

NOTICE

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2019 IL App (4th) 180418-U

NO. 4-18-0418

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 15, 2019

Carla Bender

4th District Appellate Court, IL

RONNIE CARROLL,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
ANITA GIBBAR,)	No. 17SC174
Defendant-Appellee.)	
)	Honorable
)	Robert M. Travers,
)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court properly dismissed plaintiff's defamation claim where plaintiff filed his complaint after the one-year statute of limitations period (735 ILCS 5/13-201 (West 2016)).

¶ 2 Plaintiff, Ronnie Carroll, *pro se*, appeals the judgment of the trial court granting defendant, Anita Gibbar, her motion to dismiss pursuant to section 2-619(a)(9) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2016)), where the trial court determined the one-year statute of limitations period (735 ILCS 5/13-201 (West 2016)) barred plaintiff's defamation claim. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On May 17, 2017, plaintiff filed a small-claims complaint, as amended, alleging defendant violated sections 145/2 and 145/3 of the Slander and Libel Act (740 ILCS 145/2, 3 (West 2016)), when she created an online blog and, in January 2015, posted statements about

plaintiff on the blog. Specifically, defendant's statements inquired about plaintiff after he wrote a letter to her widowed mother. Plaintiff alleged that as a direct result of the statements defendant made on the blog plaintiff suffered. According to plaintiff, the harm occurred when in February 2016, the Illinois Department of Corrections (IDOC) adjustment committee investigated plaintiff and disciplined him by imposing one-year C-Grade status, one-year segregation, revocation of six months' good-conduct credit, and a disciplinary transfer for scheming to obtain money from surviving family members and estates. Plaintiff also alleged defendant's online statements damaged his reputation where he lost pen pals, friends, and family members over the statements on the blog.

¶ 5 In March 2018, defendant moved to dismiss plaintiff's amended complaint pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2016)), alleging, in relevant part, that plaintiff's original complaint filed May 17, 2017, was barred by the one-year statute of limitations period for defamation claims (735 ILCS 5/13-201 (West 2016)). In June 2018, the trial court granted defendant's 2-619 motion to dismiss finding the one-year statute of limitations barred plaintiff's defamation claim and the discovery rule did not apply.

¶ 6 This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 Plaintiff appeals the judgment of the trial court granting defendant's 2-619 motion to dismiss plaintiff's defamation claim. We affirm.

¶ 9 A. Standard of Review

¶ 10 " 'A motion to dismiss pursuant to section 2-619 of the Code admits the legal sufficiency of the complaint but asserts [an] affirmative matter to avoid or defeat the claim.' "

Griffin v. Willoughby, 369 Ill. App. 3d 405, 410, 867 N.E.2d 1007, 1011 (2006) (quoting *Lamar*

Whiteco Outdoor Corp. v. City of West Chicago, 355 Ill. App. 3d 352, 359, 823 N.E.2d 610, 616 (2005)). "When ruling on such a motion, a court must interpret all pleadings and supporting documents in the light more favorable to the nonmoving party." *Id.* On appeal, we consider whether the pleadings and any supporting documentation raise a genuine issue of material fact and whether the defendant is entitled to dismissal as a matter of law based on the facts pled. *Id.* Accordingly, our review is *de novo*. *Id.*

¶ 11 B. Statute of Limitations for Defamation

¶ 12 Defamation actions are subject to a one-year statute of limitations. 735 ILCS 5/13-201 (West 2016) ("Actions for slander, libel or for publication of matter violating the right of privacy, shall be commenced within one year next after the cause of action accrued."). "It has been generally held that in defamation cases the cause of action accrues and the statute of limitation begins to run on the date of publication of the defamatory material." *Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc.*, 61 Ill. 2d 129, 131-32, 334 N.E.2d 160, 161 (1975).

¶ 13 Here, defendant created the online blog and posted her first statement about defendant on January 8, 2015. Therefore, the date of publication of the alleged defamatory material occurred on January 8, 2015, resulting in the statute of limitations beginning to run. As such, plaintiff had until January 8, 2016, to file his defamation complaint against defendant. Plaintiff failed to meet this deadline when he filed his defamation complaint over two years later on May 17, 2017.

¶ 14 In an effort to toll the statute of limitations, plaintiff argues the "discovery rule" applies. The discovery rule is a mechanism that avoids the mechanical application of a statute of limitations period and postpones the commencement of the applicable limitations period until the

plaintiff knows, or reasonably should have known, that he incurred an injury and that the injury was wrongfully caused. *Peal v. Lee*, 403 Ill. App. 3d 197, 207, 933 N.E.2d 450, 461 (2010). However, defamation via mass-media publications, including magazines, books, newspapers, radio and television programs are not subject to the discovery rule because they are readily accessible to the general public. *Tom Olesker's*, 61 Ill. 2d at 137-38. Courts generally do not apply the discovery rule in defamation cases " 'unless the publication was hidden, inherently undiscoverable, or inherently unknowable.' " *Peal*, 403 Ill. App. 3d at 207 (quoting *Blair v. Nevada Landing Partnership*, 369 Ill. App. 3d 318, 326, 859 N.E.2d 1188, 1195 (2006)).

¶ 15 There is nothing inherently undiscoverable about a posting on a publically-accessible website, such as the online blog on which defendant posted. While the Internet is vast, numerous search engines exist to conduct research on the Internet and discover potential defamatory statements. Our case is distinguishable from *Tom Olesker's*, 61 Ill. 2d at 137-38, where the discovery rule applied to a defamation action in which the defamatory material was contained in a credit report available only to subscribers because the material was found to be essentially hidden from and undiscoverable by the general public. At no point were defendant's internet posts hidden. To the contrary, the posts existed on a publically-accessible online blog discoverable by the general public. Thus, the discovery rule fails to apply.

¶ 16 Plaintiff however argues the mass-media exception to the discovery rule does not apply given his incarceration when defendant posted statements, and IDOC's prohibition against inmate access to the internet. Plaintiff alleges he only obtained copies of defendant's statements in April 2017 when he filed a common law writ of *certiorari* challenging the IDOC adjustment committee's decision. Plaintiff then filed his small-claims complaint against defendant a month later.

¶ 17 Plaintiff seeks to escape the mass-media exception by arguing that as a prisoner, he is not a member of the general public and lacks access to the same sources of information. According to plaintiff, his incarceration tolled the applicable statute of limitations until April 2017 when he obtained copies of defendant's online statements. However, an amendment effective January 1, 1991, deprived prisoners of any tolling benefits concluding incarceration is not a disability tolling the statute of limitations. See Pub. Act 86-1329, § 4 (eff. Jan 1, 1991). Accordingly, we find an incarcerated plaintiff is required to bring an action within the applicable statute of limitations even if he remains incarcerated the entire time. See *Schweih's v. Burdick*, 96 F.3d 917, 919 (7th Cir. 1996) (applying Illinois law). Illinois law provides no exception to the mass-media rule for prisoners. See *id.* at 921.

¶ 18 Moreover, plaintiff stated in his amended complaint that the IDOC adjustment committee issued a disciplinary report and disciplined plaintiff in February 2016, based, in part, on the online blog. Therefore, plaintiff knew about the blog in February 2016 and failed to file his lawsuit until over a year later. Even if the discovery rule applied, plaintiff's defamation claim is still time-barred by the one-year statute of limitations. Accordingly, we affirm the trial court's order granting defendant's motion to dismiss plaintiff's defamation claim where plaintiff filed his complaint after the one-year statute of limitations period.

¶ 19 III. CONCLUSION

¶ 20 For the foregoing reasons, we affirm the trial court's judgment.

¶ 21 Affirmed.