STATE OF MICHIGAN

COURT OF APPEALS

ANNA L. MARSH,

Plaintiff-Appellant/
Cross-Appellee,

v

DAVID A. CRUMMEL,

Defendant-Appellee/
Cross-Appellant.

UNPUBLISHED
April 23, 1999

No. 204941
Calhoun Circuit Court
LC No. 97-001430 NO

Before: O'Connell, P.J., and Jansen and Collins, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order granting summary disposition for defendant pursuant to MCR 2.116(C)(7), based upon a statute of limitations defense, dismissing plaintiff's claims of intentional and negligent infliction of emotional distress based upon allegations that defendant sexually abused plaintiff when she was a child. Defendant cross-appeals the trial court's failure to award costs and attorney fees under MCR 2.114(E). We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

Claims for intentional or negligent infliction of emotional distress must be brought within three years after they accrue in order to avoid the limitation bar. MCL 600.5805; MSA 27A.5805. According to MCL 600.5827; MSA 27A.5827, a claim accrues "at the time the wrong upon which the claim is based was done regardless of the time damage results." The time of the wrong that triggers the running of the limitation period is the date on which the plaintiff harmed by the defendant's act, i.e., the date an injury has resulted from a breach of duty. *Lemmerman v Fealk*, 449 Mich 56, 64; 534 NW2d 695 (1995). In *Lemmerman*, the Court observed that sexual assaults upon children inflict "immediate damage" on the children so abused. *Id*. The Court also stated that subsequent damage arising after the initial assaults does not give rise to a new cause of action or renew the running of the limitation period. *Id*.

Under the discovery rule, the limitation period begins to run when the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered a possible cause of action. *Moll v*

Abbott Laboratories, 444 Mich 1, 29; 506 NW2d 816 (1993). However, the discovery rule applies to the discovery of an injury, not to the discovery of a later realized consequence of an injury. *Id*. At 18. Thus, while the discovery rule may apply where a plaintiff is initially unaware that he or she has suffered *any* injury as a result of a defendant's known misconduct, see, e.g., *Schultz v Black*, 215 Mich App 248; 544 NW2d 741 (1996), lv den 453 Mich 947 (1996), the discovery rule is not available where a plaintiff merely misjudges the severity of a known injury. *Stephens v Dixon*, 449 Mich 531, 537; 536 NW2d 755 (1995).

Here, plaintiff cannot legitimately claim that she suffered no injury or damage whatsoever when the alleged sexual assaults occurred. *Lemmerman*, *supra* at 64. Indeed, plaintiff's complaint acknowledges that she "suffer[ed] through" the initial "physical or emotional injuries occurring during her early years of puberty." Nor does plaintiff's complaint allege that she was unaware of these initial injuries, cf. *Johnson v Johnson*, 701 F Supp 1363 (ND Ill, 1988) (repressed memory), or that she was unaware those injuries were the result of wrongful conduct, cf. *Hammer v Hammer*, 142 Wis App 2d 257; 418 NW2d 23 (1987) (parent persuaded child to believe that incest was normal and right); *Simmons v United States*, 805 F2d 1363 (CA 9, 1986) (psychiatrist persuaded patient to engage in sexual relationship). At most, plaintiff has only alleged that she was unaware of the severity and potential consequences of the known sexual assaults.

That plaintiff may have suffered new and more severe damages many years after the initial assaults does not give rise to a new cause of action or renew the running of the limitation period. *Lemmerman*, *supra* at 64. See also *Berrios v Miles Inc*, 226 Mich App 470; 574 NW2d 677 (1997). Moreover, that plaintiff may have failed to anticipate the onset of the more severe subsequent damages is also insufficient to invoke the discovery rule. *Stephens*, *supra* at 537. In this regard, plaintiff's reliance upon *Larson v Johns-Manville Sales Corp*, 427 Mich 301; 399 NW2d 1 (1986) is misplaced, since the rule developed in *Larson* is premised on the unique nature of the asbestosis litigation and is not applicable in other areas. *Berrios*, *supra* at 481-482.

Plaintiff's attempt to distinguish this case from *Lemmerman*, *supra*, on grounds that there is objective, verifiable testimony from third-party eyewitnesses to corroborate plaintiff's allegations of sexual abuse is also unavailing. Indeed, this Court has refused to distinguish *Lemmerman* even in cases where the past sexual misconduct is undisputed, i.e., admitted by the defendant. *Guerra v Garratt*, 222 Mich App 285; 564 NW2d 121 (1997).

Defendant's cross-appeal on the issue of sanctions under MCR 2.114(E) is premature, since the trial court has not made any ruling on that issue. Indeed, a review of the record reveals that defendant has never filed any motion for sanctions below. Rather, defendant only made a request for sanctions in the text of its brief in support of its motion for summary disposition. At most, defendant has only preserved the issue of sanctions so as to allow defendant to file a proper motion for sanctions subsequent to entry of the trial court's order granting summary disposition. Cf. *Maryland Casualty Co v Allen*, 221 Mich App 26; 561 NW2d 103 (1997). Since defendant

has never formally moved for sanctions or otherwise obtained a ruling from the lower court on the issue of sanctions, defendant is not entitled to appellate review of the issue at this time.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Jeffrey G. Collins