Brief with Record Extract

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2019
No. 2496

MARGUERITE R. MORRIS

Appellant

v.

TIMOTHY ALTOMARE, Et al

Appellee

Appeal from the Circuit Court for Anne Arundel County
(The Honorable Dennis M. Sweeney)

BRIEF OF APPELLANT MARGUERITE R. MORRIS

&

RECORD EXTRACT

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STATEMENT OF THE CASE

On October 3, 2019, Marguerite R. Morris, Prose, filed a Motion before the Honorable Court charging Anne Arundel County police officer's Chief Timothy Altomare, retired Chief James Teare, Sr., Sgt. Jacklyn Davis, Det. Vincent Carbonaro, Sgt. Keith Clark and Lt. John Poole with libel, defamation, intentional infliction of emotional distress, fraud, and conspiracy. The motion also included Anne Arundel County, Maryland for whom the County filed a motion to dismiss. No objection was filed by the Appellant.

The Appellant alleged there were illegal actions taken by officers to protect retired officer James Teare, who while embroiled in a documented corruption scandal (E530), had issued an illegal order in the handling of the death investigation of an African American woman named Katherine Sarah Morris (Kathy) who was the daughter of the Appellant.

November 15, 2019, the Appellee filed a *Motion to Dismiss and/or for Summary Judgment, along with its Memorandum in Support of Anne Arundel County Maryland's Motion to Dismiss.*

On December 4, 2019, the Appellant filed *Response to the Motion to Dismiss and/or for Summary Judgment and a Memorandum in support of Denying the Motion to Dismiss and/or for Summary Judgment.*

On Dec 15, 2019 the Court ordered a Complex Motions Hearing for Jan 27, 2020.

On Jan 17, 2020 the Appellant issued subpoenas to depose nonparty persons including the Medical Examiner Dr. Patricia Aronica (ME) to which the State of Maryland filed for a protective order. The ME claimed improper service alleging Appellant emailed her the

subpoena. The Appellant then filed showing proper service so the ME's protective order would likely fail. The County then filed for a protective order on ME.

Jan 21, 2020 the Appellees untimely filed a *Memorandum In Reply To Plaintiff's Response To Defendants' Motion To Dismiss and/or For Summary Judgment* stating that the Appellants complaint should be dismissed alleging statements were not defamatory, she could not establish a prima facie claim for intentional infliction of emotional distress, fraud or conspiracy and the Appellant had failed to timely provide notice under Maryland's Local Government Tort Claims Act. This motion was received January 25, 2020

January 27, 2020, the Court held the Complex Motions Hearing.

The Appellant scheduled nonparty depositions for February 17, 2020 and sent interrogatories on all Appellees.

On Feb 5, 2020 Judge Dennis Sweeney signed a final judgement and decree dismissing all claims and February 24, 2020 the Appellant filed its Notice of Appeal.

QUESTIONS PRESENTED

1. Does there exist a reversible error over the elements of the cause of action?
2. Was the trial court erroneous in its ruling on the statute of limitation when it is in direct conflict with the ruling of another judge in a related matter that involved the same documents?
3. Does the statute of limitations go to discovery?
4. Was the trial courts dismissal an abuse of discretion?
5. Was the trial court erroneous because it overlooked the elements of the complaint of defamation?
6. Was the trial court erroneous because it overlooked the elements of the complaint of conspiracy?

7. Was the trial court erroneous because it overlooked the elements of the complaint of Intentional Infliction of Emotional Distress?

8. Was the trial court erroneous because it overlooked the elements of the complaint of fraud?

9. Was the trial court acting arbitrarily and capriciously in dismissing the complaint when there existed multiple disputed facts?

10. Was the trial court erroneous because it overlooked the procedural error in the matter related to the alleged tort claims notification deficiency notice that was required to be included in the original filing of the Appellee Motion Dismiss?

STATEMENT OF FACTS

In 2012 Anne Arundel County government was embroiled in a major corruption scandal that made national news involving County Executive John Leopold, and Appellee Chief James Teare (*hereinafter Teare)* (E530). Leopold resigned, was charged and convicted. (E530) Teare resigned in lieu of being charged criminally. (E530) Before his resignation, Katherine Sarah Morris (hereafter Kathy) died on May 6, 2012. She died as a victim of marital fraud, (E441-E442) from carbon monoxide poisoning from two charcoal grills lit in her car. She was worth $100,000 (E441) dead. Her death is ruled a suicide at the death scene with still today, no investigation to the contrary.

Responding to the scene was Appellee Officer Keith Clark (*hereafter"Keith"*) (E537) who lacked experience in processing a homicide scene (E696) and made a series of investigative errors.

Subsequently per a Maryland Public Information Act (MPIA) request of Oct. 3, 2016 there was a release of "9,259 pages of internal communications" **(hereinafter referred to**

as "the communications") many of which are the evidentiary substances of this complaint.

In "the communications" was a request for a copy of the 911 tape on Oct. 2, 2013. An officer wrote "We did not burn a digital copy of the 911 call by the security dispatch due to the "Keith". (E537)

In "the communications" is also a Briefing Incident Report.." (E696) It reads "Sgt. Clark, Homicide, was contacted by Patrol and elected to check out the scene before dispatching members of the Homicide Unit.."

At the request of the parents a Congressional inquiry was issued by Congressman Steny Hoyer (E532) and directed to Teare. At the family's request Teare ordered a reinvestigation. Because of conflicts of interest the family requested "Keith" be removed from the investigation. (E533-E534) Teare assigned Appellee Vince Carbonaro (*hereafter Carbonara*) and Appellee John Poole (*hereinafter Poole*).

The Appellant posed questions, but repeatedly trusted the responses she received were genuine and authentic but repeatedly they failed the truth test. Finally after the upfront payment of nearly $5,000 for an MPIA response there was "the communications" release. (E463 and E464)

Following the release of internal communications there arose concerns about what the Appellant had been told, versus what was in the internal documents. Upon review of "the communications" it was clear that there had been an ensuing cover-up, started during a time of documented corruption (E530) within the police agency that resulted in a direct order by someone in authority who ordered a reinvestigate but with controlled outcomes.

In other words do not deviate from the original findings, regardless of any evidence to the contrary. (E880)

Therefore the Appellant is informed and believes and thereon alleges that each Appellee was at all material times an agent, servant, employee, partner, joint venture, co-conspirator, and/or alter ego of the remaining Appellees, and in doing the things herein alleged, was acting within the course and scope of that relationship. The Appellant is further informed and believes and thereon alleges that each of them gave consent, aid, and assistance to each of the remaining Appellees, and ratified and/or authorized the acts or omissions of each Appellee as alleged herein and hereafter.

At all material times, each Appellee was jointly engaged in tortious activity and integral participant in the conduct described herein, resulting in the deprivation to the Appellants harm and expense. *Priscilla Lefebure v. Barrett Boeker 217 (0:19-cr-30989), (5th Cir. 2019)*

From Appellant's *Memorandum In Support Of Denying Defendants Motion To Dismiss And Or/For Summary Judgment,* the Appellant clearly stated that this case is about the improper and or illegal activities of the officers themselves. It is illegal to give an order to control the outcomes of an investigation. To have multiple Appellees participate in obeying that order is conspiracy. For the Appellees to make false statements and circulate them to show the Appellant in a false light is both defamation and libel. For Appellees to falsify reports is illegal. For Appellees to suppress evidence is illegal. The manipulation of evidence for a desired outcome is illegal. See *Priscilla Lefebure v. Barrett Boeker (0:19-cr-30989), Fifth Circuit U.S. Court of Appeals*.

The documented deliberate and illegal acts of the Appellees are as follows:

Appellee Altomare – tampering with evidence

Stated "..Reverend Morris turned over digital evidence.. believed this evidence showed Katherine's cellular phone moving in the hours before her body was found. I directed the data to be reviewed.. An analysis.. showed ..phone was maintaining a database of cellular towers surrounding it rather than it moving.." The Appellant responded "This statement is.. false.. Altomare cannot, nor his lab, state with absolute certainty that.. Morris's phone was not moving.. because they failed to request the appropriate phone records to properly determine.. cell tower triangulation. (E681-E682)

The Appellant requested a copy of Kathy's cell phone extractions.. The Appellees gave her a PDF file of extractions. Subsequently forensics data extraction experts selected the Morris case as pro-bono project.. performed the same data extractions as Appellees using the same software as the Appellees.

The Appellant flew to Las Vegas, was met by a 20/20 reporter who recorded findings. (E505) The two extractions are compared and it found a block of records deleted from the Appellees PDF file. That block that was in the Expert Data Forensic (E519) extractions copy reflected the phone at different GPS coordinates possibly reflecting movement. (E519, E661-E678) The Appellant was instructed to request the "Raw Data" files used by Appellee's to create the PDF file. Reason, the PDF file can be manipulated but raw data files cannot.

That request went to Altomare in July of 2015 who for two years failed to respond.(E650-E652) In 2017 a second file request yielded a claim that the hard drive

containing "Raw Data" investigative files had crashed and were "completely unrecoverable".

False information circulated to deter support

The Appellant requested a meeting with the County Executive over concerns about Altomare and the ("communications") . (E465) She was denied the meeting in part because of claims of an FBI investigation that agreed with the Appellee's handling of the investigation.

The Appellant requested assistance from the Convener of Caucus of African American Leaders who said he was also told by a senior level police officer that there had been an FBI investigation into Kathy's death and their findings agreed with the Appellees. (E871-E872) So on the Appellants behalf he directed the September 2018 communication requesting clarification of the Appellees claims when a FOI response denied its existence. (E868-E869)

Ultimately Altomare is asked to explain **one** point but instead responded with a four page email in which he repeatedly averred statements he knew or should have known to be false and harmful about his interactions with Appellant.

Altomare then states that the FBI investigation consisted of an FBI agent stopping by was briefed by the Appellees and "posed no questions" Altomare states nothing about FBI agreeing – he just says they asked them no questions. But the letter from the county states differently is says "was reviewed by the FBI". (E465)

Subsequently, Appellant has confirmed (and on admission by Altomare in Oct 2018) (E873-E875) that this file and or update contained falsified public documents to include

false DNA findings, false information about the missing video footage, false financial information on the decedent and falsified responses to the homicide panel.

By that communication he was intentionally inflicting emotional distress, defamation, and libel to clearly discredit and foster disbelief in Appellants claims of a manipulated investigation designed to control outcomes to cover up the corrupt conduct of Appellees.

Tampering with evidence

In October 2018 Altomare states for the first time that portions of a **2012** surveillance video footage had been deleted.

In October 2018 Altomare identifies Appellee Teare as the officer that ordered the reinvestigation.

"The communications" identify Appellee Teare as the officer that ordered the reinvestigation with controlled outcomes. "No Deviation" (E479, E535, E558)

Appellee Retired Chief James Teare, Sr. – Obstruction of justice

In 2012 was one of two leaders involved in documented corruption. They were County Executive John Leopold and former Police Chief James Teare. (E530)

Teare was asked to resign in lieu of facing criminal charges for his part and/or connection to John Leopold's illegal activities. (E530)

"The Communications" state in an *Incident Briefing,* titled *Suicide – Katherine Sarah Morris b/f/031190 22yoa* that Col Teare assigned Detective Carbonaro to replace Sgt. Clark (E696)

Appellee Altomare states in E873-E875 that Appellee ordered the reinvestigation assigning it to Appellee Keith.

An internal report reads “Col. Teare met with Marguarite Morris and the NAACP. He directed me to re-assign the case and remove Sgt. Clark..”

In October 2018 Appellee Chief Altomare stated that Appellee Teare ordered the reinvestigation. (See E873-E874) Documents show that the scope of the investigation was to be limited. **(**E479, E535, E558**)**.

Falsification of Public Records

Appellees Poole and Carbonaro

In “the communications" there was a written summary from a Cold Case Review Committee (also referred to as the Homicide Panel) that met February 2014.

Included in “the communications" was an internal memorandum dated November 22, 2013 authored by Appellee Poole who writes “**As a side note**: Appellee Carbonara, **who is an extremely thorough and capable investigator** did not originally acquire the above details due to the fact he was given specific marching orders regarding the initial investigation and instructed not to deviate from same.” (E479, E535, E558). (All emphasis and bolding are as written in the original email). (E560)

As a result of this directive Carbonaro was selective in his reporting and suppressed any facts that would have been relevant for a non-suicide finding, and did so on multiple occasions. (E582-E586, E605-E607)

An example of Carbonaro’s actions is his reporting of only two phone calls that Kathy made in the hours before her death. (E605-E607, E441)

Carbonaro only reports.. “In the outgoing call section of Miss Morris’s call record, I observed two calls to (347) 931-8643 on May 2, 2012…..” that the decedent made to a person of interest named King (E477 E478)

Unreported by Carbonaro are three incoming calls (From King) to Kathy from (347) 931-8643 at 4:11 pm, 4:16 pm and at 4:21 pm on May 2, 2012 prior to her calling King back.

Unreported by Carbonaro are several emails from King at 4:17 pm, 4:26 pm and at 4:57 and 5:10 pm; (E606) making his statement about there being no additional information about the case false. This person named King spent three hours using an alias trying to reach Kathy all of which went unreported by Poole or Carbonaro to the Homicide Panel.

Pooles manipulation of evidence to control outcomes of a Homicide Panel Review (Cold Case) (E539) of a death

The Feb 2014 memo titled *Katherine Morris Suicide Review Summary* and is written by Poole. It stated that “Per the request and recommendation of the Homicide Panel the following points/facts were reexamined and reviewed...” (E551-E552).

1. **Homicide Panel asked** “Obtain particulars on the surveillance video activity capturing Ms. Morris’ as she committed suicide and answer Mrs. Margarite Morris request regarding “missing” footage;

   To which Poole reports: Morris expressed concern that portions of the video were missing or the video had been disturbed. This is most likely due to the fact there are several hours of footage where there is no motion on the screen and it appears

as if the recording is "paused". The video is motion activated and will only records if cameras observe movement**.** (E486, E551-E552) (E486, E552)

Facts. **The 2012 video portions were deleted or instructed to be deleted in 2012** by "Keith" and or at his direction. Yet, in 2013 the Appellees give Appellant a copy instructing her to take it to the FBI for assistance with getting it to play. It's a cruel wild goose chase. In 2012 they knew why it was missing. (E906)

2. **Homicide Panel asked** "Attempt to establish.. Morris purchased..grills utilized as the method..."; (of death) Internal documents show that Appellee Poole obtained via grand jury subpoenas the financial records of Kathy. (E536).

   To which Poole reports: One credit card that showed "No Transaction Activity at This Time" .. however no transactions came through" and "no activity on credit card after requesting "detailed purchase and billing records, covering the time period of March 17, 2012 through May 16, 2012; (See Exhibit 39) Leading the Homicide panel to the false conclusion that Kathy Morris "had not made any purchases in the time frame..". (E491, E492, E551)

   Facts. In "the communications" is a Crime Scene Unit Supplement dated May 6, 2012 states that Kathy's purse **had "several credit cards" in it.** (E658). The decedent had at least two other cards one of which she used on a daily basis. (E489, E582) and from.. May 1, 2012 to May 24, 2012 there were more than 23 transactions. (E491-E492, E583-E584). Among these transactions.. a Walmart (May 2, 2012) and CVS (May 3, 2012) purchase and those receipts showed Kathy had not purchased any of the items used to end her life. (E495-E496, E585-E586)

3. **Homicide Panel asked** "Forensically examine the packaging of the disposable grills, nighttime sleep aid pill bottle, and lighter recovered…ascertain if any foreign fingerprints are present" (E551)

   To which Poole reports: "no viable samples" which connotes they possibly exist but are not readable (E552)

   The facts are The Evidence Collection Unit attempted to process the recovered grills, pill bottle and lighter for latent prints. What is recorded in Supplemental Report #12-716431.4 dated 11-22-13 is Negative Results" for the sleeping pill bottle, grills and lighter; and the report further reads:

   a. "no possible latent lifts were obtained from any of the packaging material";
   b. "No possible identifiable latent lifts were obtained from any of these surfaces."

   The Forensic Biology report (E593-E597) actually states that DNA conclusions on the packaging for the two disposable charcoal grills was that "..due to degradation or an insufficient amount of recoverable DNA..no conclusions can be made regarding this item";

This is not reported to the homicide panel.

False DNA findings

In a letter from the OCME and coauthored by Poole (E417 and E424) the Appellant is informed "..DNA testing that was performed on the lighter..and grills by AACPD. Kathy's DNA was found on one of the grills outer packaging and on the lighter." (E419 and E425) which was deliberately misleading because if on the outer packaging, it implied Kathy had

opened the package of grills and contradicted the Mon. Apr 27, 2015 email exchange with Lt. Richard Alban and Poole which states that DNA came back on the lighter and on one of the burned grills to be Katherine Morris' and there was "No Other DNA." (E503, E507, E592)

The DNA conclusion in the Forensics Biology Report on the lighter was that "A mixture of DNA from at least two individuals was obtained from this item. (E503, E507) This is a partial mixture..which may be due to degradation or an insufficient amount of recoverable DNA. Katherine Morris cannot be excluded as a possible contributor to this mixture." (E503)

"On Mon, Apr 27, 2015 AACPD officer Lt. Richard Alban wrote: "In regards to this investigation, as the evidence is processed lets go ahead and have all DNA evidence tested. A This will make us transparent in our attempts to pursue any and all evidence in this investigation." and "This may open up questions from the family as to the results but not doing so will definitely open up questions. A". (E474, E590)

Note: Kathy's DNA is found on one of the grills which is because she had burns to her back, neck, ear, and face. (E594)

The Appellees did not report to the Appellant, Homicide Panel or any inquiring agencies that there was a mixture of DNA from at least two individuals.

Here Appellees participated in viciously suppressing key evidence to conceal interdepartmental corruption to control investigative outcomes.

And "The communications" confirm that a reinvestigation was ordered and assigned to Appellee Carbonara and Poole. Both deliberately suppressed and or manipulated **any and**

all evidence that if reviewed by others, might have brought into question the possibly errors made by “Keith”.

Also the Appellees show that on July 19, 2013 “Clark was aware of the "real issues" (E899) regarding the missing footage on the security tape.” That both confirms and verifies the intentional inflicting of emotional distress, fraud, liable, defamation and conspiracy charges in the complaint. The Appellees by their own actions were participants for seven years, which is self-evident in looking at the dates of the memos authored and circulated by Appellee Poole. (E485).

ARGUMENT

Standard of Review

1. Does there exist a reversible error over the elements of the cause of action?

Judge Dennis Sweeney writes in his Opinion “The Court agrees.. that this Complaint is grounded on the erroneous view that Plaintiff can obtain damages because of her view that the investigation of the death of her daughter was not investigated in the fashion she believes it should have been done. This assertion does not comport with current Maryland law.” He also wrote “..Defendants further contend that.. a private citizen, ..does not have standing to pursue a claim against public officials or employees to investigate or prosecute a matter in a certain way that the citizen would find to be appropriate. Defendants cited numerous cases to support this conclusion at page 6 of their memorandum and it does appear to the Court to be the current state of Maryland law. Indeed in her reply memorandum, Plaintiff states that her goal with the case is to vindicate the "right" of

citizens to have a thorough investigation done by the police. See page 20 of the reply memorandum."

The Appellant begs to differ. This is NOT what she was claiming and she makes that point very clear before the Court multiple times. In the January 27th hearing Appellants opening remark to the court is, "I would like to clarify to the Court that this is not about a lawsuit to get them to charge certain individuals or to investigate certain individuals." (Record of Transcript (hereinafter RT) Pg24 ln 24 to pg25 ln 2-14). She stresses that the lawsuit is about the inappropriate or illegal behaviors of the police officers. The Appellant goes on to reference the manipulation and suppression of evidence to persuade persons and agencies reviewing those files to rely on false information. (RT Pg 25 lines 9-14). Then again RT PG 52 ln 5-7 which read "..for over seven years, we've alleged that there was document (ed) corruption, and that this is the residue of that corruption."

In his Opinion, Judge Sweeney also states within quotes the word "right" and references page 20 of the Appellants memo. A search of page 20 of the memo *Plaintiff's Memorandum In Support Of Denying Defendents Motion To Dismiss And Or/For Summary Judgment* (E310) produced the following. "In addition, Officers charged with upholding the law are expected to do a thorough and truthful investigation, to not suppress, manipulate the facts for their preferred outcomes. For all law enforcement we ask the court to consider the impact of their service delivery to all citizens. They serve the government, are established to serve the citizens.. Citizens have a right to expect honesty..These Defendants even though officers have actually

broken the law and have repeatedly presented legal hindrances to the Plaintiff pursuit of judicial due process."

2. **Was the trial court erroneous in its ruling on the statute of limitation when it is in direct conflict with the ruling of another judge in a related matter that involved the same documents?**

Appellee's primary argument is on the misguided responses that the pleading is outside of the statute of limitations.

The Appellant puts forth The Estate of Katherine Sarah Morris et al vs Anne Arundel County, et al C-02-CV-18-000096 CSA-REG-2302-2018 pg E246 Memorandum of Opinion Judge Cathleen M. Vitale, Judge, AAC Circuit Court. "..Relevant case law provides that the limitations period will begin to toll when the request was fully responded to … see generally Bythe v. State, 161 Md. App.492 (2005). Whereas Defendant would have the Court calculate limitations based off Plaintiffs initial request, the Court will calculate limitations based off the date of final production from the Defendant, which the parties agree is October 3, 2016 when Defendant produced information relevant to Plaintiffs' email request."

On October 3, 2016 the Appellees responded to an MPIA with the release of over 9,200 (E463 & E464) pages of internal documents. In those documents were many of the referenced internal communications that are the substance of this complaint.

The Appellee by and through their attorney stated in the Jan 27, 2020 hearing .. "just on the MPIA lawsuit that's obviously not apart of this, but there wasn't a statement from the Judge about going to discovery.." (RT pg58 ln 21-23) The Appellant states that statement is false.

The Appellant further stated that in case *C-02-CV-18-000096 The Estate of Katherine Morris et al vs Anne Arundel County, Maryland* (E731) Appellee County argued "The Complaint Should Be Dismissed because Plaintiffs' Claims Are Time-Barred." The Appellant argued "The Complaint Should Not Be Dismissed Because Plaintiffs' Claims Are Not Time-Barred" and further stated that the Appellee's are in error in their reference to the statute of limitations. But "For purposes of the statute of limitations, the accrual of a cause of action in a civil case is determined by application of the "discovery rule*." Doe v. Archdiocese of Washington, 114 Md. App. 169, 177, 689 A.d2d 634 (1997).* The "discovery rule" provides that "the action is deemed to accrue on the date when the plaintiff knew or, with due diligence, reasonably should have known of the wrong." *Id. (citing Doe v. Maskell, 342 Md. 684, 690, 679 A.2d 1087 (1996), cert. denied, 519 U.S. 1093 (1997)).*"

The Honorable Judge Cathleen M. Vitale agreed, therefore, Appellees motion have failed on their statute of limitations arguments.

3. <u>Does the Statute of Limitations go to Discovery?</u>

The Appellant cites Maryland Code, Courts and Judicial Proceedings § 5-101 which states that "A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." "A statute of limitations encourages promptness in instituting actions, suppresses stale or fraudulent claims, and avoids inconvenience which may stem from delay when it is practicable to assert a right" *Harig v. Johns-Manville Prods. Corp., 284 Md. 70, 75-76, 394 A.2d 299 (1978)*. Such statutes are to be strictly construed." *Decker*

v. Fink, 47 Md. App. 202, 206, 422 A.2d 389 (1980). Moreover, the application of the statute of limitations is strictly a legal question to be decided by the Court. *Moy v. Bell, 46 Md. App. 364, 370, 416 A.2d 289 (1980).*

In addition, "Ordinarily, a cause of action accrues upon the occurrence of the last element essential to the cause of action. *(April Enterprises, Inc. v. KTTV (1983) 147 Cal.App.3d 805, 826.)* However, in cases where it would be manifestly unjust to deprive the Appellant of a cause of action.., the delayed discovery rule applies. ".. when the plaintiff either actually discovers his injury, or could have discovered his injury through the exercise of reasonable diligence." *[Smith v. Dunham, 2008 Cal. App. Unpub. LEXIS 2823 (California Unpublished Opinions 2008*)].

Judge Sweeney wrote "The Plaintiff argues that the discovery rule should alter when the statute should begin to run. Plaintiff concedes however that she and her family were on notice of the concerns they had about the police investigation beginning the week of May 10, 2012 which quickly escalated immediately thereafter given the response of the police to their concerns. See Plaintiffs reply memorandum at page 2 to 3".

First, the Appellant nowhere in her original complaint, court transcripts, or responses does she use the words indicative of or the same as "quickly escalated". She used the word "escalation" one time in E38 of Appellants Original Complaint pg43 paragraph 57 in reference to something before her daughter's death. She only uses the word "quick or quickly" one time in E38 of Appellants Original Complaint on pg. 104 paragraph 167. But what is in the RT pg 29 line 1-7 the Appellant makes a correction and says "In other words,

we felt something might not be right, but were led around literally by the police department almost like mocking us, "..they went on cover up-mode.."

Additionally the discovery of harm rule is an exception to the strict tabulation of the statute of limitations and is where a person does not discover malpractice or negligence by another until sometime later. Therefore "the communications" (E464), revealed the illegal activities of Appellees.

4. Was the trial courts dismissal an abuse of discretion?

The Appellant states that "..., in arguing the court abused its discretion.. it is important to show how the court failed to properly exercise its discretion. This usually requires proving the record affirmatively showed the court ..misunderstood the facts in arriving at its decision. In a recent Sixth District case, for example, appellate counsel successfully argued the court abused its discretion in not dismissing a prior strike conviction because the court misunderstood the facts it relied on in making its decision. (*People v. Thimmes* (2006) 138 Cal.App.4th 1207, 1212-1213.)"[1] In addition, "The court misunderstood the facts or there was insufficient evidence to support the facts it relied on. (See, e.g., *People v. Cortez* (1971) 6 Cal.3d 78, 85-86; *People v. Cluff* (2001) 87 Cal.App.4th 991, 998.)"

Judge Sweeney wrote "..Defendants further contend.. a private citizen, ..does not have standing to pursue a claim against public officials or employees to investigate or prosecute a matter in a certain way that the citizen would find to be appropriate... and it does appear

[1] http://www.sdap.org/news-10-10-08.html

to the Court to be the current state of Maryland law. Indeed in her reply memorandum, Plaintiff states that her goal with the case is to vindicate the "right" of citizens to have a thorough investigation done by the police. See page 20 of the reply memorandum." –

This is not what the Appellant claimed and she stated that point to the Court multiple times. In the January 27th hearing Appellants opening remark to the court she states "I would like to clarify to the Court that this is not about a lawsuit to get them to charge certain individuals or to investigate certain individuals." (RT Pg24 ln 24 to pg25 ln 2-14). She goes on to stress that the lawsuit is about the inappropriate behaviors of those that are on the police force to include those in charge. The Appellant goes on to reference the manipulation and suppression of evidence to persuade persons and agencies reviewing those files to rely on false information. (RT Pg25 lines 9-14). Then again on RT pg 52 of ln 5-7 which read "..for over seven years, we've alleged that there was document (ed) corruption, and that this is the residue of that corruption."

Judge Sweeney again seems to have misunderstood the Appellants position on the things before the court. He writes in his opinion "Here a fair reading of the Complaint indicates that Plaintiff asserts that the defendants have failed to agree with her positions about the investigation of her daughter's death and that they have unreasonably in her view not been open to revise their determinations about the circumstances and cause of her daughter's death… Defendants actions even as described in Plaintiff's complaint do not.. sustain this Count".

The Appellant has never disagreed with the cause of death for Kathy. It has been the manner of her death. What the transcripts reflect is that the Honorable

Court seems to have disregarded any and everything the Appellant testified to before the court, regardless of any credible evidence that verified the accuracy of her testimony.

It is also not clear what is inferred by Judge Sweeny's May 10, 2012 reference. It was impossible for parents to definitively know four days following their child's death, error, wrong doing and any other investigative irregularities. The Appellant also feels it to be an abuse of discretion and almost inhuman for the Court to have that expectation and appear to rule on it accordingly. The Appellant states that what is actually said in the *Plaintiff's Memorandum In Support Of Denying Defendants Motion To Dismiss*.. is that "Katherine Sarah Morris died on May 6, 2012. Kathy's parents began to question the handling of her death investigation during the week of May 10, 2012 and they were referring to burns on her body that the funeral director had just informed them about. "It was on that day when the parents arrived at the funeral home that was preparing their daughter's body for burial that the first red flag was raised. The parents were about to view Kathy's body when the Funeral Director stopped them at the door to prepare them for the fact that Kathy had received major burns to her body and her ear was disfigured.." The "first red flag" is also based on a feeling which is not actionable without proof.

5. **Was the trial court erroneous because it overlooked the elements of the complaint of libel and defamation?**

Four elements must be present for a plaintiff to establish a prima facie case of defamation, including that: "(1) the defendant made a defamatory statement to a third person, (2) the statement was false, (3) the defendant was legally at fault in

making the statement, and (4) the plaintiff suffered harm." *Hosmane v Seley-Radtke, 227 Md. App. 11, 20–21 (2016) (citing Offen v. Brenner, 402 Md. 191, 198 (2007)), aff'd, 450 Md. 468 (2016)*. We have defined the substantive requirements of a defamatory statement in the following way: A..statement .."which tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person." *Batson v. Shiflett, 325 Md. 684, 722–23, 602 A.2d 1191, 1210 (1992). (E465) A* false statement is one that is not substantially correct. *Id. at 726, 602 A.2d at 1212*.

The Appellant states "A court may take judicial notice if conduct is so egregious and/or injurious in nature. In such an instance, damages are self-evident. *M&S Furniture v. De Bartolo Corp., 249 Md. 540, 544, (1968)*.

Judge Sweeney wrote "..Defendants also argue that Counts 1 and 2 , the libel and defamation claims would in any event fail since the statements relied on by Plaintiff that arguably could fall within the allowable period under the statute of limitations do not in any way show that they are actionable for the Plaintiff since she is not reasonably the subject or the person to whom the message is directed and she can not demonstrate how as a matter of law she can be shown to have suffered money damages that are recognized under the law. The Court agrees." But the Appellant states that "Damages are presumed.. when a plaintiff can demonstrate actual malice, by clear and convincing evidence, even in the absence of proof of harm. *Samuels v. Tschechtelin, 135 Md. App. 483, 549-550 (2000*).

The Appellant states that she was in fact the subject of the email between Appellee Altomare and the Caucus of African American Leader. (E871) The email was a result of concerns expressed by the Appellant over false information that repeatedly emanated out of the AACPD. For from her *Memorandum In Support Of Denying Defendants Motion To Dismiss* ... (E291) "In September 2018 ..Altomare received a letter of inquiry from Carl Snowden, of the Caucus.. seeking clarification about a police officer having told him that there was an FBI investigation into the death of Kathy, but a FOI response to the Appellant denied an investigation..." (E871*)*

Appellee Altomare is to explain **one** point but instead responded with a four page email where he restated things he knew or should have known to be false and harmful to the Appellant. To a reasonable person it was obviously meant to discredit and/or to foster disbelief in the Appellee claims of a corruption within the Appellees. (E873*)*

These harmful and knowingly false statements were initiated by Appellees Timothy Altomare, and Sgt. Jacklyn Davis, were intentional and intended to cover-up departmental inadequacies, corruption, and sought to avoid full disclosure of truth in the death investigation of an African American woman.

The Appellees have repeatedly and knowingly allowed false and/or misleading written information to be communicated to the FBI, States Attorney's Office, Governor's Office on Crime Prevention, Homicide Panel, State and local NAACP, the Caucus of African American Leaders, and the public in general.

6. Was the trial court erroneous because it overlooked the elements of the complaint of conspiracy?

In *Priscilla Lefebure v. Barrett Boeker (0:19-cr-30989), (5th Cir. 2019*) the "Plaintiff makes clear that Defendants Boeker, D'Aquila [sic], and Daniel conspired and met, each taking acts in furtherance of the conspiracy (such as representations about the investigation and/or agreeing to not investigate, ..."

"A civil conspiracy..is an agreement between two or more parties.. to deceive a third party to obtain an illegal objective.[1] A conspiracy may also refer to a group of people who make an agreement to form a partnership in which each member becomes the agent or partner of every other member and engage in planning or agreeing to commit some act. It is not necessary that the conspirators be involved in all stages of planning or be aware of all details. Any voluntary agreement and some overt act by one conspirator in furtherance of the plan are the main elements necessary to prove a conspiracy. A conspiracy may exist whether legal means are used to accomplish illegal results, or illegal means used to accomplish something legal.[2] "Even when no crime is involved, a civil action for conspiracy may be brought by the persons who were damaged."[1][2]

The Appellant restates what is found in the (RT pg47 ln 2) were being circulated and being written by more than one officer and being performed by more than one officer.. they're having internal conversations, so of course, a conspiracy does fit."

[2] https://en.wikipedia.org/wiki/Conspiracy_(civil)

However, it is Judge Sweeney's Opinion that "Complaint does not contain any facts to suggest or reasonably imply that some type of an unlawful agreement exists to cover up the truth ...." The Appellant testified that the internal communications were evidence of fraudulent activities and conspiracy. A direct order to control outcome by Teare. Altomare, Keith, Carbonaro's and Poole's compliance are evident "that things are not going to go away.." (E538)

7. Was the trial court erroneous because it overlooked the elements of the complaint of Intentional Infliction of Emotional Distress?

The tort of intentional infliction of emotional distress occurs when one acts so outrageously with intent to cause another to suffer severe emotional distress.. The offender acts for the purpose of causing emotional distress so severe that it could be expected to adversely affect ones mental health.

Judge Sweeney writes, "Intentional Infliction of Emotional Distress, must also be dismissed since Plaintiff has not alleged that the individual Defendants conduct was extreme and outrageous as required in Maryland law...See Manikhi v. Mass Transit Admin., 360 Md. 333 (2000). For conduct to be extreme and outrageous it must go beyond all possible bounds of decency and... be regarded as atrocious and utterly intolerable in a civilized community. Kohler v. Shenasky, 914 F. Supp. 1208, 1212 (D. Md. 1995); Ford v. Douglas, 144 Md. App. 620 (2002)."

When the question arises as to the reliance on the truth of statements made it is by nature of their position. Each Appellee is a law enforcement officer and there

was an automatic reliance on them to uphold the law and tell the truth. It's an implied dependency and an expectation by the reasonable man.

These Appellees repeatedly re-traumatized a grieving parent leaving her suffering from Post-Traumatic Stress Disorder. At her expense and to cover up interdepartmental corruption they made this grieving mother a pawn.

"..Retraumatization is a conscious or unconscious reminder of past trauma that results in a re-experiencing of the initial trauma event. It can be triggered by a situation, an attitude or expression, or by certain environments that replicate the dynamics (loss of power/control/safety) of the original trauma."[3]

For the Appellant "Does this not rise to the level of extreme and outrageous, an atrocity and the intentional infliction of emotional distress for the reasonable man that has been devastated by the loss of their only child?

They subjected her to their deliberate and proven suppression and or manipulation of facts around her child's death and that was inhumane. Their proven false statements about video surveillance footage, sending her on wild goose chases to FBI Headquarters when they knew the reason they told her to go there was false. They subjected her to running around town to get help with getting a video to play that they knew back in June 2012 portions of it had been deleted at their direction. (E185).

[3] **Preventing Retraumatization: A Macro Social Work Approach to Trauma-Informed Practices & Policies** by Karen Zgoda, Pat Shelly, Shelley Hitzel

When this traumatized mother sort assistance from the Governor's office they let them read now proven untruths. When she sort assistance from the NAACP's office they fed them now proven untruths. When she sort assistance from the State's Attorney's office they fed them now proven untruths. They subjected her to the horror of deleted GPS settings that showed her daughter's phone at other locations throughout the night other than at the mall where her body was found. When she asked for a copy of her daughter's cell phone extractions, they provided her with a manipulated pdf file of the extractions that would later show that there were files that had been deleted from their version. They lied to this unwitting mother giving her false DNA results. (E507, E593-597)

The Appellant was subjected to the horror of requesting raw data files which the Appellees who would then claim a hard drive holding evidentiary files had crashed so the raw data no longer existed. The lied to her about the financial reports of her daughters last purchases stating in reports there were none when records showed days and days of purchases. They lied to a homicide panel charged with confirming or disaffirming whether the investigation was handled properly telling them falsehoods or manipulated truths about the video, her daughter's last purchases and unfound receipts. They manipulated facts about phone calls just hours before her daughter's death (E605-E607). They lied to the States Attorney's office about unfound receipts. They lied to the ME office about DNA results and unfound missing receipts. They lied to the Appellant about DNA results.

Lie after lie, falsehood after falsehood, manipulation are manipulation, suppression of evidence after suppression of evidence just to cover internal corruption by Appellee Teare in a possible obstruction of justice charge and to cover mistakes made by an inexperienced Appellee Keith Clark, which internal reports show was nicknamed the "Keith". (E537)

Their occupations must be considered for each of these Appellees knew or should have known the effects of their actions.

8. Was the trial court erroneous because it overlooked the elements of the complaint of fraud?

The Appellant respectfully states that fraud is to act deceitfully and again goes to the intentional perversion of truth in order to obtain a desired outcome and/or the act of deceiving or misrepresenting. One must also draw the distinction between the three types of fraud that could be relevant in this case. First there is extrinsic fraud (collateral) which is fraudulent acts that are a deceptive means of keeping one from enforcing his/her legal rights. Whereas secondly there is intrinsic fraud which is intentionally false representations (lies) which are part of the fraud that can be considered by the court in determining general and punitive damages.

The third type of fraud is the clear and apparent violations of Maryland Code Title 8 - Fraud And Related Crimes Subtitle 6 Section 8-606 Making false entries in public records ... The Appellees have clearly violated this in that any records subject to the Maryland Public Information Act are considered public records which includes an official book, paper, or record, ..that is created, received, or used by a unit of: (i) the State; (ii) a political

subdivision of the State; or (iii) a multicounty agency. Persons are prohibited from making a false entry in a public record for which upon conviction is subject to imprisonment not exceeding 3 years or a fine..or both.

The entry of false information into public records is evidenced by the Inter-Office Correspondence dated Feb.7, 2014 and is from Sgt. J. Poole. (E485, E551-E552 E559) All Appellee records are subject to MPIA thus they are public records.

In as such the Appellees asserted a false representation of a material fact to the Appellant since a false representation is an intentional untrue statement meant to mislead another.

The Appellees knew that the representation was false, or the representation was made with such reckless disregard for the truth that knowledge of the falsity of the statement can be imputed to the Appellees.

The Appellees made the false representation for the purpose of defrauding the Appellant and the Appellant has shown that the purpose of the Appellees making the untrue statement was meant to deceive the Appellant and the Appellant was in fact deceived. *See Ellerin v. Fairfax Sav., F.S.B.*, 337 Md. 216, 232 (1995).

The Appellant relied with justification upon the misrepresentation; and

The Appellant suffered damages as a direct result of the reliance upon the misrepresentation.

The first act of fraud perpetrated by the Appellees is with the missing video footage from four cameras of the parking lot in which Kathy died.

The Appellee circulated multiple written documents (E551-E552) stating that missing surveillance footage was first due to incompatibility of systems, and then claiming that

because the cameras were motion sensitive, implying they had not recorded because there was no movement. (E485, E486, E551-E552) This was a false representation of a material fact. The Appellant relied on this information being true which is demonstrated by the fact that when given a copy (E692) the Appellees instructed the Appellant to take the video to the FBI for assistance with getting it to play. Demonstrating that the Appellants justifiably or reasonable action was to rely on the Appellees untrue statements because of their position as officers of the law. The exhibits confirm that the Appellees knew that portions of the video had not preserved at the direction of Appellee "Keith" in 2012. (E906) and that the video was altered to conceal the errors of "Keith"

These intentionally untrue written statements were allowed to be reviewed by multiple agencies. This fraudulent activity of entering false information into public records, was meant to discourage support of the Appellants efforts to prove the corrupt activities of the Appellees within the Anne Arundel County Police Department.

Recap of missing video

To question "a" about the video the Appellees state the security cameras were motion sensitive, falsely implying that there was no motion, so there was no recording on the cameras. (E485, E486, E551-E552) See missing video information on page 12 point 1.

That the missing video footage "was most likely due to the fact there are several hours of footage where there is no motion the screen and it appears as if the recording is "paused"". (E552)

"The video is motion activated and will only record if the cameras observe movement within the recorded area." (E552)

All of the elements of fraud have been meant to include the final element which is the financial damages incurred by the Appellant that range from travel to counseling appointments, copays, multiple bankruptcies while living on a affixed income and being forced by the fraudulent and corrupt activities of the Appellees to file multiple lawsuits for answers, and the financial impact of being required to pay over $4,300 for “the communications" (E463). These charges were meant to deter the Appellants pursuit of the documents.

9. Was the trial court acting arbitrarily and capriciously in dismissing the complaint when there existed multiple disputed facts?

Judge Sweeney’s writes “Defendants cited numerous cases..and it does appear to the Court to be the current state of Maryland law.”

The Appellant stated in *Plaintiff’s Memorandum In Support Of Denying Defendants Motion To Dismiss..,* but that while these cases while interesting they were about “getting a prosecutor to prosecute a person for a crime and police officer to investigate a person for the crime.” The Appellant clearly stated that this case is about the improper and or illegal activities of the officers themselves. It is illegal to give an order controlling outcomes of an investigation, that’s conspiracy. To make false statements and circulate them showing her in a false light, is defamation and libel. For officers to fix reports to say what they want them to say despite the evidence to the contrary is illegal. Suppressing evidence is illegal.

The Appellant previously stated that “Forty-one percent of misconduct allegations involved Brady violations.. such as knowledge of alternative suspects and forensic science

evidence that may have weakened the prosecution's case.[4] The faking and manipulation of documents, making false and misleading statements is problematic for the Court. "Therefore, when courts confirmed Brady violations, they were more likely to deem the misconduct harmful, leading to reversals.."[5]

10. Was the trial court erroneous because it overlooked the procedural error in the matter related to the alleged tort claims notification deficiency notice that was required to be included in the original filing of the Appellee's Motion to Dismiss?

Judge Sweeny wrote "..Defendants also argue that the Complaint should be dismissed because Plaintiff did not timely provide timely notice of her claim for damages under the Maryland Local Government Tort Claims Act. This appears to be correct for the reasons stated by the Defendants in their reply memorandum and would provide still another basis for the dismissal of this Complaint." (E237)

The Appellee's claim of insufficient notice should have been stricken because it was improperly produced. Md. Rule 2-322(e). This was a procedural error in that the claim of insufficient process should have been raised in the initial filing of the Appellee's motion to dismiss. To not do so was a violation of Md. Rule 2-322(a). The Appellee moved to introduce it to the court citing it as one of three overall basis for the dismissal. (RT Pg5 lines 11-23).

The late introduction of the claim deprived the Appellant of time to even

[4] Court Findings of Prosecutorial Misconduct Claims in Post-Conviction Appeals and Civil Suits Among the First 255 DNA Exoneration Cases Prepared by: Dr. Emily M. West Director of Research Innocence Project August, 2010 Updated October, 2010

[5] Court Findings of Prosecutorial Misconduct Claims in Post-Conviction Appeals and Civil Suits Among the First 255 DNA Exoneration Cases Prepared by: Dr. Emily M. West Director of Research Innocence Project August, 2010 Updated October, 2010

properly prepare a defense against the motion since she had only received the notice 48 hours before the hearing. The Appellants objection to its entry was "..my understanding that that should have been something about insufficient process, and I am asking the Court to strike that because it should have been argued in his original pleading and not coming back 38 days later and on the eve of this hearing" (RT Pg25 lines 19-23)

Therefore the motion should have been stricken.

Conclusion

This case is about the inappropriate behaviors of a supervising police officer (already suspected of being involved in corruption) issuing a direct order to control the outcomes of an investigation, to cover the mistakes of an inexperienced officer, and the officers that took heed and obeyed that order. All during a time of already documented corruption which cannot be ignored. For the Morris family it was the perfect storm.

The Appellees by way of their profession are charged to uphold the law and are expected to not suppress, manipulate the facts in an investigation for their preferred outcomes. By doing so these Appellees broke the law by engaging in the conduct detailed throughout this pleading.

They knew or should have known their actions would cause serious emotional injury to the Appellant.

The conduct exceeded all possible bounds of decency and caused the Appellant to suffer psychological and mental anguish.

The Appellants claims are not time barred as it lends to the point of discovery, and

there is a genuine dispute so the Complaint with all of its Counts should not have been be dismissed.

The Appellant states that the trial courts dismissal was an abuse of discretion, as well as arbitrary and capricious. After all "Motions to dismiss should be granted only in the most limited circumstances where a plaintiff is not entitled to relief under any set of facts which could be proved in support of the claim" *Rogers v. Jefferson-Pilot Life Ins. Co., 883 F.2d 324, 325 (4th Cir. 1989).*

In addition this case should have survived dismissal because it contained sufficient factual matter that stated a claim for relief that was being disputed. *Finlator v. Powers, 902 F.2d 1158, 1160 (4th Cir. 1990); Waterford Citizens' Ass'n v. Reilly, 970 F.2d 1287, 1290 (4th Cir. 1992). Under Fed. R. Civ. Pro. 8(a)(2), Fed. R. Civ. Pro. 12(b)(6), and Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009.*

WHEREFORE for the above reasons and authorities stated, the Appellant respectfully requests that the judgment of the Trial Court be reversed, and that this matter be remanded to the Trial Court for trial.

Respectfully submitted,

Marguerite R. Morris

Morris Marguerite R. Morris Pro se, Appellant

STATEMENT PURSUANT TO RULE 8-504 (a)(8)

I hereby certify that the foregoing Brief was prepared proportionally double spaced, the font is Times New Roman and the type size is 13 point.

Respectfully submitted,

Marguerite R. Morris

Marguerite R. Morris Pro se, Appellant

STATEMENT PURSUANT TO RULE 8-503 (d)

This brief contains 9,000 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

Respectfully submitted,

Marguerite R. Morris

Marguerite R. Morris Pro se, Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of June, 2020, that a copy of the foregoing

Brief of Marguerite R. Morris Appellant was mailed, postage pre-paid to:

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TEXT OF CITED CASES AND STATUTES

CASES

Priscilla Lefebure v. Barrett Boeker (0:19-cr-30989), *(5th Cir. 2019)*……. 7 & 8
..was jointly engaged in tortious activity and integral participant in the conduct described herein, resulting in the deprivation to the Appellants harm and expense

Doe v. Archdiocese of Washington, 114 Md. App. 169, 177, 689 A.d2d 634 (1997)..18
"For purposes of the statute of limitations, the accrual of a cause of action in a civil case is determined by application of the "discovery rule."

Doe v. Maskell, 342 Md. 684, 690, 679 A.2d 1087 (1996), cert. denied, 519 U.S. 1093 (1997)……18
The "discovery rule" provides that "the action is deemed to accrue on the date when the plaintiff knew or, with due diligence, reasonably should have known of the wrong."

The Estate of Katherine Sarah Morris et al vs Anne Arundel County, et al C-02-CV-18-000096 CSA-REG-2302-2018 pg E246 Memorandum of Opinion Judge Cathleen M. Vitale, Judge, AAC Circuit Court……18
"..Relevant case law provides that the limitations period will begin to toll when the request was fully responded to … see generally Bythe v. State, 161 Md. App.492 (2005). Whereas Defendant would have the Court calculate limitations based off Plaintiffs initial request, the Court will calculate limitations based off the date of final production from the Defendant, which the parties agree is October 3, 2016 when Defendant produced information relevant to Plaintiffs' email request."

Blythe v State, 161 Md. App.492 (2005)……....18
Relevant case law provides that the limitations period will begin to toll when the requests was fully responded to.

Harig v. Johns-Manville Prods. Corp., 284 Md. 70, 75-76, 394 A.2d 299 (1978).…..19
A statute of limitations encourages promptness in instituting actions, suppresses stale or fraudulent claims, and avoids inconvenience which may stem from delay when it is practicable to assert a right.

Decker v. Fink, 47 Md. App. 202, 206, 422 A.2d 389 (1980)……19
Such statutes are to be strictly construed.

Moy v. Bell, 46 Md. App. 364, 370, 416 A.2d 289 (1980).……..……..19
Moreover, the application of the statute of limitations is strictly a legal question to be decided by the Court.

April Enterprises, Inc. v. KTTV (1983) 147 Cal.App.3d 805, 826.……...19
Ordinarily, a cause of action accrues upon the occurrence of the last element essential to the cause of action.

Smith v. Dunham, 2008 Cal. App. Unpub. LEXIS 2823 (Unpublished Opinions)…...20
This means the statute of limitations begins to run not upon injury, but when the plaintiff either actually discovers his injury, or could have discovered his injury through the exercise of reasonable diligence

People v. Thimmes (2006) 138 Cal.App.4th 1207, 1212-1213..……..……..21
"., in arguing the court abused its discretion.. it is important to show how the court failed to properly exercise its discretion. This usually requires proving the record affirmatively showed the court ..misunderstood the facts in arriving at its decision. In a recent Sixth District case, for example, appellate counsel successfully argued the court abused its discretion in not dismissing a prior strike conviction because the court misunderstood the facts it relied on in making its decision.

***People v. Cortez* (1971) 6 Cal.3d 78, 85-86; *People v. Cluff* (2001) 87 Cal.App.4th 991, 998…….……..21**
The court misunderstood the facts or there was insufficient evidence to support the facts it relied on

Hosmane v. Seley-Radtke, 227 Md. App. 11, 20–21 (2016) (citing Offen v. Brenner, 402 Md. 191, 198 (2007)), aff'd, 450 Md. 468 (2016).…….…..23
"(1) . the defendant made a defamatory statement to a third person, (2) . the statement was false, (3) . the defendant was legally at fault in making the statement, and (4) the plaintiff suffered harm

M&S Furniture v. De Bartolo Corp., 249 Md. 540, 544, (1968)).…….…..24
A court may take judicial notice if conduct is so egregious and/or injurious in nature. In such an instance, damages are self-evident.

Batson v. Shiflett, 325 Md. 684, 722–23, 602 A.2d 1191, 1210 (1992).)……..24
..which tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person

Id. at 726, 602 A.2d at 1212..……..24
A false statement is one that is not substantially correct

STATUTES

A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced.

Maryland Code Title 8 - Fraud And Related Crimes Subtitle 6 Section 8-606 Making false entries in public records and related crimes. The Appellees have clearly violated this in the

[6] 2017 WL 8230783 (D.Md.) (Trial Motion, Memorandum and Affidavit)
United States District Court, D. MD, Frederick Police Officer Daniel SULLIVAN, Plaintiff

records subject to the Maryland Public Information Act are considered public records because by definitions a public record includes an official book, paper, or record, ..that is created, received, or used by a unit of: (i) the State; (ii) a political subdivision of the State; or (iii) a multicounty agency. It states that a person is prohibited from making a false entry in a public record for which upon conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding $1,000 or both

Maryland Rule § 2-322(a)……..……..34

(a) Mandatory. The following defenses shall be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, and (4) insufficiency of service of process. If not so made and the answer is filed, these defenses are waived.

Maryland Rule § 2-322(e)……..……..34

(e) Motion to Strike**.** On motion made by a party before responding to a pleading or, if no responsive pleading is required by these rules, on motion made by a party within 15 days after the service of the pleading or on the court's own initiative at any time, the court may order any insufficient defense or any improper, immaterial, impertinent, or scandalous matter stricken from any pleading or may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety.