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SIXTH DIVISION
June 20, 2014

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JESSICA M. SUTTON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 13 L 2011
)	
COOK COUNTY SHERIFF'S OFFICER RUCKS)	
and COOK COUNTY SHERIFF'S OFFICER)	
PARKER, Individually and as Agents or Employees)	
of the Cook County Sheriff's Department,)	The Honorable
)	Daniel T. Gillespie,
Defendants-Appellees.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶1 *HELD: Pro se* plaintiff's complaint for intentional infliction of emotional distress against two Cook County sheriff's officers was properly dismissed because she failed to file the complaint within the requisite one-year time period.

¶2 *Pro se* plaintiff, Jessica Sutton, appeals the circuit court's order dismissing her amended complaint for intentional infliction of emotional distress in favor of defendants, Cook County Sheriff's Officer Rucks¹ and Cook County Sheriff's Officer Parker,² individually and as agents or employees of the Cook County Sheriff's Department. Plaintiff contends the circuit court erred in dismissing her amended complaint where it was filed within the statute of limitations. Based on the following, we affirm.

¶3 FACTS

¶4 On February 25, 2013, plaintiff filed her initial *pro se* complaint against the Cook County sheriff's department and Officers Rucks and Parker, alleging she was unlawfully arrested and aggressively and forcibly sexually assaulted while at the Markham police station on November 17, 2011. Plaintiff additionally claimed that she was imprisoned for "20 or more hours." Plaintiff alleged that she suffered resulting reputational damage and "great pain and anguish of body and spirit." In response, defendants filed a motion to dismiss pursuant to section 2-619(a)(2) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(2) (West 2010)) for naming a defendant with no legal existence and section 2-619(a)(5) (735 ILCS 5/2-619(a)(5) (West 2010)) for violating the statute of limitations under the Illinois Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/8-101 (West 2010)). The circuit court dismissed plaintiff's initial complaint without prejudice for failing to name a proper defendant because the Cook County sheriff's department is a non-suable entity. On April 5, 2013, plaintiff filed a motion to reconsider, arguing that the statute of limitations was tolled pursuant to section 13-202 of the Code (735 ILCS 5/13-202 (West 2010)) while her criminal prosecution related to her November 17, 2011, arrest remained pending. Because her

¹ Officer Rucks' first name does not appear in the record.

² Officer Parker's first name does not appear in the record.

criminal case was not dismissed until February 2012, plaintiff argued that her February 2013 complaint was filed within the statute of limitations. The record does not contain an order granting or denying plaintiff's motion to reconsider. The record does, however, contain an order granting plaintiff leave to file an amended complaint.

¶5 On April 12, 2013, plaintiff filed an amended complaint, the subject of which underlies this appeal. In the amended complaint, plaintiff named Officers Rucks and Parker, individually and as agents or employees of the Cook County sheriff's department, as defendants and asserted the same allegations of unlawful arrest and aggressive and forcible sexual assault while at the Markham police station on November 17, 2011, which caused reputational damage and "great pain and anguish of body and spirit." Defendants responded by filing an amended motion to dismiss pursuant to section 2-619(a)(5) of the Code for failure to comply with the statute of limitations where plaintiff did not file her complaint within one year of the "date that the injury was received or the cause of action accrued" (745 ILCS 10/8-101(a) (West 2010)) as required by the Tort Immunity Act. Plaintiff then filed a "motion to reconsider," again arguing that the applicable statute of limitations should have been tolled until her criminal case was resolved in February 2012 pursuant to section 13-202 of the Code (735 ILCS 5/13-202 (West 2010)). Plaintiff additionally argued that the amended complaint naming the proper defendants was timely as it related back to her original complaint. Plaintiff finally argued that the applicable statute of limitations was two years pursuant to section 8-101(b) of the Tort Immunity Act (745 ILCS 10/8-101(b) (West 2010)). The circuit court granted defendants' motion to dismiss under section 2-619(a)(5) of the Code for failure to comply with the statute of limitations. This appeal followed.

¶6 DECISION

¶7 Plaintiff concedes that the applicable statute of limitations is the one-year period under section 8-101(a) of the Tort Immunity Act. Plaintiff, however, contends the circuit court erred in dismissing her amended complaint where the limitations period did not begin to run until February 2012 when her criminal prosecution was adjudicated in her favor. Moreover, plaintiff contends the limitation period should have been tolled pursuant to the "continuing tort" or "continuing violation" rule. Defendants respond that plaintiff has waived review of her "continuing tort theory" by failing to raise it in her amended complaint.

¶8 Our review of the pleadings demonstrates that plaintiff preserved her argument that the statute of limitations period should have been tolled while her criminal case remained unresolved by raising it in her motions to reconsider the dismissal of her initial complaint and her amended complaint. That argument, however, was supported by the general personal injury statute of limitations. See 735 ILCS 5/13-202 (West 2010)). Plaintiff concedes that the applicable statute of limitations is section 8-101(a) of the Tort Immunity Act and no tolling language is contained therein. See 745 ILCS 10/8-101(a) (West 2010). We must apply the language of the applicable statute as written.

¶9 When reviewing a section 2-619 motion to dismiss, all well-pleaded facts and reasonable inferences therefrom are accepted as true. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 277 (2003). A section 2-619 motion to dismiss should be granted only if the moving party can prove no set of facts which would support the cause of action. *Id.* at 277-78.

¶10 Pursuant to section 8-101(a) of the Tort Immunity Act, an individual has one year from the date the injury was received or the cause of action accrued to commence an action against a local entity or one of its employees. 745 ILCS 10/8-101(a) (West 2010). A claim of intentional

infliction of emotional distress in the course of an arrest accrues on the date of the arrest.

Bridewell v. Eberle, 730 F.3d 672, 678 (7th Cir., 2013) (applying section 8-101 Tort Immunity Act). Plaintiff's alleged injury occurred during her November 17, 2011, arrest. Accordingly, plaintiff had until November 19, 2012, to file her complaint because November 17, 2011, was a Saturday. Plaintiff's initial complaint filed on February 25, 2013, therefore, was filed outside the applicable limitations period.

¶11 To the extent plaintiff did raise, for the first time on appeal, a claim that her amended complaint was timely filed pursuant to the "continuing tort" or "continuing violation" rule, we find the argument is waived. *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶ 26. Despite waiver, the "continuing tort" or "continuing violation" rule has no application to this case. See *id.* (the waiver rule is an admonition on litigants and not a limitation on the jurisdiction of a reviewing court).

¶12 Where a tort involves a continuing or repeated injury, the "continuing tort" or "continuing violation" rule tolls the limitations period until the date of the last injury or the date the tortious acts cease. *Feltmeier*, 207 Ill. 2d at 278. The rule is *not* applicable, however, "where there is a single overt act from which subsequent damages may flow." *Id.* at 279. Rather, despite the continuing nature of an injury, the limitations period begins to run on the date "the defendant invaded the plaintiff's interest and inflicted injury." *Id.* Here, there was a single act from which plaintiff alleged continuous injury to her reputation and "body and spirit," namely, her arrest on November 17, 2011. Consequently, the "continuing tort" or "continuing violation" rule does not apply.

¶13 In sum, plaintiff failed to file her complaint within the requisite one-year time period. As a result, the circuit court properly dismissed her claim for intentional infliction of emotional distress.

¶14 CONCLUSION

¶15 We affirm the judgment of the circuit court dismissing plaintiff's amended complaint.

¶16 Affirmed.