STATE OF MICHIGAN

COURT OF APPEALS

VINOD SHARMA,

Plaintiff-Appellant,

v

PAUL VALENTINO, LEHMAN & VALENTINO, P.C., REIDMAN INSURANCE, PHYSICIANS INSURANCE COMPANY OF MICHIGAN, and MARK MORA,

Defendants-Appellees.

UNPUBLISHED
January 13, 2005

No. 249904
Oakland Circuit Court
LC No. 2002-045996-NZ

Before: Neff, P.J., and Cooper and R. S. Gribbs*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the final order granting the motions to dismiss of defendants Reidman Insurance (Reidman) and Physicians Insurance Company of Michigan (PICOM). Plaintiff also challenges the order granting defendant Mark Mora summary disposition and the order granting the motion to dismiss of defendants Paul Valentino and Lehman & Valentino, P.C. (collectively "Valentino"). We affirm.

In 1994 Mora, as an employee of Reidman, sold plaintiff a PICOM medical malpractice insurance policy. Valentino filed a medical malpractice action against plaintiff in 1996 on behalf of a client. PICOM denied plaintiff's claim for lack of coverage, and Valentino requested copies of plaintiff's insurance policies. That lawsuit resulted in a jury verdict and judgment against plaintiff.

In December 2002, plaintiff initiated the instant lawsuit. Mora moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff's claims against him were barred by the applicable statute of limitations, and the trial court granted Mora's motion.

Plaintiff's theory was that Valentino had retained his insurance policies, which delayed him from initiating lawsuits against Reidman, PICOM, and Mora. Valentino moved for security for costs pursuant to MCR 2.109. The trial court granted Valentino's motion, requiring plaintiff to post a $5000 bond. Plaintiff failed to post bond, and Valentino moved to dismiss for costs. The trial court granted this motion and awarded Valentino $500 in costs. At a subsequent

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

hearing, the trial court ordered plaintiff to post a $5000 bond with respect to PICOM and Reidman. Plaintiff indicated that he would not be able to post this bond, and he suggested that the trial court dismiss his case against PICOM and Reidman. The trial court complied.

I. Bond for Security of Costs

With respect to Reidman, PICOM, and Valentino, plaintiff argues that the trial court abused its discretion by requiring that plaintiff post a $5000 bond. According to plaintiff, this mandate was unreasonable and improper in light of plaintiff's indigence. We review a trial court's decision to order a bond for security of costs for an abuse of discretion. *Farleigh v Amalgamated Transit Union, Local 1251*, 199 Mich App 631, 633; 502 NW2d 371 (1993).

Under MCR 2.109(A), on motion of a party, the court may order the opposing party to file a bond with surety in an amount sufficient to cover all costs and other recoverable expenses that may be awarded by the trial court. However, the rule does not apply "if the party's pleading states a legitimate claim and the party shows by affidavit that he or she is financially unable to furnish a security bond." MCR 2.109(B)(1). In that circumstance, the court may allow a party to proceed without furnishing security for costs. *Farleigh*, *supra* at 633. Security should not be required unless there is a substantial reason for doing so. *Id*. at 634. Taken alone, a plaintiff's poverty is not a substantial reason to order security, but the assertion of a tenuous legal theory of liability may constitute a substantial reason. *Id*. The fulcrum of the rule's balance is the legitimacy of the indigent plaintiff's theory of liability. *Id.* at 635.

Here, all of plaintiff's claims were tenuous. None of plaintiff's claims against Reidman or PICOM were legitimate because they were barred by the applicable statutes of limitation. With respect to Valentino, plaintiff failed to submit any evidence, by affidavit or otherwise, that he requested the return of certain insurance documents that were allegedly wrongly withheld, or that Valentino refused to return them. Even if plaintiff had submitted such documentation, there was no causal connection between refusal to return the documents and plaintiff's failure to timely file his actions against Mora, Reidman, and PICOM. Furthermore, plaintiff could have requested additional copies of his policies from his insurance company. Because plaintiff did not have a "legitimate claim" against Valentino, PICOM, and Reidman, we conclude that the trial court did not abuse its discretion in ordering him to post the bonds. MCR 2.109(B)(1); *Farleigh*, *supra* at 635.

II. Statute of Limitations

With respect to Mora, plaintiff argues that the trial court erred in granting summary disposition on the ground that plaintiff's claim was time barred. We review de novo a trial court's ruling on a motion for summary disposition. *Waltz v Wyse*, 469 Mich 642, 647; 677 NW2d 813 (2004). Absent disputed issues of fact, whether a cause of action is barred by a statute of limitations is a question of law that we also review de novo. *Boyle v General Motors Corp*, 468 Mich 226, 229-230; 661 NW2d 557 (2003). Statutory interpretation is also a question of law that we review de novo. *Id.* at 229.

Plaintiff effectively admitted that his negligence claim accrued when Mora sold him the malpractice insurance policy in 1994. The statute of limitations for a negligence claim is three years. MCL 600.5805(10). Accordingly, plaintiff's claim of negligence against Mora was

barred because plaintiff did not file suit until December 2002, which was five years after the statute of limitations expired. *National Sand, Inc v Nagel Const, Inc*, 182 Mich App 327, 332; 451 NW2d 618 (1990). The statute of limitations for a fraud action is six years. MCL 600.5813; *Boyle, supra* at 230. Therefore, plaintiff's claim of fraud against Mora was barred because it was brought two years too late. *Boyle, supra* at 228.

The discovery rule does not save plaintiff's claims because it does not generally apply to actions for fraud or claims of ordinary negligence. *Boyle*, *supra* at 231; *Stephens v Dixon*, 449 Mich 531, 537; 536 NW2d 755 (1995).

Further, plaintiff's claims were not tolled by a pending bankruptcy proceeding. His claims against Mora accrued in January 1994. Thus, the period of limitation for his negligence claim expired in January 1997. Plaintiff filed his bankruptcy claim in November 1999. Therefore, at the time of filing his bankruptcy petition, plaintiff no longer possessed a negligence cause of action against Mora that could have been assumed by the estate. See *Stumpf v Albracht*, 982 F2d 275, 277-278 (CA 8, 1992).

Plaintiff filed his bankruptcy claim in November 1999, and the period of limitation for plaintiff's fraud claim did not expire until January 2000. Plaintiff argues that 11 USC 108(c)(1) tolls the statute of limitations on his claims. 11 USC 108(c) provides:

> Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court *on a claim against the debtor*, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of--
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> (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
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> (2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim. [Emphasis added.]

Plaintiff's argument is misplaced because this section does not apply to the debtor's causes of action. Rather, it applies to causes of action *against* the debtor. See, e.g., *Husmann v Trans World Airlines, Inc,* 169 F3d 1151 (CA 8, 1999) (cause of action against debtor airline); *Rogers v Corrosion Products, Inc,* 42 F3d 292 (CA 5, 1995) (cause of action against debtor tortfeasor); *Aslanidis v US Lines, Inc,* 7 F3d 1067 (CA 2, 1993) (cause of action against debtor vessel owner).

Plaintiff's argument that the disability grace provision, MCL 600.5851, tolls the statute of limitations likewise fails. Plaintiff failed to present any facts to establish that he suffered from a condition of mental derangement that prevented him from comprehending rights he was otherwise bound to know. He claims that he suffered from severe depression, suicidal thoughts, and bipolar illness, in addition to severe family and financial crisis. Assuming that these

conditions could have qualified as mental derangement preventing him from comprehending rights, MCL 600.5851(2), plaintiff did not present any evidentiary support for these claims to the trial court.

Affirmed.

/s/ Janet T. Neff
/s/ Jessica R. Cooper
/s/ Roman S. Gribbs