FILED
05/25/2023
Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs March 1, 2023

BRADLEY ALLEN GARRETT v. WILLIAM TYLER WEISS, ET AL.

Appeal from the Circuit Court for Monroe County
No. V190056S Pamela A. Fleenor, Chancellor[1]

No. E2022-01373-COA-R3-CV

The pro se plaintiff appeals the trial court's summary judgment dismissal of his legal malpractice action against his attorney and the attorney's law firm. The trial court found that the action was barred by the applicable one-year statute of limitations. Because the plaintiff's action accrued more than one year before he filed the lawsuit, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded

JOHN W. MCCLARTY, J., delivered the opinion of the Court, in which W. NEAL MCBRAYER and KENNY ARMSTRONG, JJ., joined.

Bradley Allen Garrett, Louisville, Tennessee, pro se.

Daniel J. Ripper, Chattanooga, Tennessee, for the appellees, William Tyler Weiss and Law Office of Worthington & Weiss, P.C.

OPINION

I. BACKGROUND

The following facts are undisputed. In August 2015, the appellant, Bradley Allen Garrett ("Plaintiff"), retained the appellees, William Tyler Weiss and Law Office of Worthington & Weiss, P.C. ("Defendants"), to provide legal services. These services were in connection with Plaintiff's right to certain marital property at issue in his pending divorce from Eileen M. Garrett.

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[1] Sitting by interchange.

On May 11, 2017, Eileen Garrett petitioned the Circuit Court for Monroe County for an order of protection against Plaintiff. Defendants represented Plaintiff on this matter as well. By amended order of protection entered on May 30, 2017, Plaintiff was no longer allowed to reside at a property in Tellico Plains. The order of protection specified that only Eileen Garrett and her children could live at the Tellico Plains property. However, between May and August of 2017, Eileen Garrett actually resided in Sweetwater. Starting in June of 2017 and continuing up to August of 2017, Plaintiff informed Defendants on more than one occasion that the Circuit Court had erred in its May 30, 2017 amended order of protection by listing the incorrect address as the location where Eileen Garrett could reside.

In August 2017, Plaintiff cited the address error to the authorities and refused to leave the Tellico Plains residence. As a result, he was arrested and charged with resisting arrest, disorderly conduct, and violation of the order of protection. Defendants represented Plaintiff on the three criminal charges and secured a plea deal for him. Plaintiff pleaded guilty on September 12, 2017. He served six months incarceration. During Plaintiff's incarceration, the bank initiated foreclosure proceedings on the Tellico Plains property, and it was sold at auction on October 17, 2017.

On March 5, 2018, Plaintiff pro se moved the Circuit Court to alter the May 30, 2017 amended order of protection. In his pro se motion, Plaintiff argued that the "address on page 4 of 6 needs to be changed." He further averred that he had been arrested because of the clerical error, had lost his home, and that his former wife and her boyfriend had stolen his belongings. As relief, Plaintiff requested, "I would like my belong[ing]s and my son's things returned or compensated for losses." By order entered April 2, 2018, the Circuit Court granted Plaintiff's pro se motion and corrected the address in the order of protection to Eileen Garrett's actual address in Sweetwater.

On April 1, 2019, Plaintiff pro se initiated the action underlying this appeal by filing against Defendants a complaint alleging legal malpractice. In his complaint, Plaintiff alleged that "but for the negligent and wrongful acts of [Defendants] in failing to file a motion to correct the error made in the . . . amended order of protection entered on May 30, 2017 . . . no criminal charges would have been filed against Plaintiff Garrett and no foreclosure proceeding would have been initiated against [his] residence." Plaintiff gave deposition testimony, but it is not in the appellate record.

On February 23, 2022, Defendants moved for summary judgment, arguing that Plaintiff's complaint was filed outside of the applicable one-year statute of limitations. As required by Tennessee Rule of Civil Procedure 56.03, Defendants filed a statement of the material facts as to which they, as the parties moving for summary judgment, contended there was no genuine issue for trial. Defendants' statement of undisputed material facts included the following:

> 12. In his complaint, interrogatories and subsequent deposition, Plaintiff makes clear that the only errors committed by Defendants occurred in May/Summer 2017 by not correcting the Order of Protection and September 2017 by allegedly failing to adequately advise Plaintiff of the plea and charges against him.
>
> 13. Plaintiff in his deposition has made it clear that he became aware of the issues with his allegedly inadequate representation relating to his September 2017 criminal case during his six-month incarceration as part of said plea deal.

In his July 21, 2022, response to Defendants' statement of undisputed material facts, Plaintiff agreed that the foregoing paragraphs were "undisputed for the purpose of ruling on the Motion for Summary Judgment only." Plaintiff was represented by counsel at that time, and counsel drafted the response.

Defendants' motion for summary judgment was heard on July 27, 2022, by Chancellor Fleenor ("trial court") who was sitting by interchange. The hearing was not transcribed. By order entered August 11, 2022, the trial court granted the motion for summary judgment and dismissed Plaintiff's claims with prejudice. The trial court determined that "Defendants met their burden of production by demonstrating through Plaintiff's deposition that he advised Defendants of the error on the O[rder of] P[rotection] in June of 2017." The trial court concluded as a matter of law that Plaintiff's cause of action accrued on June 30, 2017, so his April 1, 2019 complaint was filed outside the statute of limitations. In the interest of judicial economy, the trial court alternatively ruled that the last possible date Plaintiff's cause of action accrued was March 5, 2018, when he moved to amend the order of protection.

On August 17, 2022, Plaintiff pro se filed a "motion for new trial," which the trial court treated as a Tennessee Rule of Civil Procedure 59.04 motion to alter or amend the order granting summary judgment. Following a hearing and by order entered September 16, 2022, the trial court denied the motion. Plaintiff appealed.

II. ISSUES

We consolidate and restate the issues on appeal as follows:

> A. Whether the trial court's order granting summary judgment was in violation of Tennessee Rule of Civil Procedure 56.04.

B. Whether the trial court erred by entering summary judgment in Defendants' favor.

III. STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04.

Because the moving parties sought summary judgment on an affirmative defense, they had the burden of proof at trial. *See Sherrill v. Souder*, 325 S.W.3d 584, 596 (Tenn. 2010) ("Because the failure to comply with a statute of limitations is an affirmative defense, *see* Tenn. R. Civ. P. 8.03, the Defendants bear the burden of proof on the issue."). When the party moving for summary judgment has the burden of proof at trial, it "must produce at the summary judgment stage evidence that, if uncontroverted at trial, would entitle it to a directed verdict." *TWB Architects, Inc. v. Braxton*, LLC, 578 S.W.3d 879, 888 (Tenn. 2019). Once the moving party has satisfied this requirement, the nonmoving party "'may not rest upon the mere allegations or denials of [its] pleading.'" *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 265 (Tenn. 2015) (quoting Tenn. R. Civ. P. 56.06). Rather, the nonmoving party must respond and produce affidavits, depositions, responses to interrogatories, or other discovery that "set forth specific facts showing that there is a genuine issue for trial." Tenn. R. Civ. P. 56.06; *see also Rye*, 477 S.W.3d at 265. If the nonmoving party fails to respond in this way, "summary judgment, if appropriate, shall be entered against the [nonmoving] party." Tenn. R. Civ. P. 56.06.

We review a trial court's summary judgment determination de novo, with no presumption of correctness. *Rye*, 477 S.W.3d at 250. Therefore, "we make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Id*. In reviewing a summary judgment motion on appeal, "we are required to review the evidence in the light most favorable to the nonmoving party and to draw all reasonable inferences favoring the nonmoving party." *Shaw v. Metro. Gov't of Nashville & Davidson Cnty.*, 596 S.W.3d 726, 733 (Tenn. Ct. App. 2019) (citations and quotations omitted).

IV. DISCUSSION

A.

We begin by acknowledging the difficulties Plaintiff has had as a pro se litigant during portions of this litigation. This court "must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe." *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003) (citing *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996)). It is well-settled that "[w]hile a party who chooses to represent himself or herself is entitled to the fair and equal treatment of the courts, [p]ro se litigants are not . . . entitled to shift the burden of litigating their case[s] to the courts." *Chiozza v. Chiozza*, 315 S.W.3d 482, 487 (Tenn. Ct. App. 2009) (internal citations omitted). However, "[t]he courts give pro se litigants who are untrained in the law a certain amount of leeway in drafting their pleadings and briefs." *Young*, 130 S.W.3d at 63.

In his brief, Plaintiff contends that the August 11, 2022 order does not comply with Tennessee Rule of Civil Procedure 56.04 because it "simply states all of Defendants' arguments." Tennessee Rule of Civil Procedure 56.04 provides that "[t]he trial court shall state the legal grounds upon which the court denies or grants the motion [for summary judgment], which shall be included in the order reflecting the court's ruling." Here, the trial court's six-page mostly handwritten order clearly states the legal grounds upon which summary judgment was granted. Additionally, there is no doubt that the order reflects the court's own independent judgment. Plaintiff's argument is without merit.

B.

The statute of limitations applicable to this legal malpractice action provides:

> Actions and suits against . . . attorneys for malpractice shall be commenced within one (1) year after the cause of action accrued, whether the action or suit is grounded or based in contract or tort.

Tenn. Code Ann. § 28-3-104(c)(1). "The concept of accrual relates to the date on which the applicable statute of limitations begins to run." *Redwing v. Cath. Bishop for Diocese of Memphis*, 363 S.W.3d 436, 457 (Tenn. 2012) (citing *Columbian Mut. Life Ins. Co. v. Martin*, 175 Tenn. 517, 526, 136 S.W.2d 52, 56 (1940)). In legal malpractice actions, the date on which a statute of limitations begins to run is determined by the discovery rule. *See Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995). Pursuant to the discovery rule, a statute of limitations will accrue once: (1) the plaintiff suffers an "actual injury" as a result of the defendant's allegedly wrongful or negligent conduct, and (2) the plaintiff knew "or

in the exercise of reasonable diligence should have known that" this injury was caused by the defendant's alleged wrongful or negligent conduct. *John Kohl & Co., P.C. v. Dearborn & Ewing*, 977 S.W.2d 528, 532 (Tenn. 1998).

As to the discovery rule's injury element, we have previously explained:

> Tennessee's accrual standard recognizes that "not every misstep leads to a fall." *Cherry [v. Williams]*, 36 S.W.3d [78], 84 [Tenn. Ct. App. 2000]. "[N]egligence without injury is not actionable." *Id*. So evidence of an actual injury is critical. *See id*. The clearest example of an actual injury is when a plaintiff has lost "a legal right, remedy[,] or interest" or incurred a new liability as a result of the wrongful conduct. *John Kohl & Co*., 977 S.W.2d at 532. But actual injury can occur under less obvious circumstances as well. A plaintiff has also suffered actual injury when "forced to take some action or otherwise suffer 'some actual inconvenience.'" *Id*. (quoting *State v. McClellan*, 85 S.W. 267, 270 (Tenn. 1905)). Incurring an expense, such as attorney's fees or court costs, as a result of the defendant's conduct qualifies as actual injury. *See Cardiac Anesthesia Servs., PLLC v. Jones*, 385 S.W.3d 530, 543–44 (Tenn. Ct. App. 2012). But our supreme court has cautioned that "the injury element is not met if it is contingent upon a third party's actions or amounts to a mere possibility." *John Kohl & Co*., 977 S.W.2d at 532.

Outpost Solar, LLC v. Henry, Henry & Underwood, P.C., No. M2019-00416-COA-R3-CV, 2021 WL 1027110, at *4 (Tenn. Ct. App. Mar. 17, 2021).

The knowledge element of the discovery rule "may be established by evidence of actual or constructive knowledge of the injury." *John Kohl & Co.*, 977 S.W.2d at 532 (citing *Carvell*, 900 S.W.2d at 29). "Our Supreme Court has stressed, however, that there is no requirement that the plaintiff actually know the specific type of legal claim he or she has, or that the injury constituted a breach of the appropriate legal standard." *PNC Multifamily Cap. Institutional Fund XXVI Ltd. P'ship v. Bluff City Cmty. Dev. Corp.*, 387 S.W.3d 525, 545 (Tenn. Ct. App. 2012) (citation omitted). "The key inquiry is whether the plaintiff had knowledge of sufficient facts to put a reasonable person on notice of the injury." *Outpost Solar*, 2021 WL 1027110, at *5 (citing *John Kohl & Co.*, 977 S.W.2d at 533).

With the elements of the discovery rule in mind, we turn now to the undisputed evidence in the record. The parties do not dispute that Plaintiff's arrest at his own home, entry of a guilty plea on the resulting criminal charges, and his incarceration stemmed from the clerical error in the amended order of protection. Any one of these events qualifies as

an actual injury under the discovery rule. *See John Kohl & Co*., 977 S.W.2d at 532. Based on Plaintiff's response to Defendants' statement of undisputed material facts, it is also undisputed that Defendants failed to take action to correct the clerical error even after Plaintiff brought it to their attention during the summer of 2017. Plaintiff admitted that "he became aware of the issues with his allegedly inadequate representation relating to his September 2017 criminal case during his six-month incarceration as part of [the] plea deal." Indeed, Plaintiff informed Defendants of the error in the amended order of protection starting in June of 2017. These facts indicate that Plaintiff had knowledge of his actual injury as early as June 2017. Furthermore, Plaintiff's action to correct the clerical error by filing his March 5, 2018 pro se motion detailing the loss of liberty and theft he had experienced and requesting "compensat[ion] for losses" is evidence of actual knowledge of an injury as a result of Defendants' inaction. In his appellate brief, Plaintiff emphasizes that had he not filed this motion, "he would have went back to jail for a second round." Based on these undisputed facts, we hold that Plaintiff had knowledge of the injury by June 2017, when he first informed Defendants of the error, and, in any event, no later than March 5, 2018, the date he filed his motion. Any of these dates triggered accrual of the action more than one year prior to its commencement on April 1, 2019.

On appeal, Plaintiff asserts that we should apply the comparative fault doctrine, the sudden emergency doctrine, and the statute of repose. Plaintiff did not make these arguments before the trial court. "It has long been the general rule that questions not raised in the trial court will not be entertained on appeal." *Watson v. Waters*, 375 S.W.3d 282, 290 (Tenn. Ct. App. 2012). Regardless, neither doctrine nor the statute of repose has any application to this case. Because the undisputed evidence establishes that Plaintiff's cause of action accrued more than one year before he commenced this action, we affirm the trial court's decision in all respects.

V. CONCLUSION

We affirm the trial court's judgment. The case is remanded for such further proceedings as are necessary and consistent with this opinion. Costs of the appeal are taxed to the appellant, Bradley Allen Garrett.

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JOHN W. McCLARTY, JUDGE