

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

Daniel Shure,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 13 L 14390
	)	
Jory Strosberg,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

The two-year statute of limitations applies to claims alleging personal injuries, while a continuing tort must allege continuing tortious conduct. The plaintiff claims that the defendant’s outrageous conduct during three weeks in August 2009 caused and continues to cause him emotional distress. Since the plaintiff has merely alleged continuing tortious injuries, he has failed to plead a continuing tort. As a result, the two-year statute of limitations bars the plaintiff’s claims, and the motion to dismiss must be granted.

**FACTS**

Daniel Shure and Jory Strosberg were married in 2002. On May 22, 2007, they obtained a dissolution-of-marriage order. The dissolution and post-dissolution proceedings occurred in the Circuit Court of Lake County.

In August 2009, Strosberg retained MSI Detective Services, a Chicago-based detective agency, to obtain covertly information concerning Shure’s interaction with the ex-couple’s two children. At Strosberg’s direction and approval, MSI employees eavesdropped on conversations between Shure, Strosberg, and the children during pre-arranged visitation exchanges. On August 7, 11, 12, 13, and 17, 2009, an MSI employee hid under a blanket in the back of Strosberg’s SUV

while she wore a concealed transmitting device to record the conversations. On August 25, 26, 27, and 29, 2009, a different MSI employee hid under a blanket in the back of the SUV and, again, recorded the conversations using an audio device linked to a concealed transmitter on Strosberg.

Shure did not know of Strosberg's and MSI's eavesdropping activities at the time they occurred, and he never consented in advance to recording the conversations. He only learned of them seven months later, on March 23 and 25, 2010, when Strosberg attempted to admit into evidence the substance of the recorded conversations through the live testimony of the two MSI private investigators during a Lake County post-decree hearing. Shure objected to the admission of the evidence, and the judge sustained the objection.

On December 20, 2013, Shure filed *pro se* a two-count complaint against Strosberg. The first count is for the tort of intrusion upon seclusion based on Strosberg's decision to hire MSI and wear a recording device in order to trespass on Daniel's privacy, seclusion, and conversations with his children. Shure alleges that Strosberg's conduct caused and continues to cause him extreme emotional distress. The second count is for intentional infliction of emotional distress. Shure alleges that Strosberg's conduct could have exposed the children to terror and the feeling of being trapped in a vehicle with a strange person, while he continues to experience anguish and emotional pain resulting from the surreptitious recordings.

On November 10, 2014, Strosberg filed a motion to dismiss the complaint pursuant to Code of Civil Procedure section 2-619. 735 ILCS 5/2-619. Strosberg argues that the complaint must be dismissed because Shure's claims are barred by the applicable two-year statute of limitations and because the eavesdropping statute has been declared unconstitutional. On December 5, 2014, Shure filed a response to the motion, and on January 14, 2015, Strosberg filed her reply. Shure then retained counsel who, on February 2, 2015, filed an appearance. The court granted Shure's attorney the opportunity to file an amended response to replace Shure's *pro se* filing. Thus, on

February 11, 2015, Shure filed his amended response brief. On February 18, 2015, Strosberg filed her amended reply brief.

## ANALYSIS

A section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). The motion must be directed against an entire claim or demand. *See id.* A court considering a section 2-619 motion is to construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarowski v. Lata*, 227 Ill. 2d 364, 369 (2008). All well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 488 (2008). A court is not to accept as true those conclusions unsupported by facts. *See Pooh-Bah Enterps., Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009).

One of the enumerated grounds supporting a section 2-619 motion to dismiss is that the plaintiff failed to file suit “within the time limited by law.” 735 ILCS 5/2-619(a)(5). Of the various Illinois statutes of limitation, a two-year period applies to “[a]ctions for damages for an injury to the person,” 735 ILCS 5/13-201, while a five-year period applies to “all civil actions not otherwise provided for. . . .” 735 ILCS 5/13-205. These two provisions lie at the intersection of the dispute over Strosberg’s motion to dismiss.

The law is plain that the two-year statute applies to claims for intentional infliction of emotional distress because “emotional distress is a species of personal injury. . . .” *Pavlik v. Kornhaber*, 326 Ill. App. 3d 731, 744 (1st Dist. 2001) (citing cases). That conclusion makes reasonable the inference that the tort of intrusion on seclusion is also limited by the two-year statute. The reason is that, for both torts, the plaintiff seeks damages for emotional injuries unique to the defendant. In other words, it is the plaintiff’s own emotional state, not anyone else’s, that is at issue in the tort of intrusion on seclusion.

The two-year statute of limitations is, therefore, applicable to both of Shure's causes of action.

Shure's argument that the five-year statute of limitations applies is wholly undeveloped and unsupported by any legal citations. The statute provides that it applies to all causes of action for which there is no defined statute of limitations. That catch-all provision is wholly insufficient, without more, on which to base a legal argument that the five-year statute of limitations should apply to Shure's causes of action.

Shure also argues that Strosberg's outrageous conduct continues to inflict emotional trauma such that the continuing-tort exception extends the tolling of any statute of limitations. A continuing tort is one that "does not involve tolling the statute of limitations because of delayed or continuing injuries, but instead involves viewing the defendant's conduct as a continuous whole for prescriptive purposes." *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 279 (2003). In other words, "[a] continuing violation or tort is occasioned by continuing unlawful acts and conduct, *not* by continual ill effects from an initial violation." *Id.* at 278 (emphasis added), *citing Pavlik*, 326 Ill. App. 3d at 745, and other cases.

Shure's complaint indicates that his claims fall into the second category. He explicitly identifies numerous but a finite number of days – August 7, 11-13, 17, 25-27, 29, 2009 – during which Strosberg and SMI surreptitiously recorded his conversations. He has not alleged any similar or other conduct that caused his emotional injuries. While it is understandable that Shure may continue to feel ill effects based on Strosberg's and MIS's outrageous conduct, a continuing tort requires ongoing conduct, not ongoing emotional injury. Quite simply, Shure's complaint fails to allege continuing tortious conduct; therefore, he has failed to allege a continuous tort.

Shure's amended response argues that Strosberg has undertaken other acts that have also caused and continue to cause him emotional distress. Shure has, however, failed to indicate what those acts are, let alone file a motion for leave to amend his complaint

adding those allegations. Without any explanation of that conduct, Shure's eleventh-hour unidentified claims are insufficient to warrant what otherwise appears to be an attempt to delay the inevitable dismissal of claims that have been brought beyond the two-year statute of limitations.

Since this court finds that Shure's claims are barred by the two-year statute of limitations, there is no need to address any of the remaining arguments.

## **CONCLUSION**

The court finds that Shure has failed to plead a continuing tort and that his claims are barred by the two-year statute of limitations. As a result,

It is ordered that:

1. Strosberg's motion to dismiss is granted;
2. This case is dismissed with prejudice; and
3. The March 9, 2015 ruling date at 11:00 a.m. is stricken.

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John H. Ehrlich, Circuit Court Judge