Circuit Court for Baltimore City
Case No. 24C15007095

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1391

September Term, 2016

CATHERINE RANDALL

v.

WINSTON GRESOV, ET AL.

Wright,
Shaw Geter,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: December 26, 2017

On December 24, 2015, Catherine Randall, appellant ("Ms. Randall") filed a complaint in the Circuit Court for Baltimore City against Winston Gresov ("Mr.Gresov"), Marion Bess Parmerter ("Ms. Parmerter"), Frederick Gresov ("Rick"), and Adelberg Rudow Dorf & Hendler, LLC ("Adelberg"), appellees. Appellees filed timely motions to dismiss asserting, among other grounds, that Ms. Randall's complaint was time-barred by the statute of limitations. On July 28, 2016, the circuit court heard argument on the motions to dismiss and, at the conclusion of the hearing, found that Ms. Randall's claims were time-barred, granted appellees' motions, and dismissed the complaint. Ms. Randall noted a timely appeal and presents two questions for our consideration, which we have consolidated and restated as follows:

Did the circuit court err when it dismissed the complaint as time-barred?

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

Ms. Randall and Mr. Gresov were divorced in 1997 and are the parents of three children, including Rick. Ms. Randall and Mr. Gresov have been engaged in litigation for several years, and Adelberg attorneys have represented Mr. Gresov in divorce and family law proceedings involving Ms. Randall. Ms. Parmerter is Mr. Gresov's long-term companion. This case arises out of a 2011 lawsuit that Rick filed in circuit court against his mother, which she alleges was part of a scheme by appellees to gain leverage against her in unrelated child support enforcement proceedings.

In Rick's 2011 lawsuit, he alleged that Ms. Randall violated the Uniform Transfers to Minors Act (UTMA) by mismanaging an account established to pay his college tuition.

Rick asserted claims for conversion and breach of fiduciary duty, and sought an accounting and declaratory relief. Adelberg attorneys represented Rick in the UTMA lawsuit. The circuit court ruled in Ms. Randall's favor on the accounting claim, then granted her motion for summary judgment on the remaining claims. The order granting Ms. Randall's summary judgment motion was dated November 20, 2012 and entered on the docket on November 27, 2012.

On December 24, 2015, Ms. Randall filed a complaint in the circuit court alleging that Mr. Gresov and Ms. Parmerter induced Rick to file the UTMA lawsuit, despite their knowledge that the factual assertions underlying his claims were frivolous, to coerce her into a favorable settlement of her child support enforcement claims against Mr. Gresov. She claimed that Mr. Gresov and Ms. Parmerter threatened Rick that they would not pay his college loans, and then, after the suit had been filed, provided Rick financial incentives to continue the lawsuit, including a $36,000 down payment to purchase a house. In addition to providing Rick financial inducements to act as a "straw plaintiff," she also alleged that Mr. Gresov and Ms. Parmerter substantially managed the course of the lawsuit, and paid Rick's legal costs. In her complaint, she claimed that Mr. Gresov and Ms. Parmerter's procurement of the UTMA lawsuit to compel her to settle unrelated litigation amounted to malicious use of process and abuse of process.

Ms. Randall also alleged a civil conspiracy by the appellees, based on her assertion that Adelberg attorneys acted in concert with Mr. Gresov, Ms. Parmerter, and Rick to "initiate, prosecute, and continue" the underlying lawsuit to coerce her to settle

her child support claim. She also sought Rule 1-341 sanctions against Adelberg and Rick for pursuing the UTMA suit in bad faith or without substantial justification.

As noted, Mr. Gresov, Ms. Parmerter, Rick, and Adelberg filed motions to dismiss the complaint, arguing, among other defenses, that Ms. Randall's claims were time-barred because her complaint was filed more than four years after the initiation of the underlying lawsuit, and more than three years after the order terminating the UTMA lawsuit had been docketed. Adelberg also argued that Rule 1-341 does not allow for sanctions as a separate cause of action.

Ms. Randall responded that her complaint was timely filed, as the UTMA lawsuit was dismissed on November 27, 2012 and the time period in which an appeal could be filed did not expire until December 27, 2012. She also asserted, alternatively, that her claims did not accrue until she knew or should have known about her loss, which she maintained was, at the earliest, January 2013. The circuit court agreed that Ms. Randall's claims were barred by the statute of limitations, granted appellees' motions, and dismissed Ms. Randall's complaint.

STANDARD OF REVIEW

We shall review the order of the circuit court granting the motion to dismiss for legal correctness. *Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP*, 451 Md. 600, 609 (2017) (citing *Kiriakos v. Phillips*, 448 Md. 440, 454 (2016)). "In conducting this review, we assume that the facts and allegations in the complaint, and any inferences that may be drawn from them, are true and view them in a light most favorable to the non-moving party." *Id.* (citing *Rounds v. Md.-Nat'l Capital Park & Planning*

Comm'n, 441 Md. 621, 636 (2015), *reconsideration denied* (Mar. 27, 2015) (citation omitted in original)). "[A] motion to dismiss ordinarily should not be granted by a trial court based on the assertion that the cause of action is barred by the statute of limitations unless it is clear from the facts and allegations on the face of the complaint that the statute of limitations has run." *Rounds,* 441 Md. at 655 (quoting *Litz v. Maryland Dep't of the Environment,* 434 Md. 623, 641 (2013)).

DISCUSSION

The general statute of limitations for civil actions, which includes malicious use of process and abuse of process, is three years from the date the claim accrues. Md. Code, Courts and Judicial Proceedings (CJ), § 5-101 (2013 Replacement Vol.). Civil conspiracy claims share a statute of limitations with the underlying tort. *Prince George's Cnty. v. Longtin,* 419 Md. 450, 480 (2011).

The operative date for our determination of whether appellant's claims are time-barred by the statute of limitations is the date the claims accrued. *Rounds,* 441 Md. at 654. A claim generally accrues at the time the plaintiff suffers the actionable harm, or "when the injury occurred." *Id.* at 654-55. The discovery rule, however, tolls the accrual date until such time as the plaintiff "in fact knew or reasonably should have known of the wrong." *Id.* at 654 (quoting *Poffenberger v. Risser*, 290 Md. 631, 636 (1981)). The discovery rule does not require actual knowledge on the part of the plaintiff, however, as "'inquiry notice' is sufficient to trigger the statute of limitations." *Id.* At 654-55 (quoting *Anne Arundel Cnty. V. Halle Dev., Inc.,* 408 Md. 539, 562 (2009)). A claimant is put on inquiry notice, and the limitations period begins to run, from the date he or she has

"knowledge of circumstances which would cause a reasonable person [] to undertake an investigation which, if pursued with reasonable diligence, would have led to knowledge of the alleged [cause of action]." *Id.* At 655 (citation omitted).

Appellant argues that the circuit court erred as a matter of law when it dismissed her claims for malicious use of process, abuse of process, and conspiracy as time-barred based on when she knew appellees had encouraged the filing of the UTMA lawsuit to gain leverage against her in other litigation, rather than when she knew or should have known that Mr. Gresov and Ms. Parmerter used financial inducements to "procure" the filing of the lawsuit. Based on the "procurement" date, appellant asserts that the earliest date she had notice of her claims was January 2013, when she became aware that Mr. Gresov used the proceeds from a reverse mortgage to pay Rick's student loans in exchange for pursuing the UTMA suit.

Appellees' respond that, based on Ms. Randall's own allegations, she was well aware of the facts that formed the basis of her claims as early as October 2011, or at least was on inquiry notice to investigate further. [1]

In *Rounds, supra*, the Court of Appeals held that when it is unclear from the facts and inferences alleged in the complaint as to when the claim accrued, this fact determination is "generally made by the trier of fact, and not decided by the court as a matter of law." *Id*. At 658 (quoting *Litz*, 434 Md. At 641). Here, appellant alleged in her

[1] On appeal, appellees also argue that Ms. Randall failed to allege special damages, as required by law. In light of our holding on the limitations issue, there is no need to address the damages issue.

complaint that in June 2011, certain accounts controlled or beneficially owned by Mr. Gresov were frozen by court order in advance of an October 2011 attachment hearing set in response to her efforts to enforce child support judgments against him. She further claimed that on October 10, 2011, in anticipation of the attachment hearing, Christopher Barber, Mr. Gresov's attorney, transmitted a copy of Rick's Objection to Attachment to her attorney which "suggest[ed] that Rick would be willing 'to release his claim' – the claim being Rick's putative UTMA claim – in exchange for a settlement with Mr. Gresov." She further alleged in her complaint that, "faced with the dire prospect that more than half a million dollars would be attached at the scheduled October 12, 2011 hearing, on the following afternoon, October 11, 2011, the Defendants worked, frantically, in close coordination to file a UTMA Complaint in Rick's name." She also claimed that on the same day that Rick's UTMA complaint was filed, "Mr. Gresov forwarded a letter from Ms. Parmerter to Ms. Randall threatening that both of her sons would sever ties with her and that Rick would launch his UTMA suit if Ms. Randall failed to bow to pressure." Her complaint also alleged that Rick's claim that the account was established to pay for college was "contradicted by substantial testimony and evidence that Mr. Gresov had agreed with Rick to pay his college loans and that none of the Defendants prior to filing the UTMA Complaint requested assistance from Ms. Randall for payment of Rick's college expenses." Moreover, she claimed that she "had informed Rick in March 2011 – by email and in person – that funds from the Account ha[d] been used to pay nanny expenses, Gilman School tuition and other sundry costs."

It is clear from the allegations in the complaint that appellant knew or was on inquiry notice that, although Rick was the plaintiff of record for the UTMA lawsuit, Mr. Gresov, Ms. Parmerter, and Adelberg attorneys were involved, and that the underlying objective of the lawsuit was to pressure her to settle her claims in advance of the attachment hearing. She was similarly on notice that Rick's claims were likely made in bad faith or without probable cause, as he had not previously requested that she contribute to his college tuition and she had informed him months earlier that the funds in the account had been exhausted for legitimate expenses.

Ms. Randall relies heavily on *Savile v. Roberts*, 1 Salkeld 13 (King's Bench 1698) and *McGaw v. Acker, Merrall & Condit Co.,* 111 Md. 160 (1909) for the proposition that a cause of action for abuse of process or malicious use of process may be based on the fact that "an innocent party [has been] propelled into litigation with another by the wrongful conduct of a third party" and that the innocent party may recover the costs of defending the frivolous lawsuit. Assuming that a cause of action may exist, the question is when Ms. Randall had knowledge or was on inquiry notice of facts sufficient for her cause of action to accrue. For inquiry notice to exist for purposes of the torts alleged herein, it is sufficient that Ms. Randall had knowledge that appellees encouraged and assisted Rick in filing a frivolous lawsuit. The result does not turn on a distinction between different types of encouragement and assistance.

Appellant attempts to preserve her tort claims by asserting that the underlying UTMA proceedings did not terminate in her favor until December 27, 2012, the date the time to appeal the summary judgment motion expired. This argument is without merit.

As the circuit court noted, under Rule 8-202, the statute of limitations is not tolled by the appeal period. This view aligns with *One Thousand Fleet Ltd. Partnership v. Guerriero*, 346 Md. 29, 43 (1997), where the Court of Appeals affirmed the dismissal of plaintiff's malicious use of prosecution claim where the judgment dismissing the underlying lawsuits was still pending on appeal at the time the complaint was filed. The Court held that, in instances where an appeal is taken, proceedings have not "terminated" for purposes of a malicious use of process claim. *Id.* Citing Section 674(b) of the Second Restatement of Torts, and noting that the Restatement position represents the majority view, the Court of Appeals noted:

> A favorable adjudication may be by a judgment rendered by a court after trial, or upon demurrer or its equivalent. In either case the adjudication is a sufficient termination of the proceedings unless an appeal is taken. If an appeal is taken, the proceedings are not terminated until the final disposition of the appeal and of any further proceedings that it may entail.

Id. at 41-42 (citing RESTATEMENT (SECOND) OF TORTS §674 cmt. j) (citations omitted).

Applying *One Thousand Fleet* to the facts here, it is clear that if proceedings have not "terminated" for purposes of a malicious use of process claim where an appeal is taken, then the underlying UTMA proceedings, where no appeal was taken, terminated in appellant's favor when the order was docketed granting her summary judgment motion on November 27, 2012. As a result, any claim for malicious use of process filed after November 27, 2015 was barred by statute of limitations, and the circuit court did not err in granting appellees' motion to dismiss.

Because appellant failed to address whether her claim for Rule 1-341 sanctions survives, appellant has waived her right to appeal from this portion of the court's order. *See* Maryland Rule 8-504(a) ("A brief shall ... include the following items in the order listed: (6) [a]rgument in support of the party's position on each issue."); *see also Catler v. Arent Fox, LLP,* 212 Md. App. 685, 712 (2013) (citations omitted).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.