

STATE OF MICHIGAN
COURT OF APPEALS

ALICE DEAN DAVENPORT,

Plaintiff-Appellee,

v

METPATH OF MICHIGAN, d/b/a CORNING
CLINICAL LABORATORIES, INC., and SHERIF
A. NASR, M.D.,

Defendants-Appellants.

UNPUBLISHED

February 19, 1999

No. 205397

Oakland Circuit Court

LC No. 97-537332 NH

Before: Gribbs, P.J., and Saad and P. H. Chamberlain,* JJ.

PER CURIAM.

Defendants appeal by leave granted the order denying in part their motion for summary disposition on statute of limitations grounds. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's physician took a "Pap" smear sample from plaintiff in August 1993, which was forwarded to defendants for analysis. Defendants issued a report interpreting the sample as normal. Plaintiff was subsequently diagnosed with cervical cancer in July 1994.

On August 23, 1994, plaintiff executed an authorization permitting her attorney to obtain her medical records. A settlement was negotiated with the clinic where plaintiff received treatment, and plaintiff filed suit against her doctor in June, 1995. That lawsuit was settled in November 1995. After obtaining these settlements, plaintiff's attorney obtained the actual Pap smear slide and submitted it to a pathologist for review. In a report dated January 10, 1996, the pathologist indicated that the slide showed evidence of cervical cancer. Plaintiff served notice of intent to sue on defendants, and filed the instant complaint on October 17, 1996.

Defendants moved for summary disposition, asserting that plaintiff failed to bring her claim within six months of time she should have discovered a possible cause of action. The trial court denied the

* Circuit judge, sitting on the Court of Appeals by assignment.

motion, finding that there were material questions of fact regarding when plaintiff should have discovered her claim. We granted defendants' application for leave to appeal.

A plaintiff in a medical malpractice case must bring her claim within two years of when the claim accrued, or within six months of when she discovered or should have discovered her claim. MCL 600.5805(4); MSA 27A.5805(4); MCL 600.5838; MSA 27A.5838; *Solowy v Oakwood Hospital Corp*, 454 Mich 214, 219; 561 NW2d 843 (1997). Plaintiff does not contest the trial court's finding that she did not bring her action within two years of when the claim accrued.

The six month discovery rule provides:

Except as otherwise provided in this subsection, an action involving a claim based on medical malpractice may be commenced at any time within the applicable period prescribed in section 5805 or sections 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. [MCL 600.5838a(2); MSA 27A.5838(1)(2).]

In *Moll v Abbott Laboratories*, 444 Mich 1; 506 NW2d 816 (1993), the Court adopted the possible cause of action standard for determining when the discovery period begins to run. Under this standard, the discovery period begins to run when, on the basis of objective facts, the plaintiff should have known of a possible cause of action. Once a claimant is aware of an injury and its possible cause, the plaintiff is aware of a possible cause of action. *Id.*, 23-24. This standard applies in medical malpractice cases. *Solowy, supra*. In the absence of disputed facts, the question whether a plaintiff's action is barred by the statute of limitations is a question of law to be determined by the trial judge. *Id.*, 230.

To apply the six month discovery provision, plaintiff has the burden of proving that she neither discovered nor should have discovered the existence of the claim at least six months before she filed her complaint. *Poffenbarger v Kaplan*, 224 Mich App 1, 12; 568 NW2d 131 (1997). The discovery period applies to discovery of a possible claim, not the discovery of the defendant's identity. *Id.* In *Poffenbarger*, this Court found that the plaintiff was clearly aware of her potential cause of action at the time she filed suit against certain doctors, and that her attempt to amend her complaint to add additional doctors ten months later was time barred.

Plaintiff has failed to show that there was a genuine issue of material fact which would preclude the trial court from deciding the statute of limitations issue as a question of law. The information necessary to determine the possibility of defendants' negligence was in plaintiff's possession during the litigation with her doctor. Plaintiff's failure to obtain an evaluation of the evidence at an earlier point does not extend the statute of limitations. The trial court erred as a matter of law in denying defendants' motion for summary disposition. *Solowy, supra*.

Reversed and remanded for entry of judgment for defendants. We do not retain jurisdiction.

/s/ Roman S. Gibbs
/s/ Henry William Saad
/s/ Paul H. Chamberlain