadings[.]" *Holton v. Holton*, 258 N.C. App. 408, 419, 813 S.E.2d 649, 657 (2018) (brackets and citation omitted), and "matters outside the complaint are not germane to a Rule

12(b)(6) motion.” *Weaver v. Saint Joseph of the Pines, Inc.*, 187 N.C. App. 198, 203, 652 S.E.2d 701, 707 (2007). However, in light of our disposition, we need not address plaintiff’s argument because the trial court’s dismissal of plaintiff’s complaint with prejudice was proper.

III. Conclusion

We conclude that the trial court properly dismissed plaintiff’s complaint with prejudice because plaintiff’s sole cognizable claim for relief was barred by the statute of limitations. For the aforementioned reason, the order of the trial court is affirmed.

AFFIRMED.

Judges GRIFFIN and FLOOD concur.

Report per Rule 30(e).