

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-717

JOHN CRITES

APPELLANT

V.

BOB COWAN & UNITED PARCEL
SERVICE

APPELLEES

Opinion Delivered January 5, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
THIRTEENTH DIVISION
[NO. CV-2009-5966]

HONORABLE COLLINS KILGORE,
JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

Appellant, John Crites, was discharged from his employment with appellee United Parcel Service in November 2004. He filed his complaint almost five years later, on August 31, 2009, alleging that the appellees retaliated against him in violation of Arkansas Code Annotated section 16-123-108(a) and (b) of the Arkansas Civil Rights Act. The trial court dismissed this case based upon its determination that the claim was time-barred; it rejected appellant's contention that a five-year statute of limitations should be applied, concluding instead that "the most appropriate statute of limitations under this section is, *at most*, three (3) years." (Emphasis added.) As his sole point of appeal, appellant contends that the trial court misapplied the statute of limitations governing employment-discrimination claims to appellant's civil-rights retaliation claim. We affirm.

Appellant's basic argument is that a retaliation claim under section 16-123-108 is "completely separate from a claim for employment discrimination which is governed by section 16-123-107(c)(1)-(3)." He argues that because there is a one-year statute of limitations in section 16-123-107, but no limitations period in section 16-123-108, the trial court should have applied the "catch-all" five-year period of limitations contained in section 16-56-115. Alternatively, appellant contends that the five-year statute of limitations for breach of a written contract should apply. Appellees' basic contention, on the other hand, is that the one-year limitations period contained in section 16-123-107 should apply to actions brought under section 16-123-108 because the two statutes are part of the same act and have similar purposes. Alternatively, appellees argue that the three-year period of limitations contained in section 16-56-105 for claims based on liability created by statute should apply, but they contend in no case is there support for the application of a five-year period of limitations under either the "catch-all" provision of section 16-56-115 or the breach-of-a-written-contract provision under section 16-56-111.

In reaching its decision, the trial court did not specify which limitations period should be applied in this case. Under the facts presented, it rejected both five-year periods of limitation and concluded that the longest possible applicable limitations period was three years, thereby making appellant's complaint untimely. Consequently, in deciding this case on appeal, it is not necessary for us to further specify which limitations period applies than did the trial court; it is only necessary for us to determine whether the trial court erred in

concluding that the longest possible period of limitations was three years, thereby rejecting the only period of limitations (five years) that would allow the timely filing of the complaint.

We find no error.

Our supreme court has offered the following guidance in determining which period of limitations applies:

When making a determination about what statute of limitations applies in a case, the court must look to the facts alleged in the complaint itself to ascertain the area of law in which they sound. If two or more statutes of limitations apply to a cause of action, generally the statute with the longest limitation will be applied. However, we look to the *gist* of the action to determine which statute of limitations to apply.

Kassees v. Satterfield, 2009 Ark. 91, at 5, 303 S.W.3d 42, 44–45 (citations omitted and emphasis added).

In his complaint, appellant asserts one count, which alleges employment retaliation in violation of section 16-123-108 of the Arkansas Civil Rights Act. There are no assertions of breach of contract contained in the complaint.

We first address appellant’s alternative “breach-of-contract” basis for the application of a five-year statute of limitations and find no error in the trial court’s refusal to apply it because the “gist” of the complaint provides absolutely no basis for its application.

We also find no error in the trial court’s refusal to apply the “catch-all” limitations period of section 16-56-115 as suggested by appellant. The “gist” of appellant’s action is one of employment discrimination, based particularly upon his claim that appellees retaliated against him in his employment in violation of section 16-123-108 of the Arkansas Civil

Rights Act. He contends that he was fired in retaliation for opposing illegal employment practices and engaging in a protected activity. Moreover, as noted by appellees, retaliation claims are characterized as acts of discrimination by the statute itself: “(a) RETALIATION. No person shall *discriminate* against any individual because such individual in good faith has opposed any act or practice made unlawful by this subchapter” Ark. Code Ann. § 16-123-108(a) (Repl. 2006) (emphasis added). Thus, even if the one-year statute of limitations contained within the Arkansas Civil Rights Act itself did not apply, claims of retaliation are still dependent upon the rights created by section 16-123-107, and the three-year period of limitations contained in section 16-56-105 has been applied to liabilities that exist only by statute. *See Chalmers v. Toyota Motor Sales*, 326 Ark. 895, 935 S.W.2d 258 (1996); *Winston v. Robinson*, 270 Ark. 996, 606 S.W.2d 757 (1980); *see also Medical Liability Mut. Ins. Co. v. Alan Curtis LLC*, 519 F.3d 466 (8th Cir. 2008). The “catch-all” limitations of section 16-56-115 would not be applicable when there are two, more appropriate limitations periods available.

Consequently, as was true for the trial court, it is not necessary under the facts of this case to decide precisely which limitations period applies because, at most, appellant had three years in which to file his action. He waited almost five years, and the trial court was correct in dismissing the action as untimely.

Affirmed; motion to certify and/or supplement brief denied.

VAUGHT, C.J., and HART, J., agree.