

Affirmed and Opinion filed October 18, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00890-CV

MARK ANTHONY JOHNSON, Appellant

V.

THE CITY OF GALVESTON AND OFFICER RICHARD EARL NEAL, Appellees

**On Appeal from the 122nd District Court
Galveston County, Texas
Trial Court Cause No. 99CV1117**

MEMORANDUM OPINION

On November 22, 1996, Galveston police officers arrested appellant Mark Anthony Johnson for possession of cocaine with intent to deliver. Johnson eventually pleaded guilty and was sentenced to twenty-five years in prison. Johnson filed this civil suit against appellees The City of Galveston and Officer Richard Earl Neal alleging libel and slander. Johnson alleges that on November 23, 1996, Officer Neal committed libel and slander when he made certain statements to the Galveston Daily News and when the Galveston Daily News published these statements on November 23, 1996. The statements about which Johnson complains are as follows: that Johnson is known as "L.A. Mark," that he is a

member of the “Bloods” gang with a lengthy police record, and that Johnson was paroled to Galveston from California in 1993. Johnson asserted other claims in the trial court; however, he has only appealed as to the libel and slander claims and has affirmatively stated in his brief that he waives appellate review as to his other claims. The trial court granted appellees’ motion for summary judgment on various grounds, including statute of limitations. We affirm.

In his first issue on appeal, Johnson asserts that the trial court erred in granting appellees’ motion for summary judgment on statute of limitations and in denying Johnson’s motion for summary judgment on the same subject. Johnson admits that he filed this suit on November 15, 1999 and that the alleged libel and slander occurred on November 23, 1996. Johnson’s libel and slander claims are subject to the one-year statute of limitations. *See* TEX. CIV. PRAC. & REM. CODE. ANN. § 16.002(a). Because the alleged defamatory statements by Officer Neal were published in a newspaper, the discovery rule does not apply. *Holloway v. Butler*, 662 S.W.2d 688, 693 (Tex. App.—Houston [14th Dist.] 1983, writ ref’d n.r.e.). Because Johnson did not file suit within one year of November 23, 1996, TEX. CIV. PRAC. & REM. CODE. ANN. § 16.002(a) bars this suit as a matter of law, and the trial court correctly granted summary judgment.

Even if the discovery rule applied to this case, Johnson’s libel and slander claims would still be barred by limitations. In various filings in the trial court and in his brief on appeal, Johnson does not assert that he first learned of Officer Neal’s allegedly defamatory statements within one year prior to filing suit. Rather, Johnson asserts that, under the discovery rule, limitations did not begin to run until February of 1999, when Johnson allegedly discovered that the Galveston Police Department and Johnson’s attorneys were not going to take any action regarding Officer Neal’s allegedly defamatory statements, despite numerous complaints by Johnson about the allegedly false statements made by Neal on November 23, 1996. Johnson misunderstands the discovery rule. Even if it applied to this case, limitations would start to run on the date Johnson learned that Officer Neal had made

the statements in question. *Kelley v. Rinkle*, 532 S.W.2d 947, 949 (Tex. 1976). There was no summary judgment evidence indicating that Johnson first learned of these statements on or after November 15, 1998; rather, the record shows that Johnson learned of these statements more than one year before filing suit.

As a matter of law, Johnson's libel and slander claims are barred by statute of limitations. Therefore, we overrule Johnson's first issue. We need not address Johnson's remaining issues on appeal because they do not assert reversible error in light of our disposition of Johnson's first issue. We affirm the trial court's judgment.

/s/ Don Wittig
Senior Justice

Judgment rendered and Opinion filed October 18, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.¹

Do Not Publish — TEX. R. APP. P. 47.3(b).

¹ Senior Justice Don Wittig sitting by assignment.