

RENDERED: April 1, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-001029-MR

TRACEY J. DUNN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY L. WILLETT, JUDGE
ACTION NO. 01-CI-002368

TODD FELTY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, KNOPF, AND TAYLOR, JUDGES.

KNOPF, JUDGE: Tracey Dunn appeals from an order of the Jefferson Circuit Court dismissing his false arrest and assault claims against Louisville Police Officer Todd Felty. Dunn argues that the trial court erred in finding these claims to be barred under the one-year statute of limitations. We agree with the trial court that the causes of action for false arrest and assault accrued on the date of the arrest, and therefore Dunn's complaint

filed seventeen months after the arrest was untimely. Hence, we affirm.

During the early morning of November 7, 1999, Dunn and his wife were awoken by a noise coming from near or around their apartment building. Dunn left his apartment to investigate and encountered several Louisville Police officers who were responding to a report of a domestic disturbance. The details of their encounter are in considerable dispute, but by the time it was over, Dunn was arrested and charged with harassment with physical contact, menacing, and resisting arrest. On April 24, 2000, a Jefferson District Court jury found Dunn not guilty on the charges of menacing and resisting arrest. The district court directed a verdict of acquittal on the charge of harassment with physical contact.

Thereafter, on April 4, 2001, Dunn filed this action against the City of Louisville and the police officers involved in the arrest, Todd Felty, Deron Shepherd, Charles Robinson, and Coty Chapell. He asserted claims of false arrest, excessive force, malicious prosecution, outrageous conduct, and failure to supervise and train. The defendants filed a motion to dismiss, arguing that Dunn's claims are subject to a one-year statute of limitations. The trial court granted the motion and dismissed the complaint on July 3, 2001.

Following a motion by Dunn, the trial court reinstated the claims for malicious prosecution and outrageous conduct, noting that a cause of action for malicious prosecution does not accrue until the plaintiff obtains a favorable termination of the criminal action and that the statute of limitations for outrageous conduct is five years.¹ However, the trial court declined to reinstate the other claims. Dunn's later motions to reinstate those claims were also denied.

Subsequently, the trial court granted the defendants' motion for summary judgment on the outrageous conduct claim. Apparently, the trial court also dismissed Officers Shepherd, Chapelle, and Robinson as parties to the action. The matter then proceeded to trial on Dunn's malicious-prosecution claim against the City and Officer Felty. At the conclusion of the trial, the jury returned a verdict in favor of the City and Felty. This appeal followed.

As a preliminary matter, we note that Dunn does not appeal from the adverse jury verdict. He appeals only from the trial court's order dismissing his false-arrest and excessive-force claims. Furthermore, Dunn named only Officer Felty as a party to this appeal.² Therefore, the dismissal of the failure-

¹ Craft v. Rice, 671 S.W.2d 247 (Ky. 1984).

² Dunn's notice of appeal names "Todd Felty *et al.*", but does not list any other appellees. CR 73.03(1) requires the notice of

to-supervise-and-train claim against the City is not before this Court.

The parties agree that actions for false arrest and for assault arising out of a false arrest must be brought within one year.³ The central question in this case concerns when these causes of action accrue. Curiously, we find no published Kentucky authority which directly addresses this issue. In other jurisdictions, however, a cause of action for false arrest is held to accrue on the date of the arrest or, at the latest, at the time of termination of imprisonment.⁴ We find this authority to be consistent with Kentucky's approach to the torts at issue in this case.

In cases involving police officers, there is no distinction between false arrest and false imprisonment. False imprisonment is always the result of a false arrest, since the individual is placed under restraint by the false arrest and there can be no imprisonment without arrest by a peace officer.

appeal to specify the name of all appellants and all appellees, and further provides that terms such as "et al." and "etc." are not proper designation of parties. Not being specifically named, the other defendants at the trial level are not parties to this appeal. Schulz v. Chadwell, 548 S.W.2d 181, 184 (Ky.App. 1977).

³ KRS 413.140(1)(a) & (c).

⁴ See M. C. Dransfield, Annotation, "When Statute of Limitations Begins to Run against Action for False Imprisonment or False Arrest," 49 A.L.R.2d 922 (1956 & 2004 Supp.).

In an action for false arrest or for assault and battery arising in the course thereof, the focus is on whether the police officer had reasonable grounds to believe and did believe in good faith that the plaintiff had committed an arrestable offense, and whether the officer used excessive force in making the arrest.⁵ The officer is liable for false arrest and battery if he lacked reasonable grounds for the arrest, or if the officer had a reasonable basis for the arrest but used more force than was necessary.⁶

A plaintiff asserting a claim for malicious prosecution must prove not only that the charge was brought without probable cause, but also that the criminal proceedings were terminated in favor of the party pursuing the claim.⁷ Thus, a malicious prosecution claim could only accrue after the criminal proceedings were resolved. In contrast, a plaintiff can plead all elements of false arrest on the day of the arrest, regardless of later proceedings.⁸ Consequently, a false arrest claim accrues for limitations purposes on the day of arrest, although likely it would have to be held in abeyance pending resolution of

⁵ City of Lexington v. Gray, 499 S.W.2d 72, 756 (Ky. 1972).

⁶ Lexington-Fayette Urban County Government v. Middleton, 555 S.W.2d 613, 619 (Ky.App. 1977).

⁷ Raine v. Drasin, 621 S.W.2d 895, 899 (Ky. 1981).

⁸ Sneed v. Rybicki, 146 F.3d 478, 481 (7th Cir. 1998).

any criminal charges. Because Dunn did not file the action within one year of his arrest, the trial court properly dismissed his false arrest and assault claims as untimely.

Accordingly, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Thomas E. Clay
Gary Richard Adams, Jr.
Clay, Kenealy, Wagner &
Adams, PLLC
Louisville, Kentucky

BRIEF FOR APPELLEES:

Lisa A. Schweickart
Assistant Jefferson County
Attorney
Louisville, Kentucky