Circuit Court for Howard County
Case No. 13C13097216

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2095

September Term, 2016

NICOLE M. JANTZ

v.

ALLSTATE INSURANCE COMPANY, et al.

Arthur,
Friedman,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: February 20, 2018

Appellant and plaintiff below, Nicole M. Jantz, was involved in a motor vehicle accident on December 2, 2008, with one of the appellees and defendants below, Marjorie Hannah.[1] Over the next nine years, two court systems were involved, three actions were filed, and one prior appeal was dismissed. Jantz, initially, made a federal case out of it. The court in that case granted the Government's motion for summary judgment, basing its decision on agency grounds. Subsequently, on the state side, Hannah and the uninsured motorist insurance (UIM) carrier for Jantz obtained favorable summary judgments on limitations grounds. As we explain below, we shall vacate those judgments and remand.

The Accident

The accident occurred about midday within the federal enclave at Fort George G. Meade, Maryland. Both parties were at the shoppette located at 4725 MacArthur Rd. to purchase gasoline. Hannah described the accident to the investigating military police officer in part as follows:

> "I went from a stopped position, then moved forward changing position—bearing to left to move to another pump (pump #2), did not see any traffic moving behind me or to the side of my vehicle and then colided [sic] with tan Explorer."

Jantz, a civilian resident of Denton, Maryland, was at the time working as a contractor on the base. Hannah, a master sergeant in the Maryland Air National Guard and a resident of Reisterstown, Maryland, was on active duty assigned to operations at Martin State Airport in eastern Baltimore County. Hannah was driving a Dodge Avenger bearing U.S. Government Registration tags G107190F. She was attired in "ACU's," which

[1]Neither party reported any personal injury to the investigating police officer.

appellant suggests stands for "'Army Combat Uniform,' or fatigues." According to an affidavit (the Affidavit) filed by Jantz in her federal and state actions, the following transpired at the scene of the accident:

> "3. Upon exiting the car, Msgt. Hanna [sic] identified herself as a Human Resource Specialist with the Maryland Air National Guard.
>
> ….
>
> "5. I was standing next to Msgt. Hanna [sic] when she advised the police that she was late for a recruiting appointment and needed to get gasoline before the meeting.
>
> "6. At no time did Msgt. Hanna [sic] say she was going to a medical appointment."

Hannah was deposed in the federal litigation on December 3, 2012. By that time she had resumed her family name, Sedlock. She testified that on December 2, 2008, she was at Fort Meade for a medical appointment that was unrelated to fitness for duty. She had gone to MSgt. Sweeney, the supervisor of the recruiting office, and "explained to him that the Motor Pool didn't have any vehicle and if one of the recruiting vehicles was available, could I use it, and he said, yes."

MSgt. Sweeney had been deposed on October 23, 2012. He testified that Hannah "asked if she could use the government vehicle. I asked was it for official duty. She said it was for official duty. I asked what type of duty. She said she had a medical appointment at Ft. Meade. And then I said okay."

The Federal Detour

Under date of November 30, 2009, Jantz submitted a claim for $1,000,513 to Third Party Claims at Fort Meade in compliance with the condition precedent to tort suit against

the Government required by 28 U.S.C. § 2675(a). By September 3, 2010, the claim had been referred to the Headquarters Air Force Legal Operations Agency. Under date of October 14, 2010, Jantz amended her claim to $3,000,513. Treating the lack of final disposition of the claim by the agency as a final denial, per 28 U.S.C. § 2675(a), Jantz filed suit against the United States on November 6, 2011, in the U.S. District Court for the District of Maryland.

The Government moved for summary judgment, raising a lack of agency defense, on January 30, 2012. By a memorandum opinion and accompanying order filed April 22, 2013, the federal court granted the Government's Motion for Summary Judgment, having concluded that "Hanna [sic] acted beyond the scope of her employment when she traveled to the medical appointment on Fort Meade."

The State Proceedings

Just over five years after the accident, on December 5, 2013, Jantz instituted the subject suit in the Circuit Court for Howard County. In addition to Hannah, Jantz named as a defendant the other appellee in this Court, Jantz's UIM carrier, Allstate Insurance Company. Allstate's answer to the complaint included a limitations defense and Allstate cross-claimed against Hannah. Hannah did not respond until September 15, 2014, when she moved to dismiss on limitations grounds.

This motion was filed for Hannah by her liability insurer, United Services Automobile Association (USAA), probably under a reservation of rights. USAA had written to Hannah on July 31, 2014, to advise that, "[a]s discussed, we've determined your

loss is not covered by [your] policy." This was because USAA "must be notified promptly of how, when and where an accident or loss happened."[2]

Jantz opposed Hannah's motion to dismiss, which, by attaching exhibits, was actually a motion for summary judgment. The plaintiff took the position that the earliest date on which the statute of limitations began to run on her claim was January 30, 2012, when the United States moved to dismiss it on the ground that Hannah was not acting in the course of her employment with the United States Air Force (USAF). The Government had never asserted an agency defense during the claim process. Jantz maintained that a jury question was presented as to whether Hannah's "concealment" prevented Jantz from discovering her cause of action. Jantz referred the court to *Rhea v. Burt*, 161 Md. App. 451, 457 (2005), which we discuss, *infra*.

The circuit court granted Hannah's motion for summary judgment by a written order without any opinion or explanation. The ruling dismissed with prejudice "any and all" claims against Hannah. It necessarily concluded that Jantz's Affidavit, describing what she heard Hannah say at the accident scene, was legally insufficient to defeat summary judgment on limitations grounds. Allstate, concerned that the ruling would destroy its subrogation claim, sought reconsideration, as did Jantz. Those motions were denied without opinion. Both motions had argued that Hannah's misleading statement delayed commencement of the state suit and estopped her from pleading limitations.

[2]USAA's denial of coverage led to a declaratory judgment action by Hannah against USAA. It has not been consolidated with the action before us. No party to the instant action contends that a ruling, if any, in the declaratory judgment action has any effect on the decision in the instant matter.

Jantz and Allstate appealed to this Court. That appeal was dismissed for want of a final judgment inasmuch as Jantz's claim against Allstate was undecided.

On remand, Allstate moved for summary judgment against Jantz. The UIM carrier argued that Jantz was not legally entitled to recover from Hannah, because limitations had run against Jantz. It further argued that Jantz could not prove that Hannah was an uninsured motorist because, at the time of the accident, the vehicle driven by her was both self-insured by the United States and covered by Hannah's USAA policy. Jantz opposed, relying, *inter alia*, on the Affidavit. The circuit court held that the prior summary judgment had determined that limitations had run on Jantz's claim against Hannah. Because Jantz could not recover from Hannah, Jantz could not recover from Allstate. Judgment was entered accordingly.

This appeal by Jantz followed.

Questions Presented

> "1. If a tortfeasor provides fraudulent information at the scene of an automobile collision that would lead a reasonable person to believe that the tortfeasor was acting within the scope of her duties as a federal employee, and the plaintiff sues only the federal government as provided for in the Federal Tort Claims Act, but a federal court determines the tortfeasor was acting outside the scope of her employment at the time of the crash, does the tortfeasor's fraud delay the accrual of the plaintiff's cause of action and allow the plaintiff to sue the tortfeasor more than three years after the occurrence?
>
> "2. If a tortfeasor's insurance carrier denies coverage to the tortfeasor after the statute of limitations has expired as to the tortfeasor, can the plaintiff maintain an action for uninsured motorist benefits against her insurance carrier?"

We shall not reach the second question. Appellant recognizes that if we reverse the "grant of summary judgment in favor of Hannah … then the circuit court's grant of

summary judgment in favor of Allstate must be reversed as well," because the basis for the earlier ruling was also the basis for the later ruling.

Discussion

Jantz submits that Hannah is estopped from asserting limitations as a defense by the false information that she gave at the accident scene. The Affidavit presents a genuine dispute of material fact that defeats summary judgment. To demonstrate that the Affidavit presents material facts, *i.e.*, facts which, if believed by the trier of fact, would constitute an estoppel, Jantz relies on *Rhea v. Burt*, 161 Md. App. 451 (2005). We agree with Jantz that the principle illustrated therein applies here.

In that case, an automobile accident occurred on November 2, 1999, when the plaintiffs' vehicle was rear-ended. *Id*. at 452-53. The adverse driver identified himself as Allen E. Burt. *Id*. at 453. Suit naming Burt as the defendant was timely filed on October 10, 2002. *Id*. at 452. In late April 2003, Burt sought summary judgment, asserting that the driver was his father-in-law, Robert R. Wurtz. *Id*. at 453. Burt had furnished this information in answers to interrogatories filed in February 2003, after limitations had run chronologically. *Id*. at 455. Counsel for Burt also advised the plaintiffs that Wurtz had died. *Id*. at 454. In May the plaintiffs opposed summary judgment for Burt and in June they amended to claim against Wurtz's estate. *Id*. at 453-54. The personal representative moved to dismiss the amended complaint on limitations grounds, arguing that the plaintiff knew of the injury and should have investigated all aspects of it. *Id*. at 454-55.

The circuit court granted Burt summary judgment and dismissed the amended complaint against Wurtz's estate. *Id*. at 455. This Court vacated both judgments and

remanded. *Id*. at 461. If Burt were believed, then Wurtz had falsely identified himself at the accident scene. We said:

> "If Mr. Wurtz were still alive, he would not be entitled to summary judgment on the ground that appellants' claims against him are barred by the statute of limitations. We agree with those courts that have held that 'one who gives false identification [at the scene of] an automobile accident and thereby causes delay in the commencement of suit is estopped from pleading the statute of limitations as a defense.' See, e.g. *Talley v. Piersen*, 33 F.R.D. 2, 4 (E.D. Pa. 1963), and cases cited therein."

Id. at 455-56. *See generally* Annotation, *Estoppel Against Defense of Limitation in Tort Action*, 77 A.L.R. 1044 (1932-2018).

Estoppel can also operate against a time limitation that is an element of the cause of action. *See Chandlee v. Shockley*, 219 Md. 493, 502 (1959) (time limit on claim against decedent's estate).

In *Cunninghame v. Cunninghame*, 364 Md. 266 (2001), the Court of Appeals examined equitable estoppel when rejecting it as supporting the untimely claim presented against a decedent's estate in that case.

> "'[E]quitable estoppel requires that the party claiming the benefit of the estoppel must have been misled to his injury and changed his position for the worse, having believed and relied on the representations of the party sought to be estopped. *Dahl v. Brunswick Corp.*, 277 Md. 471, 487, 356 A.2d 221, 230-31 (1976); *Savonis v. Burke*, 241 Md. 316, 319, 216 A.2d 521, 523 (1966). Although wrongful or unconscionable conduct is generally an element of estoppel, an estoppel may arise even where there is no intent to mislead, if the actions of one party cause a prejudicial change in the conduct of the other. *Bean v. Steuart Petroleum*, 244 Md. 459, 224 A.2d 295 (1966); *Travelers v. Nationwide*, 244 Md. 401, 224 A.2d 285 (1966); *Alvey v. Alvey*, 220 Md. 571, 155 A.2d 491 (1959). Of course, the party who relies on an estoppel has the burden of proving the facts that create it. *Doub v. Mason*, 2 Md. 380, 406 (1852); *First Nat. Bank v. Mayor and City Council*, 27 F. Supp. 444, 454 (D. Md. 1939).

> "'As indicated by the definition set forth above, equitable estoppel is comprised of three basic elements: "voluntary conduct" or representation, reliance and detriment. These elements are necessarily related to each other. The voluntary conduct or representation of the party to be estopped must give rise to the estopping party's reliance and, in turn, result in detriment to the estopping party. *See Dahl v. Brunswick Corp., supra*; *Savonis v. Burke, supra*. Clearly then, equitable estoppel requires that the voluntary conduct or representation constitute the source of the estopping party's detriment.'"

Id. at 289-90 (quoting *Knill v. Knill*, 306 Md. 527, 534-35 (1986)).

In the matter at hand, Jantz's vehicle had been struck on a military base by a vehicle bearing Government tags and operated by a person wearing military clothing. That person identified herself to Jantz as a member of the Maryland Air National Guard engaged in personnel work. Per her Affidavit, Jantz heard the person tell the investigating military police officer that she was on her way to a recruiting appointment. We now know that Hannah was at Fort Meade for a medical appointment, unrelated to fitness for duty. A jury could find that Hannah misrepresented that she was engaged in her duties for the Government at the time of the accident.

A jury also could find that Jantz relied on the misrepresentation. She made claim timely against the United States under the Federal Tort Claims Act (FTCA).

Finally, a jury could further find that Jantz suffered detriment. While she waited for the Government to investigate the matter, and before the Government denied what Hannah had said, three years had elapsed since the date of the accident.

Hannah now says that Jantz knew she had been in an accident and should have used the three years to investigate. In support, Hannah cites cases involving the discovery rule,

but Jantz seeks to avoid limitations by invoking estoppel. We conclude that a jury clearly could find that Jantz's reliance on the misrepresentation was reasonable.

Under Title 28 U.S.C. § 2679(b), part of the FTCA, action against the Government is "exclusive of any other civil action or proceeding for money damages" for property damage or personal injury "resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment." "Any other civil action" is "precluded." A FTCA suit may not be brought against the United States, however, unless the claimant "first presented the claim to the appropriate Federal agency." 28 U.S.C. § 2675(a). The Government then investigates, including whether the federal employee was "acting within the scope of his office or employment." The Government is in a better position to do so than a civilian claimant, particularly when the alleged tortfeasor is a member of the military.

Hannah says that "nothing in the Federal Tort Claims Act prevents a plaintiff from suing the Federal Government and the employee[.]" Presumably Hannah is inviting us to rule, as a matter of law, that Jantz is the author of her own injury so that the detriment was not caused by Hannah's misrepresentation. Hannah cites no case authority supporting joinder of the United States and the tortfeasor as defendants in suits under the FTCA.

In *Strong v. Dyar*, 573 F. Supp. 2d 880 (D. Md. 2008), the plaintiffs were injured in a motor vehicle accident with a drunk driver, an airman in the USAF, who was in a USAF alcohol and drug treatment program. The plaintiffs sued the USAF and the Secretary of the USAF under the FTCA on the theory that the latter had negligently supervised the tortfeasor. *Id*. at 881-82. The Court ruled:

> "Since the FTCA only waives sovereign immunity for suits brought against 'the United States,' 28 U.S.C. § 2674, suits brought against a federal agency *eo nomine* or against a federal employee individually are dismissible for lack of jurisdiction."

Id. at 884-85. Relying on Hannah's accident scene statements, Jantz proceeded correctly.

Appellee Allstate raised issues in its brief to us that were not decided by the court below and that would be reached only if testimony consistent with the Affidavit is not believed by the jury. Those arguments are premature.

For the reasons set forth above, we reverse.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY ON THE CLAIMS OF JANTZ AGAINST HANNAH AND ALLSTATE AND ON THE CLAIM OF ALLSTATE AGAINST HANNAH VACATED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE EQUALLY DIVIDED BETWEEN THE APPELLEES.