

STATE OF MICHIGAN
COURT OF APPEALS

VIVIAN M. WATTS,

Plaintiff-Appellant,

v

FREDERICK L. PIERSON,

Defendant-Appellee.

UNPUBLISHED

March 12, 1999

No. 205897

Ottawa Circuit Court

LC No. 96-024791 NI

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

MEMORANDUM.

Plaintiff Vivian Watts appeals of right from the circuit court order granting the motion for summary disposition filed by defendant Frederick Pierson. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On November 9, 1992 the parties were involved in an automobile accident. Plaintiff filed suit on November 2, 1995, alleging negligence on the part of defendant. Plaintiff attempted both personal service and service by certified mail, but could not accomplish service prior to expiration of the summons.

Plaintiff filed a second suit on February 22, 1996. That complaint alleged that when service was attempted, defendant concealed his identity. The concealment was alleged to have been discovered on February 19, 1996.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff's suit was barred by the three-year statute of limitations on personal injury actions. MCL 600.5805(8); MSA 27A.5805(8). Plaintiff asserted that because defendant concealed his identity when service was attempted, she was entitled to bring suit within two years of the discovery of the identity. MCL 600.5855; MSA 27A.5855. The trial court granted defendant's motion, finding that § 5855 did not apply because plaintiff knew of the existence of the cause of action and knew defendant's identity.

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

This Court reviews a trial court's decision on a motion for summary disposition de novo. When reviewing a motion for summary disposition granted pursuant to MCR 2.116(C)(7), this Court must accept as true the plaintiff's well-pleaded allegations and construe them in a light most favorable to the plaintiff. The motion should not be granted unless no factual development could provide a basis for recovery. *Smith v YMCA of Benton Harbor/St. Joseph*, 216 Mich App 552, 554; 550 NW2d 262 (1996), lv den 454 Mich 863 (1997).

MCL 600.5855 provides:

If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of any person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

We affirm the trial court's order granting defendant's motion for summary disposition. MCL 600.5855 is designed to prevent actions which hinder a plaintiff from discovering the existence of a claim or the identity of a liable person. If the plaintiff knows of the cause of action, no concealment can exist. *Stroud v Ward*, 169 Mich App 1, 7-8; 425 NW2d 490 (1988). Plaintiff asserted no facts which demonstrated that defendant, or anyone acting on his behalf, took affirmative steps to conceal either the existence of the cause of action or that he was the potentially liable person. Any efforts by defendant to avoid service do not equate to affirmative steps to conceal his identity. By filing suit plaintiff demonstrated that she knew of the existence of the cause of action and had identified defendant as the potentially liable person. Because concealment could not exist under the facts of this case, *Stroud, supra*, § 5855 could not serve to allow plaintiff to maintain an action filed beyond the statute of limitations.

Affirmed.

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