FOR PUBLICATION

APPEAL NO. 01-032-GA

IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

MEREDITH ODEN,
Plaintiff/Appellant,

v.

NORTHERN MARIANAS COLLEGE,
Defendant/Appellee.

CIVIL ACTION NO. 00-0359

OPINION

Cite as: *Oden v. Northern Marianas College*, 2003 MP 13

Civil Action No. 00-0359
Argued on June 21, 2002
Decided August 8, 2003

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BEFORE: DEMAPAN, Chief Justice, CASTRO and MANGLONA, Associate Justices.

MANGLONA, Associate Justice:

¶1 Meredith Oden appeals from the trial court's dismissal, on statute of limitations grounds, of her complaint, containing tort claims against Northern Marianas College. The appeal being timely, we have jurisdiction pursuant to N.M.I Const. art. IV, § 3. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Meredith Oden ("Oden") brought this action against Northern Marianas College ("NMC") for damages sustained while attending NMC as a student. Specifically, Oden alleges that NMC negligently failed to supervise or control Bruno Dalla Pozza ("Dalla Pozza"), an NMC instructor whom she contends sexually harassed and molested her from the period between January 6, 1996 and April 10, 1996. Excerpts of Record ("ER") at 4 (Summons/Complaint).

¶3 In April of 1998, Oden filed a complaint in Federal District Court against Dalla Pozza and NMC, alleging sexual harassment, battery, negligent supervision and other claims. ER at 3 (Order Granting Motion to Dismiss). On October 29, 1999, the Federal District Court declined to exercise supplemental jurisdiction over Oden's common law negligence claims and dismissed them without prejudice pursuant to 28 U.S.C. § 1367.[1] *Oden v. Northern Marianas College*, Civ. No. 98-0020 (D.N.M.I. Oct. 29, 1999) (Order Re: Motion for Summary Judgment and Dismissing Common Law Claims without Prejudice).

¶4 The District Court entered final judgment in the action dismissing all claims on July 17, 2000. ER

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[1] Section 1367 generally provides that a district court, when considering claims over which the court has jurisdiction because the claims involve federal questions, must exercise supplemental jurisdiction over other related claims that are part of the same case or controversy. 28 U.S.C. § 1367(a). The statute further provides, however, that the district court may decline to exercise supplemental jurisdiction over such claims and dismiss them without prejudice in certain circumstances. 28 U.S.C. § 1367(c).

at 3 (Order Granting Motion to Dismiss). On August 16, 2000, Oden brought the present action in the Commonwealth Superior Court. *Id*. On September 20, 2000, NMC moved to dismiss, asserting, among other things, that the two-year statute of limitations for negligence claims in 7 CMC § 2503(d) barred the complaint. *Id*.

¶5 On October 10, 2001, the Commonwealth trial court granted the motion to dismiss, holding that Oden's claims are time-barred. *Id*. The trial court stated that since the actions upon which Oden based her complaint occurred January 1996 through April 1996 and since she did not file her complaint until August 16, 2000, her action was barred by the two-year statute of limitations. *Id.* The court further held that neither 28 U.S.C. § 1367(d) nor the equitable tolling doctrine tolled the running of the limitations period. *Id.*

QUESTIONS PRESENTED AND STANDARDS OF REVIEW

¶6 We consider the following questions:

1. Whether 28 U.S.C. § 1367(d), a federal tolling statute, saves Oden's claims from being barred by the statute of limitations. This is a question of law subject to *de novo* review. *Zhang v. Commonwealth*, 2001 MP 18 ¶9.

2. Whether the doctrine of equitable tolling saves Oden's claims from being barred by the statute of limitations. This is a question of law subject to *de novo* review. *Id*.

ANALYSIS

I. Commonwealth Rules of Civil Procedure 12(b)(6) Standard

¶7 In examining a trial court's dismissal under Com. R. Civ. P. 12(b)(6), we review the contents of a complaint by construing it in the light most favorable to the plaintiff and accepting all well-pleaded facts as true. *Sablan v. Tenorio*, 4 N.M.I. 351, 355 (1996). The failure to file a complaint within the limitations

period is sufficient to support a Rule 12(b)(6) dismissal. *Zhang*, 2001 MP 18 ¶11 (*citing Hutton v. Realty Executives, Inc.*, 14 P.3d 977, 979 (Alaska 2000)). The statute of limitations defense must be apparent from the face of the complaint, but a court may take judicial notice of matters of public record. *Id*. (*citing Truitt v. Metropolitan Mortgage Co.*, 609 So. 2d 142, 143 (Fla. Dist. Ct. App. 1992) and *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001)).

II. Federal Tolling Statute, 28 U.S.C. § 1367(d)

¶8 Oden argues that 28 U.S.C. § 1367(d) tolled the running of the two-year statute of limitations on her common law claims filed in this action. Section 1367(d) applies to those non-federal claims over which the district court declines to exercise supplemental jurisdiction. The statute states that the limitations period for any such claim "shall be tolled while the claim is pending [in federal court] and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d).

¶9 Oden states that the time to file suit in Commonwealth court should run for thirty days from the final judgment in the entire federal action and not from the dismissal of the claims over which the district court declined to exercise supplemental jurisdiction. She asserts that there is no definitive case law regarding when the tolling period ends and, since a party generally may only appeal final determinations, the tolling period should start running from final determinations as well. Therefore, contends Oden, since she filed her common law claims in the Commonwealth court within thirty days of the dismissal of her remaining claims in federal court, the two-year statute of limitations does not bar her claims. We disagree.

A. Plain Language

¶10 The Court's primary basis for statutory interpretation is the plain language of the statute. Only when such statutory language is unclear will the Court's analysis venture outside the plain wording of the statute. *Limon v. Camacho,* 1996 MP 18 ¶ 40, 5 N.M.I. 21, 28 (*citing Office of Attorney General v. Deala,*

3 N.M.I. 110, 117 (1992)).

¶11 Oden's argument attempts to inject complexity and ambiguity into a statute with simple and clear wording. Section 1367(d) states plainly that the period of limitations shall be tolled for any claim over which the district court declines to exercise supplemental jurisdiction "while the claim is pending and for a period of 30 days after it is dismissed." This explicit language spells out exactly when the limitations period runs, namely, thirty days after the district court dismisses the claim.

¶12 Nowhere in the statute does the plain language suggest, as Oden contends, that the limitations period runs thirty days from when the federal court disposes of the entire action. The statute unequivocally states that the limitations period will run thirty days from when the district court dismisses the *claim*, not the *action*. Accordingly, analysis of the plain language of Section 1367(d), which is the Court's principal method of statutory interpretation, leads to the conclusion that the limitations period runs from the date the district court dismisses the supplemental claims and not the date of final disposition of the entire action.

B. Case Law

¶13 It is true, as Oden asserts, that there is no definitive case law to shed light on this issue. One case, *Lucas v. Muro Pharm., Inc.*, No. 94-4052, 1994 Mass. Super. LEXIS 462 (Dec. 2, 1994), discusses the issue of when the limitations period runs under Section 1367(d), but in a different context than the present case. In *Lucas*, the district court dismissed the plaintiff's entire action, which included federal discrimination claims and supplemental state law claims, on the same date. The plaintiff appealed the dismissal, and the First Circuit affirmed.

¶14 The question before the Massachusetts Superior Court in *Lucas* was whether the thirty-day limitations period ran from the district court's dismissal or the First Circuit's affirmation of the dismissal. *Id.* at *6. The *Lucas* Court held that the limitations period ran from the First Circuit's decision, reasoning

that it would be a waste of judicial resources to necessitate a filing in state court when a pending appeals court decision may obviate that need. *Id.* at *7-8.

¶15 The *Lucas* situation is inapplicable to the instant case. In *Lucas*, the plaintiff was waiting to see if the appeal eliminated the need to file in state court. The *Lucas* court found that it was not necessary to require filing in state court while waiting for an appellate decision that would determine whether such a filing was even needed.

¶16 Here, Oden has not asserted that she appealed the District Court's dismissal of her supplemental claims. She went directly to Commonwealth court to vindicate those claims, and she has not furthered any reason why she waited until the District Court disposed of her federal claims to do this. Therefore, the judicial economy notion is not involved here.

¶17 Where no appeal of the dismissal is filed, such as in the present situation, a filing in Commonwealth court is inescapable if the claimant wishes to vindicate those claims, regardless of what happens to the remaining federal claims. In *Lucas*, the decision of whether to file in state court depended on what happened in the appeal, whereas here, the decision of whether to file in the Commonwealth courts had no relation to the disposition of the remaining federal claims. Oden would have had to file in the Commonwealth courts anyway, the only question was when, not whether. Thus, our reading of Section 1367(d), that in this situation the limitations period runs from the date of dismissal of the supplemental claims, will not require a possibly unnecessary filing in the Commonwealth courts. Therefore, *Lucas* is not relevant to this inquiry.

¶18 We agree with the trial court that Section 1367(d) does not save Oden's claims from being time-barred. As applied to this set of facts, the tolling period in Section 1367(d) runs from the date of the district court's dismissal and not from the date of final disposition of the action.

¶19 Oden's concern that filing in Commonwealth courts within thirty days of dismissal would lead to the possibility of inconsistent determinations in multiple jurisdictions is overblown. If this danger exists, the Commonwealth courts could stay the case until the district court disposes of the federal claims.

III. Equitable Tolling

¶20 Oden argues that the doctrine of equitable tolling saves her claim from being barred by the two-year statute of limitations. We disagree. Although we have never applied this doctrine, we discussed equitable tolling in *Zhang*, 2001 MP 18.[2] We stated that this doctrine, recognized in California and other jurisdictions, in certain circumstances relieves a party from the statute of limitations when renewing a claim previously filed in federal court. *Id.* at ¶18 (*citing Addison v. California*, 578 P.2d 941, 944-45 (Cal. 1978) and *Collier v. City of Pasadena*, 191 Cal. Rptr. 681, 684 (Cal. Ct. App. 1981)). The rationale is that it would be "'inefficient, awkward and laborious'" to pursue actions simultaneously in both federal and state court when the actions are based on the same facts. *Id*. (*quoting Addison*, 578 P.2d at 944).

¶21 In *Zhang*, we outlined three factors considered when deciding whether to apply equitable tolling: (1) the defendant must receive timely notice of the claims; (2) the defendant must suffer no prejudice from the delay; and (3) the plaintiff must act reasonably and in good faith. *Id.* at ¶19 (*citing Collier*, 191 Cal. Rptr. at 684 and *Ervin v. County of Los Angeles*, 848 F.2d 1018, 1019 (9th Cir. 1988)). We added that since a defendant receives proper notice of the initial federal suit, the first two elements are usually undisputed, which makes the third element the most determinative. *Id*. (*citing Kolani v. Gluska*, 75 Cal. Rptr. 2d 257, 261 (Cal. Ct. App. 1998)).

¶22 To elaborate on the meaning of this third element, we recognized that a late filing that results from

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[2] Even though we issued the *Zhang* decision two months before Oden filed her appellate brief, Oden fails to mention *Zhang* in her brief. We assume that this failure to discuss the leading case in the Commonwealth on equitable tolling was only a major oversight by Oden's counsel and not an attempt to intentionally mislead the Court.

counsel's misreading of a statute's allowable refiling period is "'at best . . . a garden variety claim of excusable neglect'" that will not invoke equitable tolling. *Id*. at ¶20 (*quoting Irwin v*. *Dep't of Veterans Affairs*, 498 U.S. 89, 96, 111 S. Ct. 453, 458, 112 L. Ed. 2d 435, 444 (1990)). In the present situation, Oden's counsel misread Section 1367(d), contorting the statute's plain wording from thirty days from the dismissal of the supplemental claims to thirty days from the disposition of the entire action. Therefore, according to *Zhang*, this situation is undeserving of equitable tolling.

¶23 Further discussing this third element in the equitable tolling analysis, we stated that an excessive time interval between the dismissal and the new filing date cannot be "reasonable" without extraordinary extenuating circumstances. *Id*. (*citing Kolani*, 75 Cal. Rptr. 2d at 262). After analyzing *Kolani*, which found that the longest delay ever allowed in California under the doctrine was thirty days, we found that the two-month delay by Zhang was excessive and unreasonable. *Id*. at ¶¶ 21-22.

¶24 In the present situation, the delay was nearly ten months. Oden asserts that she was lulled into not filing her action sooner because NMC urged her not to file her civil action until NMC had a chance to resolve the claims internally through their administrative process. This explanation begs the question as to why NMC's actions prevented her from filing her action in the Commonwealth courts but not from filing the exact same claims in federal court. Not only is the excessive delay of almost ten months unreasonable, but Oden's purported explanation for this delay is irrational as well.

¶25 Therefore, we agree with the trial court that equitable tolling should not be applied to save Oden's claims.[3]

CONCLUSION

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[3] Because the statute of limitations bars Oden's claims, we do not need to reach the question as to whether a direct action exists against NMC under the Commonwealth Constitution.

¶26 For the foregoing reasons, the trial court's order dismissing the complaint is **AFFIRMED**.

So Ordered this 8th day of August 2003.

/s/_____
MIGUEL S. DEMAPAN, Chief Justice

/s/_____
ALEXANDRO C. CASTRO, Associate Justice

/s/_____
JOHN A. MANGLONA, Associate Justice