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JOHN SMITH, a fictitious person. : SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
: Docket No.: A-1339-16T3
Plaintiff/Appellant, :
: Civil Action
v. :
: On Appeal From an Order entered
: October 19, 2016
ARVIND R. DATLA, MD; CONSULTANTS : Superior Court of New Jersey
IN KIDNEY DISEASE, PA, ABC 1-20 : Law Division - Mercer County
(one or more fictitious : Docket No.: MER-L-1527-15
corporations), DEP COMPANY 1-20 :
(one or more fictitious : Sat Below:
companies); JOHN and/or JANE DOE :
1-20 (names being fictitious). : Hon. Douglas H. Hurd, P.J.Cv.
:
Defendant/Respondent. :
:
:
:

BRIEF OF AMICUS CURIAE NEW JERSEY STATE BAR ASSOCIATION

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Preliminary Statement

The statute of limitation questions at the crux of this matter present access to justice issues with far-reaching implications. The New Jersey State Bar Association (NJSBA) seeks to participate in this matter to address those implications in an effort to assist the Court in resolving the dispute in a manner that does not shutter the courthouse doors for future litigants.

The Court is being asked to apply a single statute of limitations in a situation where multiple claims are pled, but where the claims arise out of a common set of facts or conduct. This scenario presents itself almost daily in courtrooms across the state, as complaints plead alternative causes of action based on contract, tort, personal injury, defamation, professional negligence, and any number of other legal theories. Even though each cause of action may rely on the same set of facts, each claim has unique criteria necessary for recovery, and its own statute of limitations. The NJSBA is not aware of any reported decision in which multiple claims were distilled to the shortest applicable statute of limitations, as is urged here. To do so would be in stark contrast to the current handling of civil causes of action, and would prevent the advancement of many viable and meritorious claims.

The Court is also being asked to apply a one-year statute of limitations to claims alleging violations of the Aids Assistance

Act (the Act), a statute intended to protect individuals living with HIV/AIDS from disclosure of their medical status. The NJSBA submits that such an application is illogical and potentially discriminatory, as it would afford individuals living with HIV/AIDS less protection than if the statute intended to protect them did not exist.

Finally, the Court is asked to analogize a claim brought under the Act to a defamation claim, subject to a one-year statute of limitations. The NJSBA believes that analogy is misplaced. Rather, claims brought under the Act are more akin to causes of action that carry a two-year statute of limitations, such as the New Jersey Law Against Discrimination (LAD), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and other medical malpractice claims.

In light of the above, the NJSBA urges the Court not to embark down a slippery slope that could dramatically alter how multiple causes of action are plead and considered, and to apply a statute of limitations to claims brought under the Act consistent with claims brought under similar measures.

Procedural History and Statement of Facts

The NJSBA relies upon the procedural history and statement of facts as established by the parties in their respective briefs.

Legal Argument

I. A Decision by this Court to Apply a Single Statute of Limitations to Multiple Distinct Causes of Action Arising from Common Facts has No Support in The Law and Would Have a Devastating Impact on Litigants' Access to Justice Through the Courts.

The fundamental proposition posed by this appeal is the notion that a single statute of limitations should be imposed in a circumstance where all of the claims arise out of a common set of facts or conduct. See Db25. In this case, Plaintiffs have pled three distinct causes of action arising out of the same conduct, specifically, a medical malpractice claim, a statutory claim under the Act, N.J.S.A. 26:5C-1, et seq., and an invasion of privacy claim. See Pb8.

The proposition urged is without citation to any direct authority or even analogous case law in support. If accepted by this Court, it would dramatically alter civil causes of action of all types in a manner that would restrict citizens' access to the justice system.

Compounding this disservice to the public is the equally unsupported argument that in a circumstance where a single statute of limitations is selected by a court, it should be the most restrictive one available. In this case, that would be a one-year statute of limitations.

The combined impact of these two legally unsubstantiated arguments, if accepted, would have far-ranging negative consequences on litigants who seek to resolve many other types of disputes.

Our courts are routinely presented with cases that plead multiple causes of action arising out of common facts, but to which different statutes of limitation apply. For example, personal injury claims arising out of construction accidents often alternatively plead breach of contract claims (with a six-year statute of limitation) and negligence claims (with a two-year statute of limitations). It would be unfathomable for one to credibly argue that all of those claims should be governed by a single statute of limitations, and if so that it should be the shortest applicable statute of limitation. Research did not disclose any reported decision in which that proposition was even argued, let alone accepted by a court.

Another example highlighting that point is this Court's decision in DiIorio v. Structural Stone & Brick., Inc., 368 N.J. Super. 134 (App. Div. 2004). In that case, the Court analyzed whether the plaintiff's claims were cognizable under the Uniform Commercial Code (four-year statute of limitations), the Consumer Fraud Act (six years), or common law tortious injury to real or personal property (six years). Id. at 136. While the court analyzed which of the alternatively pled causes of action were

cognizable under the facts presented, including the differing statutes of limitation governing those claims, there was never any suggestion that a single statute of limitations should govern all causes of action pled or that the shortest limitation period would govern all surviving claims. Id. at 140-43; see also Dean v. Barrett Builders, 406 N.J. Super. 453, 467-68 (App. Div. 2009), rev'd on other grounds, 204 N.J. 286 (2010).

Both parties to this appeal also discuss the perceived implications of Estate of Behringer v. Medical Center at Princeton, 249 N.J. Super. 597 (Law Div. 1991). In that case a common law medical negligence claim was pled along with a statutory LAD claim. Id. at 605. Defendants argue the logic of the court's opinion in that case supports treatment of the within privacy claim as analogous to a defamation claim, with a resulting one-year statute of limitations. See Db9-11. Putting aside for the moment whether the analogy is supported by law, were this Court to accept the balance of Defendants' arguments the period of limitations for the separately alleged statutory Act claim would be shortened to match the defamation statute of limitations.

The logical extension of Defendants' argument would further result in that shorter statute of limitation being applied even if the common law invasion of privacy claim were not pled, just because the Act claim "sounds" in defamation. Moreover, that same logic would extend to any case in which a common set of facts

allowed for multiple causes of action to be pled, regardless of which theories of recovery were advanced by a plaintiff.

The chilling effect on access to justice through the courts would be devastating, and many causes of action presented in ongoing cases would be subject to dismissal. The NJSBA submits that, regardless of which limitation period this Court determines should apply to the common law invasion of privacy claim the Plaintiff alleges, the Court's chosen limitation period must apply to only that claim.

II. Individuals Living with HIV/AIDS Should Not be Afforded Less Protection Under the Aids Assistance Act Than Protection Provided for Individuals Under Similar Measures

Individuals bringing claims for discrimination or for unauthorized disclosure of private medical information have a variety of legal theories available to include in their pleadings. The LAD provides protection for, among other things, an individual's disability, including their HIV/AIDS status. N.J.S.A. 10:5-5(q). Private medical information is also protected under both HIPAA, 42 U.S.C.A. 1181, et seq., and the common law, which provides remedies for any person who suffers damages as a result of an unauthorized disclosure of private medical information. Claims brought under any of these measures are subject to a two-year statute of limitation.

Individuals bringing a claim for unauthorized disclosure of their HIV/AIDS status have the Act as an additional tool provided by the Legislature. In establishing the Act, the Legislature recognized that individuals living with HIV/AIDS have a heightened susceptibility to harm if information of their medical condition is disclosed without consent. N.J.S.A. 26:5C-14. In spite of the remedies available through the other means noted above, the Legislature determined to provide additional specific statutory protection against unauthorized disclosure of HIV/AIDS status. N.J.S.A. 26:5C-14 not only provides for recovery of actual damages,

but also provides for equitable relief, attorney's fees and even punitive damages, in order to recognize unique damage done to a person "aggrieved as a result of a violation" of the Act. Id. The one factor missing from the Act is an applicable timeframe within which a claim must be brought.

Although the Legislature did not provide a specific statute of limitations, it is illogical to conclude that it would have intended to provide lesser protections under the Act than afforded elsewhere. If, however, the Court were to apply a lesser, one-year statute of limitations to any recovery under the Act than that applied to other avenues of recovery, the result would be exactly that—individuals living with HIV/AIDS would actually be afforded less protection under the Act than if the Legislature had never sought to provide added protection.

To the extent that an individual would have two years to assert a LAD, HIPAA, or common law claim for damages resulting from an unauthorized disclosure of any other type of private medical information, a person living with HIV/AIDS must be entitled to the same protection. Any ruling by this Court that provides a shorter limitation period would not only frustrate the purpose of the Act but would effectively discriminate against the very class of people the Act was enacted to protect.

For these reasons, the NJSBA urges the Court to find that a two-year statute of limitations applies to any claim for recovery brought under the Act.

III. Claims Asserted Under the AIDS Assistance Act Should be Subject to a Two-Year Statute of Limitations, Consistent with the Time Limitation in Other Measures; Analogies to a Defamation Claim as Justification for a One-Year Limitations Period are Misplaced

While Defendants posit that disclosure claims under the Act should be viewed as analogous to a defamation claim with a one-year statute of limitations, no legal support is offered. The NJSBA believes, on the contrary, that such a claim is more akin to claims that carry a two-year statute of limitations, such as claims under the LAD and claims alleging the disclosure of other private medical information.

The Act seeks to protect individuals living with HIV/AIDS from disparate treatment by allowing a person who has or is suspected of having AIDS or HIV infection to bring a civil action for unauthorized disclosure of the condition. N.J.S.A. 26:5C-14. It also allows punitive damages when the disclosure is wantonly reckless or intentionally malicious. Id. Despite providing for increased protections, as previously noted, the Legislature failed to provide for a statute of limitations.

Like the Act, the LAD's provisions also left open the question of an appropriate statute of limitations. In grappling with the appropriate time limitation, the Supreme Court determined that a uniform statute of limitations should apply to all LAD claims. Montells v. Haynes, 133 N.J. 282, 291 (1993). The Court further

determined that the period of limitations should be two years noting that discrimination claims are more akin to personal injury claims. Id. at 292-93. In fact, "the statute strikes directly at conduct that injures the personhood of another. A discrimination claim cuts most deeply at the personal level." Id. at 294. The statute has long been determined to apply to discrimination against a person suffering from AIDS. See Behringer, supra, 249 N.J. Super. at 642-44; see also Poff v. Caro, 228 N.J. Super. 370, 376-78 (Law Div. 1987).

Similarly, common law claims for unauthorized disclosure of private medical information are often asserted in the form of a medical malpractice negligence action, as is the case here, and are ordinarily subject to a two-year statute of limitations.

Defamation claims, on the other hand, are subject to a one-year statute of limitations. Defendants argue that the disclosure of an individual's HIV/AIDS status is akin to defamation and, therefore, should be treated similarly. Analogizing an unauthorized disclosure claim under the Act to one brought for defamation, however, is flawed for several reasons. Unlike a typical defamation claim, the information protected from unauthorized disclosure under the Act is true. In addition, unlike a defamation claim where a lawsuit provides the opportunity for the defamed person to vindicate his or her reputation, the damage caused by an unauthorized disclosure of an individual's HIV/AIDS

status cannot be undone by ordinary damages for reputational harm recoverable in a defamation lawsuit, as evidenced by the Legislature's decision to provide for other damages to one so aggrieved. The interest protected by the Act is not the reputation of the HIV/AIDS victim. Instead, it is that person's right to control access to his or her private medical information.

Perhaps the greatest distinction between causes of action brought under the two theories is that a defamation claim is subject to a single publication rule. Barres v. Holt, Rinehart & Winston, Inc., 131 N.J. Super. 371, 387-88 (Law Div. 1974), aff'd o.b., 141 N.J. Super. 563 (App. Div. 1976), aff'd o.b., 74 N.J. 461 (1977). The trial court in Barres offered two reasons for adopting the single publication rule: to prevent the constant tolling of the statute of limitations thereby destroying the short limitations period with each subsequent repetition of the defamatory statement, and convenience to the parties in consolidating all publications into a single lawsuit. Id. at 379. In stark contrast, the Act provides that "each disclosure made in violation of this act is a separate and actionable offense." N.J.S.A. 26:5C-14(b). The rationale underlying the single publication rule cannot be reconciled with the clearly expressed legislative intent related to the Act.

While the Legislature was silent on the statute of limitations applicable to claims under the Act, its remedial intent aligns

more closely with claims brought under the LAD, HIPAA or common law medical malpractice principles than those brought under the guise of defamation.

For these reasons, the NJSBA urges the Court to apply a two-year statute of limitations to claims alleging a violation of the Act, bringing it in line with the applicable statute of limitations to similar claims.

CONCLUSION

The NJSBA cautions that the Court's decision in this matter could have broad applications that would denigrate the ability of citizens to access justice. Uniformly applying the shortest applicable limitations period to all claims alleged in a single lawsuit has no support in the law and is unsustainable in practice. Further, applying a one-year statute of limitations to disclosure claims brought under the Act is contrary to its purposes, would provide less protection than that afforded individuals bringing disclosure claims under other remedial measures and could lead to discriminatory results. Finally, claims brought under the Act are akin to claims brought under similar measures where a two-year statute of limitations is applicable. Analogizing to a defamation claim, where a one-year statute of limitations applies, is misplaced.

For the reasons noted above, the NJSBA urges the Court to affirm that multiple causes of action arising from the same set of facts are not subject to a single, shortened, statute of limitations, and that the applicable limitation period for

claims brought under the AIDS Assistance Act is two years,
consistent with the time limitation applied to similar measures.

Respectfully submitted,

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Dated: 2/6/17