

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI
TWENTIETH CIRCUIT COURT DISTRICT

FILED
MADISON COUNTY

MICHAEL D. LAND

PLAINTIFF

VS.

NOV 12 2020

CAUSE NO. 2020-0014 -JE

PAUL JOSEPH BERTUCCI

ANITA W. GIBBITT CLERK

DEFENDANT

BY *Dango* D.C.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER CAME ON FOR HEARING, the Defendant, Paul Joseph Bertucci's, Motion for Summary Judgement and the matter having been fully briefed by the parties, and argued before the Court on November 4, 2020, the Court hereby finds as follows:

1.

This civil action arises from Plaintiff, Michael D. Land's (hereinafter, sometimes, "Mr. Land") Complaint against the Defendant, Paul Joseph Bertucci (hereinafter, sometimes, "Bertucci"), filed on January 15, 2020, alleging claims of alienation of affection, intentional and negligent infliction of emotional distress [Doc. 1].

2.

Defendant Bertucci timely filed his Answer and subsequent thereto filed his Motion for Summary Judgment [Doc. 9] and a Memorandum in Support [Doc. 12]; and Plaintiff filed his Response in Opposition and for Rule 56(f) Relief [Doc. 14]. Defendant Bertucci filed his Reply [Doc. 15].

3.

Defendant Bertucci's Motion for Summary Judgment seeks dismissal of all claims based upon the Plaintiff's failure to file his civil action within the applicable statute(s) of limitations. The parties agree that the alienation of affection and negligent infliction of emotional distress claims are governed

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- Exhibit "3" -

by the three (3) year statute of limitations found in Mississippi Code Annotated §15-1-49, and as more fully set forth in *Carter v. Reddix*, 115 So. 3d 851, 857 (Miss. Ct. App. 2012). Likewise, the parties agree that the applicable statute of limitation for the intentional infliction of emotional distress claim is one (1) year, pursuant to Mississippi Code Annotated §15-1-35.

4.

A claim for alienation of affection accrues when the alienation or loss of affection is finally accomplished. The accrual of the claim, then, accrues when the affections of the spouse involved in the extramarital relationship are alienated. *Fulkerson v. Odom*, 53 So. 3d 849, 851 (Miss. Ct. App. 2011).

In the present matter, there is no genuine issue of material fact disputing that Mrs. Land left the marital home and abandoned the marital relationship on October 31, 2014. Since then, there has been no co-habitation with the Plaintiff, or even attempted reconciliation of the marriage. Mrs. Land filed for divorce on March 2, 2015, and has continuously sought a divorce from Mr. Land since that time, albeit unsuccessfully.

5.

The undisputed evidence establishes that prior to the abandonment of the marriage on October 31, 2014, Ms. Land verbalized her lost love and affection for Mr. Land, and her desire for a divorce. Plaintiff's complaint filed January 15, 2020, also alleges that Mrs. Land's affections were alienated at the time of the filing of the divorce on March 2, 2015.

6.

There is no genuine issue of material fact that the loss of affections were alienated and finally accomplished on October 31, 2014, more than five (5) years prior to the filing of the Plaintiff's Comp, and well beyond the applicable three (3) year statute of limitations for these claims.

7.

Summary Judgment must be granted if the Defendant “shows that there is no genuine issue as to any material fact, and that the moving party is entitled a judgment as a matter of law.” Mississippi Rules of Civil Procedure 56(c). When a Motion for Summary Judgment is made and supported as provided in Rule 56, an adverse party may not rest on the mere allegations or denials of pleadings. Instead, his response must set forth specific facts showing that there is a genuine issue for trial. It is therefore;

ORDERED AND ADJUDGED, the Defendant’s Motion for Summary Judgment on all claims is well-taken and is hereby granted. It is further,

ORDERED AND ADJUDGED, that Final Judgment is entered in this matter, and this matter is hereby dismissed with prejudice.

SO ORDERED AND ADJUDGED, this the 12th day of November, 2020.


CIRCUIT COURT JUDGE

Prepared and Submitted by:

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