

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001476-MR

MELISSA GOINS

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 11-CI-01211

KRISTINE LAFOE, in her individual
and official capacities;
DONALD BOWLES, in his individual
and official capacities;
RONALD GAUNCE, in his individual
and official capacities;
JESSICA HERBEL, in her individual
and official capacities;
LEO HERBEL, in his individual
and official capacities; AND
LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

APPELLEES

OPINION
AFFIRMING

** **

BEFORE: COMBS, DIXON, AND D. LAMBERT, JUDGES.

DIXON, JUDGE: Melissa Goins appeals from a summary judgment of the Fayette Circuit Court in favor of the Lexington-Fayette Urban County Government and five employees of the LFUCG Detention Center: Kristine LaFoe, Donald Bowles, Ronald Gaunce, Jessica Herbel, and Leo Herbel. The court concluded that Goins's claims sounding in tort were time-barred and that her malicious prosecution claim failed as a matter of law. Finding no error, we affirm.

On March 22, 2006, Goins was arrested following a dispute at her home involving a social worker for the Cabinet for Health and Family Services. Goins was charged with terroristic threatening, resisting arrest, and three counts of harassment. Goins was transported to the LFUCG Detention Center and was subsequently charged with third-degree assault by corrections officer Jessica Herbel, who alleged Goins struck her in the face and head. Goins was indicted on the charges in August 2006. In May 2010, Goins ultimately entered a guilty plea to one count of the indictment (harassment), and the remaining counts were dismissed.

On March 4, 2011, Goins filed a complaint against the Appellees to recover damages pursuant to KRS 446.070 for injuries she sustained on March 22, 2006. Goins alleged she was injured when the corrections officers violated the Kentucky Penal Code by: Counts 1-3) committing assault (first, second, and fourth degree); Count 4) engaging in organized crime; and Counts 5-6) official misconduct (first and second degree). In Count 7, Goins alleged a claim of

malicious prosecution relating to the assault charge filed against her by Jessica Herbel.¹ In Goins's answers to interrogatories she elaborated on the allegations pled in the complaint, asserting that the corrections officers used excessive force against her causing numerous injuries, including head and neck trauma, shoulder and back injuries, and internal bleeding.

Appellees moved for summary judgment, contending that Counts 1-6 were time-barred by the one-year limitations period applicable to personal injury actions. KRS 413.140(a). As to Count 7, malicious prosecution, Appellees asserted the claim failed as a matter of law because the criminal proceeding was resolved by Goins's plea agreement with the Commonwealth. Despite Goins's vigorous arguments in opposition, the court granted summary judgment in favor of Appellees. This appeal followed.²

Summary judgment is proper where no material issues of fact exist, and the moving party is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). On appeal, we undertake a *de novo* review of the legal questions presented, and we owe no deference to the decision of the trial court. *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001).

I.

¹ On May 24, 2011, the circuit court granted Appellees' motion to dismiss the official capacity claims and the claims against LFUCG on grounds of sovereign immunity.

²

We need not address one of the arguments raised by Goins relating to the service of process on Appellee LaFoe. The record indicates the trial court granted summary judgment as to all Appellees without ruling upon LaFoe's motion to dismiss for insufficient service of process.

Appellees contend Goins's complaint essentially sets forth claims for personal injuries she allegedly sustained at the LFUCG Detention Center; consequently, those claims are time-barred pursuant to the one-year limitations period of KRS 413.140(1)(a). KRS 413.140(1) states:

The following actions shall be commenced within one (1) year after the cause of action accrued:

(a) An action for an injury to the person of the plaintiff, or of her husband, his wife, child, ward, apprentice, or servant[.]

In contrast, Goins contends her claims are not premised on a theory of personal injury; rather, Goins asserts Appellees are liable for her injuries because Appellees acted in violation of penal statutes relating to assault, engaging in organized crime, and official misconduct. To support her argument, Goins relies on KRS 446.070, which states:

A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation.

By characterizing her claims as violations of the statutory penal code, Goins asserts the five-year limitations period of KRS 413.120 applies to her claims. KRS 413.120 provides:

The following actions shall be commenced within five (5) years after the cause of action accrued:

...

(2) An action upon a liability created by statute, when no other time is fixed by the statute creating the liability.

In *Finck v. Albers Super Markets*, 136 F.2d 191, 191-92 (6th Cir. 1943), the plaintiff argued the five-year limitations period applied to his claim of injury arising from the defendant's alleged violation of KRS Chapter 217, which regulates food, drugs, and cosmetics. The Sixth Circuit Court of Appeals analyzed the evolution of Kentucky's jurisprudence regarding the applicability of the limitations periods found in KRS 413.140 and KRS 413.120. Following its analysis, the Sixth Circuit concluded that, in Kentucky,

suits for physical injuries caused by the negligent acts of another or his agent must be commenced within the period of one year from the date of the alleged injury and the fact that the . . . tort-feasor violates a statute causing the injury does not operate to change the rule or extend the time for the commencement of such actions.

...
This interpretation seems to us to be highly reasonable, for there is a manifest objection to the consideration that by merely changing the form of the action an injured person may extend the time for its commencement, when we have regard to the purpose of fixing a short term of limitation for actions arising from physical injuries which avoids the use of testimony weakened by the lapse of time. It is not to be supposed that the Legislature of the Commonwealth intended to have different periods of limitation for the recovery of damages growing out of physical injuries depending on the form of the action. No matter which form is used, the gist of the action is the wrongful injury, not the violation of a statute

Id. at 193.

Here, Goins cannot circumvent the applicable statute of limitations by characterizing her tort claims as statutory violations. The gist of her cause of action is for physical injuries she allegedly suffered at the LFUCG Detention

Center; consequently, the one-year statute of limitations applicable to personal injury actions applies. KRS 413.140(1)(a). Since Goins waited nearly five years before she filed suit, the trial court correctly concluded those claims were time-barred pursuant to KRS 413.140(1)(a).

II.

Goins asserts she presented a viable claim for malicious prosecution against Jessica Herbel, as the criminal charge of third-degree assault was ultimately dismissed by the Commonwealth. In turn, Appellees contend the court correctly concluded that Goins's plea agreement in the criminal case barred her subsequent civil claim.

In an action for malicious prosecution, a movant must show, among other things, that the prior criminal proceedings were terminated in his favor.

Raine v. Drasin, 621 S.W.2d 895, 899 (Ky. 1981). In *Broadbush v. Campbell*, 911 S.W.2d 281, 284 (Ky. App. 1995), this Court stated:

[I]t is settled that a dismissal by compromise of the accused is not a termination favorable to the accused. Restatement (Second) of Torts § 660(a) provides:

A termination of criminal proceedings in favor of the accused other than by acquittal is not a sufficient termination to meet the requirements of a cause of action for malicious prosecution if

(a) the charge is withdrawn or the prosecution abandoned pursuant to an agreement of compromise with the accused;

. . . .

The reasoning for this rule is stated in Comment C to this section:

Although the accused by his acceptance of a compromise does not admit his guilt, the fact of compromise indicates that the question of his guilt or innocence is left open. Having bought peace the accused may not thereafter assert that the proceedings have terminated in his favor.

Goins asserts here, as she did below, that she pled guilty to one count of harassment and the remaining counts of the indictment were dismissed; consequently, she believes the charge of third-degree assault was terminated in her favor.

After considering the applicable law, we agree with the reasoning of the trial court on this issue. The court stated, in relevant part:

In [Goins's] case, the offer of entry of plea official court documents reveal that [Goins's] offer to enter a plea was conditioned on the Commonwealth's dismissal of the remaining counts of the indictment. The judgment entered in the case on the acceptance of [Goins's] guilty plea demonstrates the offer of plea was 'with advice of counsel and agreement of the Commonwealth.' Thus, there was an agreement and because of this, [Goins] does not satisfy all elements necessary for malicious prosecution.

We conclude that Goins's plea agreement in the criminal action barred her subsequent claim of malicious prosecution as a matter of law. The trial court properly granted summary judgment.

For the reasons stated herein, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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