STATE OF MICHIGAN

COURT OF APPEALS

AKIO FUJIMAKI, Plaintiff-Appellant,	UNPUBLISHED November 17, 2015
v	No. 324173 Washtenaw Circuit Court
YUMIKO ICHIKAWA, Defendant-Appellee.	LC No. 14-000535-CZ

Before: GADOLA, P.J., and HOEKSTRA and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(4) (lack of subject-matter jurisdiction) and (7) (claim is time-barred by the statute of limitations). We affirm the trial court's order in part, reverse in part, and remand for further proceedings.

I. BACKGROUND

On May 29, 2014, plaintiff filed a complaint raising claims of alienation of parental affection and intentional infliction of emotional distress stemming from parental alienation. Plaintiff's complaint stated that the parties were previously married and had one child together, but they divorced in May 2004. In September 2008, defendant acquired sole legal and physical custody of the child. Plaintiff alleged that after defendant acquired sole custody, she commenced a campaign to destroy his relationship with the minor child. Plaintiff alleged that defendant consistently denied him parenting time, and, for that reason, was found in contempt of court on two occasions and sentenced to jail. Plaintiff claimed that the trial court ordered the child to stay with plaintiff during defendant's incarceration, but defendant, the child, and the child's school manipulated the situation, and the child stayed with a teacher instead.

Plaintiff's complaint further alleged that the trial court ordered the parties to undergo a psychological evaluation by Dr. James Bow, who found extreme parental alienation by defendant. According to plaintiff, in August 2013, the trial court also found extreme parental alienation by defendant, but concluded that it had limited options regarding custody arrangements because the child was 17 years old and his relationship with plaintiff was already damaged. Plaintiff alleged that he had no relationship with his son as a result of defendant's willful and deliberate acts of denying him access to the child.

Defendant filed a motion for summary disposition under MCR 2.116(C)(4) and (7), arguing that Michigan does not recognize claims of alienation of parental affection, and that plaintiff's intentional infliction of emotional distress claim was time-barred by the three-year statute of limitations governing tort actions.[1] In his response, plaintiff agreed that Michigan does not recognize an independent cause of action for alienation of parental affection, but argued that his intentional infliction of emotional distress claim did not accrue until Dr. Bow identified defendant's extreme parental alienation, or until August 2013 when the trial court found extreme parental alienation by defendant.

Attached to his response, plaintiff provided an affidavit outlining defendant's alleged extreme and outrageous conduct between August 2011 and June 2014. According to plaintiff's affidavit, defendant began denying him parenting time on December 31, 2011, and continued to deny him parenting time for 22 consecutive weeks until May 2012. Plaintiff said defendant was held in contempt of court on June 4, 2012, and was sentenced to jail for denying plaintiff parenting time, and she was held in contempt again on October 8, 2013. According to plaintiff's affidavit, on March 21, 2014, defendant sent a letter stating that she would continue to deny plaintiff parenting time; on May 1 and May 31, 2012, defendant stated that she was intentionally excluding plaintiff from the child's life; on February 3 and May 11, 2012, defendant asked the child's school to exclude plaintiff from school events; and on June 6, 2012, defendant delegated her parental authority to one of the child's teachers to prevent plaintiff from caring for the child while defendant was incarcerated.

Following a hearing on defendant's motion, the trial court agreed that Michigan does not recognize the claim of alienation of parental affection and dismissed plaintiff's claim under MCR 2.116(C)(4). The trial court also dismissed plaintiff's intentional infliction of emotional distress claim under MCR 2.116(C)(7), concluding that the claim accrued in September 2008, when "defendant acquired sole custody and control of the parties[']minor child, and the ability to effectively alienate the parties' minor child against the plaintiff," and was therefore barred by the three-year statute of limitations. Plaintiff then filed a motion for reconsideration, which the trial court denied.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Tarlea v Crabtree*, 263 Mich App 80, 87; 687 NW2d 333 (2004). Summary disposition under MCR 2.116(C)(7) is appropriate if the claim is barred by a statute of limitations. "A motion under MCR 2.116(C)(7) may be supported by affidavits, admissions, or other documentary evidence and, if submitted, must be considered by the court." *Home Ins Co v Detroit Fire Extinguisher Co*, 212 Mich App 522, 527; 538 NW2d 424 (1995). Courts "must take the well-pleaded allegations in the pleadings and the factual support submitted by the nonmoving party as true, and summary disposition is proper only if the moving party is then shown to be entitled to

[1] MCL 600.5805(10) states that "[e]xcept as otherwise provided in this section, the period of limitations is 3 years after the time of the death or injury for all actions to recover damages for the death of a person, or for injury to a person or property."

judgment as a matter of law." *Id.* at 527-528.[2] This Court reviews de novo questions involving the applicability of a statute of limitations. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

III. DISCUSSION

Plaintiff argues that the trial court erred by granting summary disposition on his intentional infliction of emotional distress claim under MCR 2.116(C)(7) because the court improperly concluded that the statute of limitations barred plaintiff's claim. We agree.

In order to establish a claim of intentional infliction of emotional distress, a plaintiff must show "(1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress." *Graham v Ford*, 237 Mich App 670, 674; 604 NW2d 713 (1999). Liability attaches when a plaintiff demonstrates that a defendant's conduct was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." *Id.* The test to determine whether a defendant's conduct was sufficiently extreme and outrageous is whether the facts of the case would lead an average member of the community to arouse resentment against the actor and exclaim, "Outrageous!" *Lewis v LeGrow*, 258 Mich App 175, 196; 670 NW2d 675 (2003) (citations omitted).

A claim of intentional infliction of emotional distress must be brought within three years after the claim accrues to avoid being time-barred. *Nelson v Ho*, 222 Mich App 74, 85; 564 NW2d 482 (1997). MCL 600.5827 provides that "the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results." The term "wrong" as used in MCL 600.5827 refers to the date the plaintiff was *harmed* by the defendant's act, not the date the defendant *acted*. *Frank v Linkner*, ___ Mich App___, ___; ___NW2d ___ (2015), citing *Moll v Abbott Laboratories*, 444 Mich 1, 12; 506 NW2d 816 (1993). Otherwise, a claim could be barred before a plaintiff suffered any injury. *Frank*, ___ Mich App at ___. "Accordingly, a cause of action for a tortious injury accrues when all the elements of the claim have occurred and can be alleged in a proper complaint." *Schaendorf v Consumers Energy Co*, 275 Mich App 507, 512; 739 NW2d 402 (2007) (citation omitted).[3]

---

[2] Plaintiff contends that we should consider documentary evidence that he attached to his motion for reconsideration and his brief on appeal when reviewing the trial court's summary disposition decision. However, when reviewing such a decision, we only consider evidence that "was properly presented to the trial court before its decision on the motion." *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003). Therefore, we will consider plaintiff's complaint, his response and brief in opposition to defendant's motion for summary disposition, and his accompanying affidavit, but we will not consider the additional documentary evidence.

[3] Plaintiff cites *Mays v Three Rivers Rubber*, 135 Mich App 42; 352 NW2d 339 (1984), for the proposition that his claim did not accrue until all the elements of the cause of action had occurred and he knew or should have known of their occurrence. Michigan law precludes use of this principle, known as the discovery rule, to toll the accrual date of any claims to which

In *Frank*, ___ Mich App at ___, this Court further clarified the definition of "accrues" as used in MCL 600.5827 as follows:

> [The concept that a claim does not accrue until all the elements of the claim have occurred] is consistent with Black's Law Dictionary's definition of "accrue," which means "[t]o come into existence as an enforceable claim or right; to arise . . . . 'The term 'accrue' in the context of a cause of action means to arrive, to commence, to come into existence, or to become a present enforceable demand or right . . . .' " *Black's Law Dictionary* (7th ed), quoting 2 Ann Taylor Schwing, *California Affirmative Defenses* § 25:3, at 17–18 (2d ed 1996); Cf *Cooey v Strickland*, 479 F3d 412, 419 (CA 6, 2007) ("Under the traditional rule of accrual . . . the tort cause of action accrues, and the statute of limitations commences to run, when the wrongful act or omission results in damages. The cause of action accrues even though the full extent of the injury is not then known or predictable") (citation omitted). [Alteration in original.]

In this case, the harm on which plaintiff's claim was based was parental alienation, or defendant's destruction of the relationship between plaintiff and the child, which resulted in psychological damage to plaintiff. The trial court found that plaintiff's claim accrued in September 2008, when defendant acquired sole physical and legal custody of the child and had the ability to effectively alienate the child from plaintiff. There is no evidence indicating that plaintiff's relationship with the child was destroyed due to parental alienation at that point in time, or that defendant had yet exhibited intentional conduct that was sufficiently extreme or outrageous in nature to give rise to a claim of intentional infliction of emotional distress.

Accepting plaintiff's affidavit as true, facts sufficient to sustain the elements for a claim of intentional infliction of emotional distress did not arise until at least December 31, 2011, when defendant began denying plaintiff parenting time, which, it could be argued, constituted extreme and outrageous conduct. See *Schaendorf*, 275 Mich App at 512 (holding that a tortious injury claim does not accrue until all the elements of the claim have occurred). Moreover, it does not appear that the harm of extreme parental alienation occurred until 2013. In either case, plaintiff's May 29, 2014 complaint fell well within the three-year limitations period for tort claims. Accordingly, the trial court erred by finding that plaintiff's claim accrued in September 2008, and that summary disposition was therefore warranted under MCR 2.116(C)(7).

To the extent plaintiff presented arguments relating to the trial court's dismissal of his alienation of parental affection claim, because plaintiff admitted that Michigan does not recognize such a cause of action, we consider any error regarding this issue waived. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). Therefore, we affirm the trial court's summary disposition order with respect to plaintiff's alienation of parental affection claim,

---

MCL 600.5827 applies, which includes intentional infliction of emotional distress claims. See *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 407; 738 NW2d 664 (2007) ("[T]he plain language of MCL 600.5827 precludes the use of a broad common-law discovery rule to toll the accrual date of claims to which this statute applies."). Therefore, plaintiff's argument that the discovery rule should apply in this case lacks merit.

reverse with respect to plaintiff's intentional infliction of emotional distress claim, and remand the case for further proceedings consistent with this opinion.

/s/ Michael F. Gadola
/s/ Joel P. Hoekstra
/s/ Michael J. Kelly