

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

DAVIS MCARTHUR, by and through *
DANA MCARTHUR, his Court *
Appointed Guardian, *
*
Plaintiff, *

v. *

Civil Action File No. 7:23-CV-000105-HL

CHAD CASTLEBERRY, in his individual *
and official capacity as Chief of the City of *
Adel, Georgia Police Department, Sergeant *
JOHN GARY ROBERTS, TAYLOR *
GREEN, and JOEL FUTCH (in their *
respective individual and official capacities *
as members of the City of Adel Police *
Department), DOUGLAS G. HANKS, *
Sheriff of Cook County (Ga.), both *
individually and in his official capacity as *
Sheriff, and numerous unknown Cook *
County Sheriff’s Office employees, (in their *
respective individual and official capacities) *
designated as unknown John Doe(s) and *
Jane Doe(s), *
*
Defendants. *

REPLY IN SUPPORT OF THE MOTION TO DISMISS
DEFENDANTS DOUGLAS G. HANKS AND UNKNOWN
COOK COUNTY SHERIFF’S OFFICE EMPLOYEES

Defendants DOUGLAS G. HANKS and unknown COOK COUNTY SHERIFF’S OFFICE EMPLOYEES, in their individual and official capacities (Defendants Hanks and the unidentified members of the Cook County Sheriff’s Office collectively referred to herein as “these Defendants” or the “Cook County Defendants”), file this reply in support of their Motion to Dismiss the claims of Plaintiff Davis McArthur, by and through his court appointed guardian, Dana McArthur (“Plaintiff”), showing the Court as follows:

In his Response (Doc. 8) to these Defendants' Motion to Dismiss ("Plaintiff's Response"), Plaintiff's sole argument is that the statute of limitations was tolled pursuant to O.C.G.A. § 9-3-90(a). This argument fails as explained below. Further, in Plaintiff's Response, Plaintiff failed to respond to these Defendants' other defenses set forth on pages 11 – 19 of these Defendants' memorandum in support of their Motion to Dismiss (Doc. 6-1). Thus, Plaintiff has conceded the validity of these defenses. *See Price v. Sallie Mae, Inc.*, No. 1:08-CV-2712-CAP-ECS, 2009 WL 10711922, at *6 (N.D. Ga. 2009)("Plaintiff appears to concede that his statutory claim under the [Georgia Fair Business Practices Act] is preempted by the [Fair Credit Reporting Act]; he did not respond to any of Defendant's arguments regarding preemption of his GFBPA claim in his brief. Accordingly, the Court recommends that Plaintiff's Georgia Fair Business Practices Act claim be dismissed."); *Hopper v. First Advantage Background Servs. Corp.*, No. 1:20-CV-1935-AT, 2022 WL 1690538, at *2-3 (N.D. Ga. 2022)(finding the plaintiff waived certain claims because the defendant addressed the subject claims brought by the plaintiff in the defendant's dispositive motion, and the plaintiff did not respond to the defendant's arguments in the plaintiff's response to the dispositive motion); *Schechter v. Bd. of Regents of Univ. Sys. of Georgia*, No. 1:07-CV-0846-ODE-ECS, 2008 WL 11327403, at *6 (N.D. Ga. 2008)("In her response to Defendant's motion for summary judgment, Plaintiff entirely failed to respond to Defendant's contention that Plaintiff cannot establish a prima facie case for any of her three claims This failure to respond would be enough, by itself, to warrant granting Defendant's motion for summary judgment, as courts in this district have held that a failure to respond to specific arguments in the movant's motion for summary judgment brief constitutes waiver or abandonment.").

Plaintiff is not entitled to the tolling provisions of O.C.G.A. § 9-3-90(a)

In arguing that Plaintiff is entitled to the tolling provisions of O.C.G.A. § 9-3-90(a), Plaintiff ignores the Order (and law cited therein) entered by this Court dismissing the first lawsuit brought by Plaintiff against these Defendants (*McArthur v. City of Adel, et al.*, United States District Court for the Middle District of Georgia, Civil Action No. 7:23-cv-105, Doc. 8). In that Order, this Court noted that the appointment of a guardian for someone who is legally incompetent due to mental illness halts the tolling otherwise afforded by O.C.G.A. § 9-3-90(a). After referencing § 9-3-90(a), this Court stated: “[i]n situations where an individual has a guardian appointed on his behalf no such tolling shall take place.” *Id.*, p. 3 (citing *Price v. Dep’t of Transportation*, 214 Ga. App. 85, 88 (1994)).

At the time of the alleged acts giving rise to the present case, Plaintiff admits Dana McArthur was one of the court-appointed guardians for Davis McArthur. (Doc. 1, pp. 2-3). Thus, this Court concluded in the first lawsuit that “Plaintiff does not benefit from any tolling due to mental incapacity as he was under a guardianship at the time of the incident.” *McArthur v. City of Adel, et al.*, United States District Court for the Middle District of Georgia, Civil Action No. 7:23-cv-105, Doc. 8, p. 5. Plaintiff’s claims in the instant case are founded upon the same factual allegations as the first lawsuit and should be dismissed for the same reasons. *See Price v. Dep’t of Transportation*, 214 Ga. App. 85, 88 (1994); *McArthur v. City of Adel, et al.*, United States District Court for the Middle District of Georgia, Civil Action No. 7:23-cv-105, Doc. 8.

Conclusion

Based on the foregoing, as well as the reasons set forth in their memorandum filed in support of their motion to dismiss, these Defendants submit that Plaintiff is not entitled to the tolling afforded by O.C.G.A. § 9-3-90(a) and, as a result, the claims Plaintiff is asserting against

them are barred by the applicable statute of limitations, as well as barred by the other defenses asserted in these Defendants' memorandum filed in support of their motion to dismiss. Thus, these Defendants respectfully request that the Court enter an order that dismisses with prejudice all claims that Plaintiff is asserting against them.

Respectfully submitted this 11th day of December, 2023.

Elliott Blackburn PC
3016 N. Patterson Street
Valdosta, GA 31602
(229) 242-3333
(229) 242-0696 (fax)
jimelliott@elliottblackburn.com
hansellwatt@elliottblackburn.com

/s/ James L. Elliott
James L. Elliott
Georgia Bar No: 244244

/s/ C. Hansell Watt, IV
C. Hansell Watt, IV
Georgia Bar No: 140885

*Attorneys for Defendants
Hanks and Cook County
Sheriff's Office employees*

CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

This 11th day of December, 2023.

/s/ James L. Elliott
James L. Elliott