

[Cite as *Ibanez v. Hutchins*, 2012-Ohio-5040.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Regina M. Ibanez,	:	
Plaintiff-Appellant,	:	
v.	:	No. 12AP-319
Hattie P. Hutchins,	:	(C.P.C. No. 11CVC-03-4059)
Defendant-Appellee.	:	(REGULAR CALENDAR)

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D E C I S I O N

Rendered on October 30, 2012

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*Regina M. Ibanez, pro se.*

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Plaintiff-appellant, Regina M. Ibanez ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which dismissed her complaint against defendant-appellee, Hattie P. Hutchins ("appellee"). For the following reasons, we affirm.

{¶ 2} Appellant filed her complaint against appellee in March 2011 and filed an amended complaint in April 2011. Appellee filed an answer and counterclaim. Appellee asked the trial court to dismiss the complaint or grant summary judgment in her favor.

{¶ 3} The trial court dismissed appellant's complaint with prejudice and denied appellee's counterclaim without prejudice. In its decision, the trial court noted that appellant's complaint was "very difficult to decipher," but it appeared to allege claims of

defamation, slander, libel, and intentional infliction of emotional distress, as well as claims that appellee committed criminal offenses against appellant. The court concluded that appellant's claims of defamation, slander, and libel arose from actions that occurred in 2004 or 2009; therefore, they were time-barred. The court also concluded that appellant based her claim of intentional infliction of emotional distress on her defamation, slander, and libel claims; therefore, it was also time-barred. The court also concluded that appellant's claims for appellee's criminal prosecution were not claims upon which the court could grant relief. And finally, the court concluded that appellant's complaint did not meet the requirements of Civ.R. 8(A) and 10(B).

{¶ 4} Appellant filed a timely notice of appeal. Like her complaint, appellant's brief is very difficult to decipher. It does not comply with App.R. 16(A)(3), which requires "[a] statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected." In the interest of justice, we will address what we believe to be her assignment of error, which we paraphrase as follows:

The trial court erred by dismissing appellant's complaint.

{¶ 5} A motion to dismiss for failure to state a claim is procedural and tests whether the complaint is sufficient. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992). In considering a Civ.R. 12(B)(6) motion to dismiss, a trial court may not rely on allegations or evidence outside the complaint. *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207 (1997). Rather, the trial court may only review the complaint and may dismiss the case only if it appears beyond a doubt that the plaintiff can prove no set of facts entitling the plaintiff to recover. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus. Moreover, the court must presume that all factual allegations in the complaint are true and draw all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). We review de novo a judgment on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶ 5.

{¶ 6} Applying these principles here, we will review appellant's complaint, and only her complaint, to determine if she has stated a claim upon which the trial court could grant relief. In her complaint, appellant stated the following:

Plaintiff filed a complaint of Slander, Libel & Intentional Infliction of Emotional Distress; Alleges [appellee] violated the following felony crimes against her person.

{¶ 7} First, allegations of criminal activity do not raise claims upon which the trial court could grant relief in a civil matter. Therefore, appellant's claims that appellee should be prosecuted for assaulting her, engaging in menacing activity, committing "indictable criminal offense[s] involving moral turpitude" by attempting or threatening to have her probated, and attempting to murder her, are not claims upon which the trial court could have granted relief.

{¶ 8} Second, to the extent that appellant has attempted to raise claims of slander and libel, we agree with the trial court's conclusion that these claims are subject to a one-year statute of limitations. R.C. 2305.11(A). In her complaint, appellant alleged that appellee made false statements about her in December 2004, when appellee had appellant "falsely probated," and in October 2009, when appellee made false statements in an answer. If true, these alleged false statements occurred more than one year before appellant filed her complaint in March 2011, and her claims based on these statements are time-barred.

{¶ 9} Third, to the extent appellant has attempted to raise a claim of intentional infliction of emotional distress, we agree with the trial court that the claim is not subject to a different statute of limitations under these circumstances. Rather, in considering whether a cause of action is time-barred, we must "determine the true nature or subject matter of the acts giving rise to the complaint." *Doe v. First United Methodist Church*, 68 Ohio St.3d 531, 536 (1994). Here, appellee's allegedly false statements are the subject of appellant's claim for intentional infliction of emotional distress. Therefore, the one-year statute of limitations applies, and appellant's claim is time-barred. *Accord Grover v. Bartsch*, 170 Ohio App.3d 188, 2006-Ohio-6115, ¶ 53 (2d Dist.) (holding that the plaintiff's claim for intentional infliction of emotional distress arose from the

defendant's allegedly defamatory statements and, therefore, was subject to a one-year statute of limitations).

{¶ 10} Finally, we note our agreement with the trial court's conclusion that appellant's complaint did not comply with Civ.R. 8(A), 10(B) or Loc.R. 11.06. This failure to comply provided sufficient and independent grounds to support the trial court's dismissal of appellant's complaint for failure to state a claim upon which the trial court could grant relief. Appellant does not address that conclusion on appeal and, therefore, has failed to address an independent ground for dismissal of her complaint.

{¶ 11} For all these reasons, we overrule appellant's assignment of error, as we have interpreted it. We affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BRYANT and KLATT, JJ., concur.

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