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IN THE COURT OF APPEALS OF IOWA

KENNETH A. GREEN, and  
OPAL M. GREEN,

Plaintiffs-appellants,

vs.

ROBERT PICKENPAUGH, MARGE  
PICKENPAUGH and THE CITY OF  
CARSON, A MUNICIPAL CORPORA-  
TION IN THE STATE OF IOWA,

Defendants-appellees.

Filed February 26, 1980

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2-63084

Appeal from Pottawattamie District Court at Avoca - Leo F. Connolly, Judge.

Plaintiffs appeal dismissal of claim against defendant-city for injunctive relief and damages.      Reversed and remanded.

John E. Wietzke, Greenfield, for plaintiffs-appellants.

N. Michael D'Angelo of Hogzett & D'Angelo, Oakland, for defendants-appellees.

Heard by Oxberger, C.J., Donielson, Snell, Carter and Johnson, J.J.

**DONIELSON, J.**

Plaintiffs appeal dismissal of claim against defendant-city for injunctive relief and damages, asserting their petition stated a claim against the city and was filed within the 6-month limitations period prescribed by section 613A.5, The Code 1977. We reverse and remand this action for reinstatement.

Our review is de novo. Iowa R. App. P. 4.

On November 6, 1978, plaintiffs filed a petition seeking injunctive relief and damages, naming Robert and Marge Pickenpaugh and the City of Carson as defendants. Plaintiffs' petition alleged criminal charges were wrongfully filed against them at the instigation of the Pickenpaughs, a city police officer trespassed on their property and fired a gun into their kennel at their dog, the city wrongfully graded plaintiffs' property, and the city harassed them by writing them letters concerning grass and a hedge on their property. Count I of plaintiffs' petition concerned the instigation of the criminal charges and the city's letters, as well as unrelated factual allegations against the Pickenpaughs. Count II was directed solely against the city. Plaintiffs amended the petition by adding dates of events constituting a continuing course of conduct by the city extending into the six months preceding the petition's filing.

Defendants filed motions to dismiss, alleging the petition failed to state a claim upon which relief could be granted and was barred when the petition was not filed within the time periods prescribed by section 614.1(2), The Code 1977, and section 613A.5, The Code 1977, because the claim arose not later than 1974. The trial court sustained the city's motions and overruled the Pickenpaughs' motion, finding neither the petition nor the record stated any facts upon which relief could be granted against the city.

A motion to dismiss should be sustained only when it appears to be a certainty the pleader has failed to state a claim upon which any relief may be granted under any state of facts provable under the allegations. Curtis v. Board of Supervisors of Clinton County, 270 N.W.2d 447, 448 (Iowa 1978); Iowa R. Civ. P. 104, Comment. This motion admits the allegations and waives any ambiguity or uncertainty in the pleading. Curtis, 270 N.W.2d at 448. Allegations are construed in the light most favorable to the pleader,

and doubts are resolved in the pleader's favor. Weber v. Madison, 251 N.W.2d 523, 525 (1977).

Here, plaintiffs' allegations concerning the city police officer's trespass and firing of a pistol on their property without cause, the grading and graveling of an alley on their property, and the letters about the grass and hedge, are allegations of ultimate facts of the city's agents doing physical acts allegedly resulting in injury to plaintiffs. Each incident, if proven, could provide plaintiffs a basis for relief. We, therefore, hold plaintiffs' petition did state at least one ground upon which relief could be granted; the trial court erred in holding to the contrary.

Plaintiffs assert the petition contains allegations establishing a continuous course of conduct, extending from July 23, 1974 to September 1978. Since they filed their pleading against the city on November 6, 1978, actions arising from events occurring on or after June 6, 1978, are not tolled by section 613A.5, The Code 1977. Actions arising from events occurring before June 6, 1978, may be barred by that section unless shown to be part of the course of conduct continuing to September 1978. This issue will be determined on how plaintiffs seek to prove their claim and damages. See Stoller Fisheries, Inc. v. American Title Insurance Co., 258 N.W.2d 336, 340 (Iowa 1977) (statute of limitations does not commence to run until cause of action accrues, which includes incurring of injury); Anderson v. Yearous, 249 N.W.2d 855, 860 (Iowa 1977). See generally 54 C.J.S. Limitations of Actions § 169(a) (1948). We do not address this issue here since at least one of plaintiffs' claims falls within the limitations period.

We reverse the judgment of the trial court and remand this case for an order reinstating it.

REVERSED AND REMANDED.