

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

JOHN VINCENT HYLAND, JR.,

Plaintiff,

v

File No. 97-15641-NM
HON. PHILIP E. RODGERS, JR.

WAYNE V. SIMMONS,

Defendant.

John Vincent Hyland, Jr. #228879
In Pro Per

Charles H. Gano (P26998)
Attorney for Defendant

DECISION AND ORDER

The Plaintiff has filed a claim for civil damages against the Defendant arising out of testimony which the Defendant provided as a court-appointed psychologist in a custody battle between the Plaintiff and his wife.

The Defendant has filed a Motion for Summary Disposition on a number of grounds. The Plaintiff is a prisoner subject to the custody of the Michigan Department of Corrections who is serving a substantial prison term for sexually molesting his own children. The Court, then, has issued a Pre-Hearing Order and will resolve the issues raised by the Defendant's motion based upon a review of the parties' written submissions. There will be no oral argument. MCR 2.119(E)(3).

Having reviewed the parties' written materials and the applicable law, and for reasons that will now be described, the Defendant's motion is granted. Plaintiff's case is dismissed.

The standard of review for a (C)(7) motion is set forth in *Moss v Pacquing*, 183 Mich App 574, 579; 455 NW2d 339 (1990).

In considering a motion for summary disposition under MCR 2.116(C)(7), a court must consider any affidavits, pleadings, depositions, admissions, and documentary evidence then filed or submitted by the parties. MCR 2.116(G)(5). In this case, all of Plaintiffs' well-pled factual allegations are accepted as true and are to be construed most favorably to Plaintiffs. *Wakefield v Hills*, 173 Mich App 215, 220; 433 NW2d 410 (1988). If a material factual question is raised by the evidence considered, summary disposition is inappropriate. *Levinson v Sklar*, 181 Mich App 693, 697; 449 NW2d 682 (1989); *Hazelton v Lustig*, 164 Mich App 164, 167; 416 NW2d 373 (1987).

Statute of Limitations

The Plaintiff's complaint was filed on January 6, 1997. The statements of which he complains were made by the Defendant to the Otsego County Probate Court in a hearing held on January 5, 1995. The relevant Statute of Limitations is two years. MCLA 600.5805; MSA 27A.5805. Plaintiff's complaint is late and the case should be dismissed. MCR 2.116(C)(7).

Plaintiff notes that he should be granted leniency since he is a prisoner representing himself. The Court would note that its files are replete with complaints the Plaintiff has filed against others.¹ The Plaintiff is intelligent and had ample time to consider the filing of this claim. As will be further discussed ahead, the Plaintiff's complaint is frivolous and there are no equities presented to this Court which suggest that Plaintiff should be granted any leniency in the application of the Statute of Limitations.

Psychologist-Patient Privilege

It is beyond the pale of reasonable disagreement that Plaintiff did not enjoy a psychologist-patient relationship with the Defendant. Rather, the Defendant is a fully licensed state psychologist who was appointed by the Otsego County Circuit Court to provide an independent psychological evaluation of the Plaintiff in conjunction with the child custody proceeding in which the Plaintiff was

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John V. Hyland, Jr. v Wendell Johnson and Smith, Johnson, Brandt & Heintz, Grand Traverse County Circuit Court File No. 96-15619-NM; John Vincent Hyland, Jr. v Craig Elhart, Grand Traverse County Circuit Court File No. 95-13347-NM; John Vincent Hyland, Jr. v Madeleine A. Thomas, Grand Traverse County Circuit Court File No. 95-13348-NM; and John Vincent Hyland, Jr. v Stuart Hubbell, Grand Traverse County Circuit Court File No. 95-13349-NM.

involved. In subsequent proceedings, he was required to testify regarding those findings as they related to the subsequent effort to terminate the Plaintiff's parental rights.

Michigan law recognizes that there is no physician-patient privilege when the examination is not conducted for the purpose of rendering medical care or treatment to the person asserting the privilege, at least when that person lacks a reasonable expectation that the consultation is cloaked with a veil of confidentiality. *Vansickle v McHugh*, 171 Mich App 622, 627; 430 NW2d 799 (1988). Here, Plaintiff well understood that the Court was appointing Dr. Simmons to conduct an evaluation for purposes of testifying in a child custody proceeding regarding its results. There was no expectation that treatment would be provided or that any part of the evaluation was intended to be confidential. There was never a psychologist-patient relationship between the Defendant and the Plaintiff and no such privilege applies. Plaintiff's arguments to the contrary are frivolous. MCR 2.114(F).

Tort Immunity

As previously discussed, the claims against the Defendant arise out of testimony he provided to the Otsego County Probate Court in a hearing held on January 5, 1995. The Defendant gained his knowledge of the Plaintiff as a court-appointed independent psychological expert. The testimony which the Defendant provided in this hearing is then cloaked with judicial immunity. *Martin v Children's Aid Society*, 215 Mich App 88; 544 NW2d 651 (1996); *Brown v Northville Regional Psychiatric Hospital*, 153 Mich App 300; 395 NW2d 18 (1986). Again, Plaintiff's arguments to the contrary are frivolous. MCR 2.114(F).

The Defendant having established on the undisputed facts before the Court that the Plaintiff failed to bring his complaint in a timely fashion, that there was no psychologist-patient relationship subject to privilege between them and that the Defendant's statements are cloaked with judicial immunity, the Defendant's motion for summary disposition is hereby granted. Further, the Court finds that the Plaintiff's complaint is frivolous and sanctions shall be ordered consistent with MCR 2.114(F). If the defense chooses to pursue sanctions, he has 14 days from the date signed below to submit an affidavit of reasonable attorney's fees and costs incurred in the defense of this action. Failure to submit the requisite affidavit shall be deemed a waiver of any request for sanctions.

Disputes regarding the appropriate amount of sanctions shall be resolved by the Court on a Pre-Hearing Order.

IT IS SO ORDERED.



HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____

7/25/97