Circuit Court for Wicomico County
C-22-CV-17-000177

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2486

September Term, 2017

PHILLIP S. BAILEY

v.

LANCE LLOYD, ET AL.

Nazarian,
Arthur,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: March 19, 2019

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Appellant Phillip S. Bailey, an inmate at Eastern Correctional Institution, filed suit in the Circuit Court for Wicomico County against Sergeant Lance Lloyd of the Maryland State Police and the "Wicomico County Narcotics Task Force." Although Bailey did not formally name the Maryland State Police as a party, he complained about its conduct and arguably sought relief from it.

The court dismissed the complaint on the ground that it was filed beyond the applicable three-year statute of limitations. Bailey appealed. We affirm.

FACTS AND PROCEEDINGS

On April 28, 2017, Bailey filed a one-count complaint in which he alleged that Sgt. Lloyd and the Narcotics Task Force were in contempt of an order dated October 15, 2010. In support of his allegation of contempt, Bailey asserted that on July 30, 2010, the Narcotics Task Force, including Sgt. Lloyd, had executed a search warrant at his residence in Salisbury. According to Bailey, the Task Force seized a 1996 Freightliner truck from him. Bailey moved for the immediate return of the truck, and the Circuit Court for Wicomico granted his motion on October 15, 2010. It appears, however, that, eight days before that order, the State had returned the truck to the lienholder. Because the State authorities were no longer in possession of the truck, they took no action in response to the October 15, 2010, order.[1]

[1] During argument on Bailey's motion to dismiss. Sgt. Lloyd's attorney explained that security agreements typically state that the seizure of property securing a loan is an event of default, which triggers the acceleration clause in the loan documents and entitles

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Bailey asserted that Sgt. Lloyd, the Narcotics Task Force, and the Maryland State Police were in contempt of the order of October 15, 2010, and that the failure to return the truck had caused him to suffer financial hardship and lost income. In his prayer for relief, he sought $600,000 in damages or the return of the truck.

Sgt. Lloyd moved to dismiss the complaint. In his motion he argued that there was no stand-alone cause of action for contempt; that the complaint was time-barred; that he was immune from suit; and that Bailey had never served the Maryland State Police and the Narcotics Task Force, but that they were not amenable to suit and had the same defenses as he.[2]

Bailey opposed the motion, reiterating his positions on the merits of the dispute.

On February 8, 2018, the court conducted a hearing, at which Bailey represented himself. After argument, the court ruled that the general three-year statute of limitations barred Bailey's action because he filed it more than six years after the order that required

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the secured party to repossess the property. Md. Code (2001, 2018 Repl. Vol.), § 12-501 of the Criminal Procedure Article requires "the forfeiting authority" (in this case, the State Police or the Wicomico County Sheriff) to "release the property to the lienholder" on the lienholder's request.

[2] Although it appears from the face of the complaint that Bailey had unsuccessfully sought the return of the truck in an action for detinue or replevin in 2015, Sgt. Lloyd did not argue the claim was barred by res judicata. *See, e.g., Powell v. Breslin*, 430 Md. 52, 64 (2013) (final judgment on the merits "was conclusive as to the matters decided in that case, as well as to 'all matters which with propriety could have been litigated in the first suit[]'") (quoting *Alvey v. Alvey*, 225 Md. 386, 390 (1961)).

the return of the truck. Although the court said that it granted the motion to dismiss "on those grounds alone," it added, "clearly there is immunity."

This timely appeal followed.[3]

DISCUSSION

This Court conducts a *de novo* review of a circuit court's grant of a motion to dismiss, "applying the same standard as the circuit court and determining whether that decision was legally correct." *Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 713 (2015) (citations omitted). For the following reasons, we conclude that the circuit court was legally correct in granting the motion to dismiss Bailey's complaint.

Md. Code (1974, 2013 Repl. Vol.), § 5-101 of the Courts and Judicial Proceedings Article provides that: "A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." In assessing when a cause of action accrues, Maryland applies the discovery rule, which provides that a claim "accrues when the claimant in fact knew or reasonably should have known of the wrong." *Poffenberger v.*

[3] Bailey did not obtain a judgment against the Narcotics Task Force or the Maryland State Police, because he never effectuated service on them. Assuming that those entities could properly be named as parties on the theory that they are instrumentalities of the State of Maryland, the absence of a judgment against them does not deprive this Court of appellate jurisdiction. "[A] named defendant who has not been served is not a party for the purpose of determining finality of a judgment." *State Highway Admin. v. Kee*, 309 Md. 523, 529 (1987); *accord Turner v. Kight*, 406 Md. 167, 172 n.3 (2008); *Swarey v. Stephenson*, 222 Md. App. 65, 81 (2015); *Burns v. Scottish Dev. Co.*, 141 Md. App. 679, 690 (2001).

Risser, 290 Md. 631, 636 (1981). If it is apparent from the face of a complaint that limitations bars the plaintiff's claims, the complaint fails to state a claim upon which relief can be granted. *G&H Clearing and Landscaping v. Whitworth*, 66 Md. App. 348, 354 (1986); *accord Doe v. Archdiocese of Washington*, 114 Md. App. 169, 175 (1997).

In this case, it is apparent from the face of the complaint that Bailey knew of the alleged wrong, *i.e.*, the failure to return the truck to him, on or around October 15, 2010, when the circuit court ordered that it be returned. Nevertheless, he waited more than six years to file a complaint concerning the alleged violation of the order. He does not point to any factual allegations that could have tolled the running of the statute of limitations. Thus, we conclude that the circuit court properly dismissed the complaint on the ground that it was filed beyond the three-year limitations period.

Even if the court erred in dismissing the complaint on grounds of limitations (which is not the case), it could still have dismissed the complaint on the alternative basis that Sgt. Lloyd was immune from suit. As an officer of the Maryland State Police, Sgt. Lloyd is immune from suit in the courts of this State and from liability in tort for an act or omission that is within the scope of his public duties and is made without malice or gross negligence. *See* Md. Code (1984, 2014 Repl. Vol.), § 12-105 of the State Government Article; Md. Code (1974, 2013 Repl. Vol.); § 5-522 of the Courts and Judicial Proceedings Article. Bailey did not allege that Sgt. Lloyd was acting outside of the scope of his duties when he failed to comply with the court's order because the authorities had already turned over the truck to the lienholder. Nor did Bailey allege that Sgt. Lloyd

acted maliciously or with gross negligence. Sgt. Lloyd was, therefore, immune from suit in this case.

Finally, although the circuit court did not consider whether the complaint stated a claim for "contempt," the court could easily have concluded that it did not. In current practice, a charge of "contempt" implicates a number of rule-based proceedings with elaborate procedural and substantive requirements. *See generally* Md. R. 15-201 to -208. In the case of constructive civil contempt, which is the only form of contempt proceeding that Bailey could initiate on his own,[4] he would be required to file a petition "in the action in which the alleged contempt occurred." Md. R. 15-206(a). He did not do so. Furthermore, his complaint contained none of the required contents of a petition for constructive civil contempt. *See* Md. R. 15-206(c). The court, therefore, could properly

[4] The court alone may initiate a proceeding for direct civil or criminal contempt (*see* Md. Rule 15-203(a)), i.e., a proceeding to address "a contempt committed in the presence of the judge presiding in court or so near to the judge as to interrupt the court's proceedings." Md. Rule 15-202(b). The court, the State's Attorney, and (in some unusual cases) the Attorney General and the State Prosecutor may initiate a proceeding for constructive criminal contempt (*see* Md. Rule 15-205(b)(1)-(4)), i.e., any form of criminal contempt other than direct criminal contempt. Md. Rule 15-202(a). A person with actual knowledge of facts constituting a constructive criminal contempt may ask the State's Attorney, the Attorney General, or the State Prosecutor, as appropriate, to file a petition for constructive criminal contempt, but the person may not file one on his or her own. *See* Md. Rule 15-205(b)(5).

have dismissed Bailey's complaint because it was legally insufficient to establish a claim for "contempt."[5]

For all of these reasons, therefore, the circuit court did not err in dismissing Bailey's complaint.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.

[5] Although the circuit court did not base its decision on this ground, an appellate court can affirm the grant of a motion to dismiss "'on any ground adequately shown by the record, whether or not relied upon by the trial court.'" *City of Frederick v. Pickett*, 392 Md. 411, 424 (2006) (quoting *Berman v. Karvounis*, 308 Md. 259, 263 (1987)).