TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00250-CV

Margaret Haule, Appellant

v.

Travis County, Texas; and Michael Anthony Spinner, Appellees

FROM THE 459TH DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-GN-18-003629, THE HONORABLE AMY CLARK MEACHUM, JUDGE PRESIDING

MEMORANDUM OPINION

Margaret Haule appeals from the district court's order granting appellees' motion for summary judgment and dismissal under chapter 13 of the Civil Practice and Remedies Code. We affirm the district court's judgment.

BACKGROUND

In October 2010, Haule contacted the Travis County Sheriff's Office to make a complaint against the Caldwell County District Attorney, Richard Hicks III, who had prosecuted Haule in a criminal case. Haule alleged Hicks threatened to jail her if she filed a complaint with the State Bar of Texas. According to Haule, after she called the Travis County Sheriff's Office, Officer Michael Spinner came to her door to take the complaint but "was very hostile and belligerent," "did not allow [Haule] to lodge a criminal complaint[,] and kept pestering [Haule]

for more information." A few months later, in January 2011, Haule obtained through an open-records request Spinner's incident report. In addition to noting that Haule wanted to file a complaint against Hicks, the report said that when Spinner attempted to speak with Haule about the incident, she read him a statement from a piece of paper, then asked if he had further questions about the incident. The report continued, "While attempting to ask the subject questions she began making threats to me regarding contacting the NAACP." The report states that Spinner left a business card with Haule that contained the incident number and that he advised her to contact the State Bar to report her complaint. Finally, the report noted that Haule appeared to be mentally ill or possibly on narcotics. Later in 2011, Haule filed a complaint with the Travis County Sheriff's Office regarding Spinner's refusal to take a criminal complaint and the report's comment that she seemed mentally ill or on narcotics. In a letter, the Travis County Sheriff's Office informed Haule that her complaint about Spinner was "not sustained." The letter also explained that the Travis County Sheriff's Office (and its officers) lacked jurisdiction over the Caldwell County District Attorney's Office or Hicks and referred Haule "to the Caldwell County Sheriff's Office or the Texas Attorney General's Office if you have any issues with Mr. Hick's Office."

In July 2018, Haule filed a petition in Travis County district court suing Spinner and Travis County for "injuries and damages resulting to Plaintiff, pursuant to 42 U.S.C. § 1981, 1983 and 1988, the Fourth and Fourteenth Amendments to the United States Constitution, Section 242 of Title 18 of the U.S.C. and the Texas Torts Claims Act under the Texas Civil Practice and Remedies Code." She further asserts that appellees are liable for intentional infliction of emotional distress. Haule's petition identifies as the basis for her claims Spinner's interaction with her in 2010. Specifically, Haule complains of Spinner's "preventing [Haule]

from reporting a crime" and "falsely labeling [Haule] a drug addict and mentally ill." Appellees filed a motion for summary judgment and motion to dismiss the case as frivolous. *See* Tex. Civ. Prac. & Rem. Code § 13.001(a)(2) ("A court in which an affidavit of inability to pay under Rule 145, Texas Rules of Civil Procedure, has been filed may dismiss the action on a finding that . . . the action is frivolous or malicious."). The district court granted the motion without specifying the grounds for its decision.

ANALYSIS

In what she styles as six issues, Haule challenges the district court's judgment.[1] Haule also asserts appellees cannot rely on the statute of limitations because (1) the discovery rule applies and (2) the statute is tolled based on her allegation that Spinner's peace officer license was suspended. Appellees respond that (1) the district court properly granted summary judgment because the statute of limitation barred Haule's claims and she failed to provide evidence that it was tolled; (2) the district court properly granted the chapter 13 motion to dismiss, and (3) the district court did not err by not granting Haule's request for discovery because there are no controverted facts concerning appellees' defenses to Haule's claims. Because it is dispositive, we begin by reviewing the propriety of granting summary judgment on the ground of limitations.

[1] Haule, acting pro se, asserts the district court erred because (1) the court's judgment failed to meet the two-part test of a chapter 13 dismissal, (2) the court excluded and did not consider critical evidence and failed to rule on a motion for discovery, (3) the court did not allow Haule to cross examine appellees, (4) the court did not allow Haule to redress the false and harmful report, thereby denying Haule due process, (5) the false report represented ongoing misconduct and invokes the continuing violation doctrine, and (6) the evidence is factually insufficient to support the judgment.

Standard of Review

In reviewing a summary judgment, we consider the evidence in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion. *Community Health Sys. Prof'l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 680 (Tex. 2017); *B.C. v. Steak N Shake Operations, Inc.*, 512 S.W.3d 276, 279 (Tex. 2017). We credit evidence favorable to the nonmovant if a reasonable factfinder could and disregard contrary evidence and inferences unless a reasonable factfinder could not. *B.C.*, 512 S.W.3d at 279.

A defendant moving for summary judgment on the affirmative defense of limitations has the burden to conclusively establish that defense. *KPMG Peat Marwick v. Harrison Cty. Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999). To do so, the defendant must (1) conclusively prove when the cause of action accrued, and (2) negate the discovery rule, if it applies and has been pleaded or otherwise raised, by proving as a matter of law that there is no genuine issue of material fact about when the plaintiff discovered, or in the exercise of reasonable diligence should have discovered, the nature of its injury. *Id.*

"If the nonmovant asserts that a tolling provision applies, the movant must conclusively negate the tolling provision's application to show his entitlement to summary judgment." *Jennings v. Burgess*, 917 S.W.2d 790, 793 (Tex. 1996) (citing *Zale Corp. v. Rosenbaum*, 520 S.W.2d at 891)). The discovery rule is one limited exception to the statute of limitations that tolls accrual of claims. *Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1996). The rule applies when the nature of the injury is inherently undiscoverable, that is, when it is "difficult for the injured party to learn of the negligent act or omission." *Id.* at 456 (quoting *Willis v. Maverick*, 760 S.W.2d 642, 645 (Tex. 1988)).

"Inherently undiscoverable encompasses the requirement that the existence of the injury is not ordinarily discoverable, even though due diligence has been used." *Id.* Whether an injury is inherently undiscoverable is a legal question "decided on a categorical rather than case-specific basis; the focus is on whether a type of injury rather than a particular injury was discoverable." *Via Net v. TIG Ins.*, 211 S.W.3d 310, 314 (Tex. 2006). The discovery rule defers the accrual of a cause of action until the date the plaintiff knew or, exercising reasonable diligence, should have known of the facts giving rise to the cause of action. *Computer Assocs.*, 918 S.W.2d at 455; *see J.M. Krupar Constr. Co. v. Rosenberg*, 95 S.W.3d 322, 329 (Tex. App.—Houston [1st Dist.] 2002, no pet.). A plaintiff need not know the full extent of the injury before limitations begin to run. *See Town of Dish v. Atmos Energy Corp.*, 519 S.W.3d 605, 613 (Tex. 2017) (holding that evidence showed plaintiffs were concerned about air contamination and were on "inquiry notice" of claims before the date of the report on which they relied as the accrual date); *Gonzales v. Southwest Olshan Found. Repair Co.*, 400 S.W.3d 52, 58 (Tex. 2013) ("[O]nce a claimant learns of a wrongful injury, the statute of limitations begins to run even if the claimant does not yet know the specific cause of the injury; the party responsible for it; the full extent of it; or the chances of avoiding it."); *see also Murphy v. Campbell*, 964 S.W.2d 265, 273 (Tex. 1997).

Section 1983 Claims

In reviewing Haule's claims, we are mindful that the bases of her complaints are that Spinner allegedly prevented her from reporting a crime and that his assertion in the incident report that she "appear[ed]" to be mentally ill or possibly on narcotics was false. All of Haule's federal claims are asserted as falling under her section 1983 claim. *See* 42 U.S.C. § 1983. To prevail on a section 1983 claim, Haule was required to establish a violation of a right secured by

the Constitution or federal law. *American Mfrs. Mut. Ins. v. Sullivan*, 526 U.S. 40, 49-50 (1999); *Bryant v. Military Dep't of Miss.*, 597 F.3d 678, 686 (5th Cir. 2010). Haule alleges Spinner violated the Fourth and Fourteenth Amendments to the United States Constitution. Regarding the Fourth Amendment, Haule argues Spinner had no "reasonable suspicion" for writing that she might be mentally ill or on narcotics. "Reasonable suspicion" is required when an officer temporarily detains an individual who he suspects is violating the law. *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005) (citing *Garcia v. State*, 43 S.W.3d 527, 530 (Tex. Crim. App. 2001)); *Carmouche v. State*, 10 S.W.3d 323, 328-29 (Tex. Crim. App. 2000) (reasonable suspicion permits officer to detain person on less than probable cause for purpose of investigating possible criminal behavior when officer points to specific and articulable facts that, taken together with rational inferences from those facts, reasonably warrant detention). Haule asserts, ostensibly in relation to the Fourteenth Amendment, that Spinner damaged Haule's "credibility and circumvent[ed] justice by maliciously and recklessly entering a false statement of fact and false report." She does not expressly identify the "false statement of fact," but it is possible she is referring to Spinner's opinion that she seemed mentally ill or on narcotics. Haule also does not articulate her claim under section 1981. *See* 42 U.S.C. § 1981 (relating to equal rights to make and enforce contracts). Assuming Haule has established a claim under federal law, the claims would have been subject to the statute of limitation applicable to section 1983 claims. In Texas, the relevant limitation period is two years. *Henson-El v. Rogers*, 923 F.2d 51 (5th Cir. 1991), *cert. denied*, 501 U.S. 1235 (1991). Given the more than seven-year delay between Haule obtaining a copy of the report and filing this lawsuit, the statute of limitations bars Haule's claims unless a tolling provision applies.

State Law Claims

Appellees identify negligence, fraud, malicious prosecution, and defamation as possible claims underlying some of Haule's claims. The limitations periods for these claims are all less than the over seven-year period that passed between Haule obtaining the report and filing suit. *See* Tex. Civ. Prac. & Rem. Code §§ 16.002(a) (one-year limitations period for malicious prosecution and defamation), .003(a) (two-year limitations period for negligence, gross negligence, personal injury), .004(a) (four-year limitations period for fraud), .051 (four-year period of limitations for "[e]very action for which there is no express limitations period). Although Haule's petition mentions claims under the Texas Civil Practice and Remedies Code, she provides no further information in her petition or briefing to this Court as to what those claims might be or how they would not also be barred by limitations. *See id.* § 16.051 (four-year residual limitations period). Haule's claims under state law are therefore barred by limitations unless a tolling provision applies.

Discovery Rule and Tolling

Haule alludes to the discovery rule but does not explain why it should apply here. The incident with Spinner occurred in 2010; she received the report in January 2011; and, as to her complaint that Spinner refused to take her "criminal" complaint, she received a letter from the Travis County Sheriff's Office in 2011 explaining how she could pursue her complaint with entities having jurisdiction over Hicks. The record shows as a matter of law that there is no genuine issue of material fact about when Haule discovered, or in the exercise of reasonable diligence should have discovered, the nature of her alleged injuries, which were not inherently undiscoverable. *See Computer Assocs.*, 918 S.W.2d at 456. Therefore, the discovery rule does not apply.

In addition to referencing the discovery rule, Haule asserts that the alleged violations are ongoing, and thus not subject to limitations, because the report remains false. We cannot construe the report as "ongoing." *See Texas Disp. Sys. Landfill, Inc. v. Waste Mgmt. Holdings, Inc.*, 219 S.W.3d 563, 587-88 (Tex. App.—Austin 2007, pet. denied) (stating "a continuing tort is an ongoing wrong causing a continuing injury that does not accrue until the tortious act ceases" and holding that discrete communications did not represent "a constant, continuous pattern of tortious conduct"). She further asserts Skinner was "working with a suspended license at the time of this incident which tolls the statute of limitations." In 2018, Haule obtained a copy of a Texas Commission on Law Enforcement Notice of Violation stating that from 2009 through 2013, Spinner failed to complete his continuing education requirements under the Occupations Code and that his license "is subject to a minimum ninety-day suspension." *See* Tex. Occ. Code §§ 1701.501 (Disciplinary Action), .351 (Continuing Education Required for Peace Officers). Haule provided no evidence as to whether Spinner's license was actually suspended, however, and Appellees assert that, as a matter of law, issues related to the status of Spinner's license do not toll the limitations period for claims regarding Spinner's "refusal" in 2010 to file a criminal complaint for Haule and his observation that Haule seemed to be mentally ill or on narcotics. Haule has identified no nexus between her claims and her allegation that Spinner was operating with a suspended license, nor has she explained why Spinner's failure to complete continuing education should be a factor in her decision to sue for the claims she asserts regarding her encounter with Spinner and the incident report. She also cites no authority for this tolling argument. Based on this record, we determine that Haule's causes of action, if any, accrued either when she received the report or when she received the letter from the Travis County Sheriff's Office, which occurred in 2011. *Cosgrove v. Cade*, 468

S.W.3d 32, 38 (Tex. 2015) (stating "the date a cause of action accrues is normally a question of law, and the exercise of reasonable diligence is usually a question of fact, but 'in some circumstances, we can still determine as a matter of law that reasonable diligence would have uncovered the wrong'" (quoting *Hooks v. Sampson Lone Star, L.P.*, 457 S.W.3d 52, 58 (Tex. 2015))).

Having determined that no tolling provisions apply to Haule's claims as a matter of law, we conclude that the district court did not err in granting summary judgment in favor of appellees. We need not address Haule's remaining issues. *See* Tex. R. App. P. 47.1.

CONCLUSION

We affirm the district court's judgment.

Gisela D. Triana, Justice

Before Chief Justice Rose, Justices Baker and Triana

Affirmed

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