2014 IL App (1st) 123725-U

FOURTH DIVISION
July 31, 2014

No. 1-12-3725

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RENEE JONES,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 12 L 3339
	)	
CHICAGO POLICE DEPARTMENT,	)	Honorable
	)	Kathy M. Flanagan,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

O R D E R

¶ 1 ***Held:*** We affirm the trial court's dismissal of plaintiff's complaint because it was not timely filed and raised claims for which the defendant was immune from liability.

¶ 2 *Pro se* plaintiff, Renee Jones, appeals the dismissal of her complaint with prejudice against defendant, the Chicago Police Department (Department). On appeal, she contends that her complaint should not be barred either by the one-year limitations period or by the immunity from liability provided in the Local Governmental and Governmental Employees Tort Immunity

Act (Act) (745 ILCS 10/8-101 (limitations period), 10/4-102 (immunity for police) (West 2012)). We affirm.

¶ 3 In March 2012, *pro se* plaintiff filed a complaint alleging that she was a victim of a sexual assault in 1999, causing her to go to Michael Reese Hospital. Plaintiff further alleged a Department detective, Allen Nathaniel, did not follow the chain of custody of the evidence in her "1999 sexual assault case" and her rape kit and clothes "were destroyed by the officer or some unknown person at the Michael Reese Hospital." In 2009, an assistant State's Attorney (ASA) in the "Rape Division" contacted plaintiff to ask if a detective could question plaintiff about the sexual assault case. Plaintiff alleged that the police never contacted her. The ASA contacted the police and was told "they were busy and would get to her [plaintiff]" but the police never came. Plaintiff further alleged that her case was "on suspension" because she "was mentally unable to deal with the situation" and "could not help with the prosecution of" the case. Plaintiff stated that she had been released by her doctor and could now deal with this matter.

¶ 4 In July 2012, defendant filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2012)). In its motion, defendant asserted plaintiff's complaint was time-barred because it was filed outside the one-year limitations period for the filing of civil actions under section 8-101 of the Act. In addition, defendant claimed that the police department and officers are immune from liability under section 4-102 of the Act for the conduct alleged by plaintiff.

¶ 5 In response, plaintiff contended, in relevant part, dismissal was inappropriate because the statute of limitations tolls whenever a person is under a legal disability pursuant to section 13-211 of the Code (735 ILCS 5/13-211 (West 2012)). In addition, plaintiff asserted that a police

officer is liable when he takes actions that "were in violation of the plaintiff's constitutional rights." In September 2012, defendant filed a reply, asserting plaintiff's claims lacked merit.

¶ 6 In December 2012, the trial court granted defendant's motion to dismiss plaintiff's complaint with prejudice. In its ruling, the court found the complaint was untimely because it was filed after the one-year limitations period stated in the Act and plaintiff had not demonstrated a legal disability to toll the applicable limitations period.[1] In addition, the court found defendant was immune from liability under the Act and rejected plaintiff's contention police violated her constitutional rights, reasoning that she failed to plead a violation of any constitutional right and cited inapplicable authority. This appeal followed.

¶ 7 On appeal, plaintiff first asserts the trial court erred by dismissing her complaint with prejudice as untimely. In support of her assertion, plaintiff contends she was under a legal disability that tolled the statute of limitations pursuant to section 13-211 of the Code and the "equitable tolling doctrine." She also argues she has a right to refile her cause of action.

¶ 8 A motion to dismiss pursuant to section 2-619 of the Procedure Code admits the legal sufficiency of a complaint but asserts the claim is defeated by some affirmative matter. *Jane Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 15. A section 2-619 motion presents a question of law, which we review *de novo*. *In re Estate of Boyer*, 2013 IL 113655, ¶ 27.

¶ 9 In relevant part, a civil action "against a local entity or any of its employees for any injury" must be "commenced within one year from the date that the injury was received or the cause of action accrued" under section 8-101(a) of the Act. 745 ILCS 10/8-101(a) (West 2012).

[1] We note that the trial court's order dismissing plaintiff's complaint was not included in the record. However, plaintiff has appended a copy of the order to her brief and defendant has not challenged the veracity of the order. Accordingly, for purposes of this appeal, we will consider the order contained in the appendix to plaintiff's brief.

Plaintiff filed her complaint in 2012, well over one year after the last action alleged in the complaint, *i.e.*, no police detective contacted her in 2009. Furthermore, the cause of action was premised on alleged conduct in 1999, *i.e.*, a detective failed to preserve the chain of custody of the evidence from her 1999 sexual assault and the detective or an unknown hospital employee destroyed her evidence. Thus, plaintiff's 2012 complaint against the Department is barred by the applicable one-year limitations period.

¶ 10 Plaintiff unsuccessfully advances three arguments to overcome the one-year limitations period. First, plaintiff asserts the time period was tolled because she was under a legal disability pursuant to section 13-211 of the Code, which provides in relevant part that if the complainant was under a legal disability at the time the cause of action accrued, she may bring the action within two years after the disability is removed. 735 ILCS 5/13-211 (West 2012). A person is considered to be under a legal disability if she has some disability or incapacity that prevents her from being fully able to manage her person or estate. *Parks v. Kownacki*, 193 Ill. 2d 164, 178 (2000). Plaintiff has not shown she has a legal disability by simply alleging that her case was "on suspension" because she "was mentally unable to deal with the situation" at some unspecified time and could not assist in the prosecution. See *Parks*, 193 Ill. 2d at 179 (the plaintiff, who alleged only that the defendants' conduct rendered her "psychiatrically unable" to take legal action, failed to plead facts sufficient to indicate she had a legal disability).

¶ 11 Second, plaintiff seeks to invoke the "equitable tolling" principle, relying on *Williams v. Board of Review*, 241 Ill. 2d 352 (2011). The *Williams* decision is distinguishable because it involved whether a provision of a federal statute was subject to equitable tolling under federal law and no federal statute is involved in the present case. Even under Illinois law, equitable tolling may only be considered under three circumstances: "(1) if the defendant actively misled

the plaintiff; (2) if the plaintiff was prevented from asserting his or her rights in some extraordinary way; or (3) if the plaintiff mistakenly asserted his or her rights in the wrong forum." *Ralda-Sanden v. Sanden*, 2013 IL App (1st) 121117, ¶ 19 (citing *Clay v. Kuhl*, 189 Ill. 2d 603, 614 (2000)); see also, *e.g.*, *Thede v. Kapsas*, 386 Ill. App. 3d 396, 402 (2008) (quoting *Clay*, 189 Ill. 2d at 614). These three circumstances were either not alleged or not shown in the present case.

¶ 12 Third, plaintiff's reliance on section 13-217 of the Code does not aid her because it allows for refiling a complaint only in the following instances: where judgment is entered for the plaintiff but reversed on appeal, where a verdict is returned in favor of the plaintiff but judgment is entered against the plaintiff upon a motion in arrest of judgment, or where an action is voluntarily dismissed, dismissed for want of prosecution, or dismissed for lack of jurisdiction or improper venue. 735 ILCS 5/13-217 (West 1994)[2]. None of these circumstances occurred in plaintiff's case and, therefore, section 13-217 does not apply.

¶ 13 Even assuming plaintiff's complaint was not time-barred, the trial court correctly ruled that plaintiff's complaint was barred by section 4-102 of the Act, which protects the police from liability as follows: "Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals." 745 ILCS 10/4-102 (West 2012).

[2] As defendant notes, Public Act 89-7, § 15 (eff. March 9, 1995) amended this section of the Code but the Illinois Supreme Court found that Public Act 89-7 was unconstitutional in its entirety in *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997). Accordingly, the version of section 13-217 of the Code currently in effect is the one that existed prior to Public Act 89-7. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 469 n. 1 (2008).

¶ 14 In her reply brief, plaintiff incorrectly contends that the immunity conferred by section 4-102 should not apply because it is contrary to the Illinois Constitution that provides as follows: "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly." Ill. Const. 1970, art. I, § 12.

¶ 15 Plaintiff's contention is unpersuasive. "[T]he Tort Immunity Act has repeatedly withstood constitutional challenges" under the certain remedy clause cited by plaintiff because although the legislature may not completely abolish a particular category or type of action, it retains broad discretion to alter an existing remedy as necessary to promote the public welfare. *Choice v. YMCA of McHenry County*, 2012 IL App (1st) 102877, ¶¶ 67-68. Accordingly, the trial court did not err by finding section 4-102 of the Act barred plaintiff's claims.

¶ 16 For the reasons stated, we affirm the trial court's dismissal of plaintiff's complaint with prejudice.

¶ 17 Affirmed.