IN THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT, HENRY COUNTY, OHIO

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NOTICE OF FILING OF JOURNAL ENTRY

GEORGE M KRANTZ

vs.

FAMILY SERVICES OF NORTHWEST OHIO

Case No. 7-13-11

Date: 3/24/2014

To: The attorneys of record, the parties not represented by counsel and the trial court.

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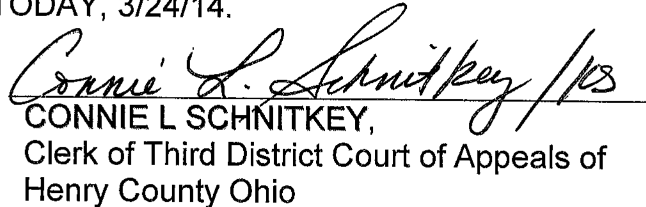

CONNIE L SCHNITKEY,
Clerk of Third District Court of Appeals of
Henry County Ohio

cc: STEVEN WINTERS
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IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
HENRY COUNTY

GEORGE M. KRANTZ,

PLAINTIFF-APPELLANT, **CASE NO. 7-13-11**

v.

FAMILY SERVICES OF NORTHWEST OHIO, **JUDGMENT ENTRY**

DEFENDANT-APPELLEE.

This appeal, having been placed on the regular calendar, is *sua sponte* being assigned and considered on the accelerated calendar pursuant to App.R. 11.1(E) and Loc.R. 12. This decision is, therefore, rendered by summary judgment entry, which is controlling only as between the parties to this action and not subject to publication or citation as legal authority under Rule 3 of the Ohio Supreme Court Rules for the Reporting of Decisions.

Plaintiff-appellant, George M. Krantz, appeals the Henry County Court of Common Pleas' decision granting dismissal by summary judgment in favor of defendant-appellee, Family Services of Northwest Ohio, Inc. (hereinafter "Family Services"). We affirm.

On or about January 12, 2006, Family Services performed a diagnostic assessment on Krantz's minor child, Dakota, at the request of Dakota's guardian

ad litem ("GAL"), who was appointed by the Lucas County Juvenile Court during the pendency of the parental rights dispute between Krantz and Dakota's mother, Patricia W. (Doc. No. 17, attached). Krantz did not participate in Dakota's assessment. (Krantz Aff., Doc. No. 17). In the diagnostic assessment report, Family Services stated that Krantz suffered from mental illness—a statement that Krantz claims is patently false. (Doc. No. 17, attached).

On November 15, 2006, a magistrate for the Lucas County Juvenile Court held a hearing on Patricia's motion to terminate Krantz's visitation and companionship with Dakota. (Doc. No. 12, Ex. A). At the close of the hearing, the magistrate granted Patricia's motion. (*Id.*). On January 8, 2007, the Lucas County Juvenile Court adopted the magistrate's decision. (Doc. No. 12, Ex. B).

In November 2008, Krantz discovered the Family Services diagnostic assessment, which contained the statements concerning Krantz's mental illness. (Krantz Aff., Doc. No. 17).

On August 23, 2010, Krantz filed a civil defamation claim against Family Services in the Henry County Court of Common Pleas, which was assigned case number 10CV0017. (*See* Doc. Nos. 2, 18). Krantz voluntarily dismissed that case on August 11, 2011. (*Id.*).

On August 13, 2012, Krantz refiled his complaint against Family Services, alleging, in relevant part, that in the diagnostic assessment report, Family Services

"stated several conclusions about Plaintiff's mental health, specifically stating that Plaintiff suffered from mental health issues" and "[t]he statements made by Defendant regarding Plaintiff were patently false when made." (Doc. No. 1). Krantz further alleged that Family Services knew or should have known the statements were false, and the statements regarding his mental health were "subsequently published and used against Plaintiff in several court proceedings, including proceedings * * * concerning Plaintiff's parental rights with his minor son." (*Id.*).

On June 8, 2013, Family Services filed a motion for summary judgment, arguing: (1) its assessment of Dakota was not used in the juvenile court proceedings; (2) it was entitled to absolute immunity because the report was generated at the request of the court-appointed GAL; and (3) Krantz's original complaint was filed outside the one-year statute of limitations governing defamation. (Doc. No. 12).

On August 19, 2013, Krantz filed a memorandum in opposition, arguing that Family Services is not immune; that the complaint raised an issue of negligence and was, therefore, not time-barred by the one-year statute of limitations governing defamation; and, that there was a material issue of fact concerning causation of damages he suffered. (Doc. No. 16).

On August 21, 2013, the trial court granted Family Services summary judgment, concluding that the complaint alleged defamation, and the defamation claim was time-barred by the one-year statute of limitations. (Doc. No. 18). The trial court also concluded that there was no evidence that the Lucas County Juvenile Court relied on Family Services' diagnostic report to terminate Krantz's visitation and companionship rights; and, even if the Juvenile Court did rely on the report, Family Services prepared the report for court proceedings, and therefore, Family Services was absolutely immune. (*Id.*).

On September 20, 2013, Krantz filed a notice of appeal. (Doc. No. 19). Krantz raises the following assignment of error:

Assignment of Error

The Trial Court Erred When it Granted Summary Judgment to Appellee on the Basis of Immunity and the Statute of Limitations.

In his sole assignment of error, Krantz argues that the trial court erred by granting Family Services summary judgment on the basis of immunity and the statute of limitations. Because it is clearly dispositive, we will address the statute of limitations issue first.

We review a decision to grant summary judgment de novo. *Doe v. Shaffer*, 90 Ohio St.3d 388, 390 (2000). Summary judgment is proper where there is no genuine issue of material fact, the moving party is entitled to judgment as a matter

of law, and reasonable minds can reach but one conclusion when viewing the evidence in favor of the non-moving party, and the conclusion is adverse to the non-moving party. Civ.R. 56(C); *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.*, 69 Ohio St.3d 217, 219 (1994).

Krantz argues that the trial court erred by applying the one-year defamation statute of limitations in R.C. 2305.11(A) when his complaint sounded in negligence and should, therefore, be governed by R.C. 2305.10's two-year statute of limitations. Applying R.C. 2305.10's two-year statute of limitations along with the discovery rule, Krantz argues that his original complaint, filed in August 2010, was timely. We disagree.

Under Ohio law, "defamation occurs when a publication contains a false statement 'made with some degree of fault, reflecting injuriously on a person's reputation, or exposing a person to public hatred, contempt, ridicule, shame or disgrace, or affecting a person adversely in his or her trade, business or profession.'" *Jackson v. Columbus*, 117 Ohio St.3d 328, 2008-Ohio-1041, ¶ 9, quoting *A & B–Abell Elevator Co. v. Columbus/Cent. Ohio Bldg. & Const. Trades Council*, 73 Ohio St.3d 1, 7 (1995). The language of Krantz's complaint tracks the elements of defamation. Nowhere does Krantz discuss "duty" or "breach of duty" in his complaint—necessary elements of negligence. *Ruther v. Kaiser*, 134 Ohio St.3d 408, 2012-Ohio-5686, ¶ 16.

Krantz cites paragraphs nine and ten of his complaint for his position that he raised negligence. In those paragraphs, Krantz asserted that Family Services stated that he had a mental illness without first counseling, evaluating, or even talking with him; and, Family Services had no evidence or scientific basis on which to draw any conclusions regarding his mental health. (Doc. No. 1, ¶ 9-10). We disagree with Krantz's characterization of these paragraphs. These paragraphs do not raise negligence; rather, these paragraphs raise the issue of fault, which is essential to a defamation claim. Furthermore, it appears that Krantz's novel theory of negligence was created in an effort to avoid the applicable statute of limitations.

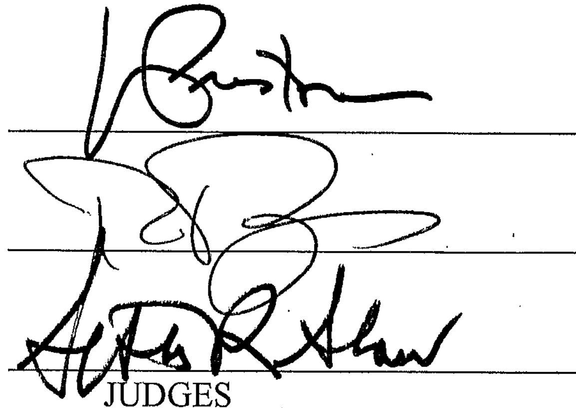
Because the allegedly false statements were published on November 15, 2006 (the date of the Lucas County Juvenile Court hearing), Krantz's original complaint should have been filed by November 15, 2007. The discovery rule does not apply to defamation claims to toll the limitations period. *Cramer v. Fairfield Med. Ctr.*, 182 Ohio App.3d 653, 2009-Ohio-3338, ¶ 70 (5th Dist.). *Even if* the discovery rule applied, Krantz's original complaint—filed in August 2010—was still untimely, because it was filed more than one year from when he discovered the Family Services assessment in November 2008.

After reviewing the record herein, we conclude that the trial court did not err by granting Family Services summary judgment based on R.C. 2305.11(A)'s one-year statute of limitations. The trial court additionally found that Family

Services was absolutely immune from suit, because it prepared the report at the request of the minor child's court-appointed GAL for court proceedings. Because we have found that the trial court's grant of summary judgment was correct based on the statute of limitations, we need not reach this issue.

Accordingly, for the aforementioned reasons, it is the order of this Court that the Judgment Entry of the Henry County Court of Common Pleas be, and hereby is, affirmed. Costs are assessed to Appellant for which judgment is hereby rendered. This cause is remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this judgment entry to the trial court as the mandate prescribed by App.R. 27, and serve a copy of this judgment entry on each party to the proceedings and note the date of service in the docket as prescribed by App.R. 30.



JUDGES

DATED: March 24, 2014
/jlr