

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BARBARA COFFEY,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 210739  
Oakland Circuit Court  
LC No. 97-544155 NH

UNIVERSITY FAMILY PHYSICIANS, f/k/a  
UNIVERSITY FAMILY PHYSICIANS, P.C., d/b/a  
GRACE FAMILY PRACTICE CENTER, DR.  
FERRANS, SANFORD LAX, M.D., and DR.  
QUEK,

Defendants-Appellees

and

DR. BENITEX-GONZALEZ, a/k/a ORLANDO  
BENEDICT, M.D.

Defendant.

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Before: Whitbeck, P.J., and Saad and Hoekstra, JJ.

PER CURIAM.

Plaintiff Barbara Coffey appeals as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7), which provides for summary disposition where the statute of limitations has run on a claim. Plaintiff argues that her claim is not barred by MCL 600.5805(4); MSA 27A.5805(4), which mandates a two-year statute of limitations on actions to recover damages based on medical malpractice. Plaintiff argues that because defendants continued to treat her after they failed to properly diagnose her cancer, the alleged negligence continued until her condition was properly diagnosed by another doctor in early 1995. Because she filed her notice of intent in 1996, plaintiff argues that she is within the statute of limitations. However, we agree with the trial court that the so-called "continuing violations" doctrine does not apply to these sorts of medical malpractice claims. For purposes of determining whether the statute of limitations has run on plaintiff's claim, we look to the date of the actual commission or omission that forms the basis of her claim, which

in this case happens to be sometime in June of 1994. Consequently, plaintiff's claim is barred by MCL 600.5805(4); MSA 27A.5805(4), and we affirm the trial court's order granting defendants' motion for summary disposition.

The parties do not dispute the essential facts. According to plaintiff, she began seeking treatment from defendants in 1993 when she was experiencing abdominal pain and rectal bleeding. On June 13, 1994, at defendants' request, plaintiff underwent a procedure known as a barium enema. Although the test did not reveal any significant abnormalities, the doctor who summarized the test results recommended a colonoscopy if plaintiff's clinical symptoms suggested polyp or polypoid lesion. Defendants did not order or perform any further tests, but they continued to treat plaintiff for various medical problems through the beginning of 1995. On March 16, 1995, plaintiff complained to defendants of pain in her lower abdomen. Further tests, including a CT scan and a colonoscopy, revealed that plaintiff had colon cancer that had metastasized to her ovaries. On April 12, 1995, plaintiff underwent surgery to remove the mass.

In her complaint, plaintiff alleged that defendants failed to order appropriate and timely diagnostic testing to determine the source of her rectal bleeding and, consequently, failed to diagnose her colon cancer. She notified defendants of her intent to file this lawsuit on November 8, 1996 and filed her complaint on May 14, 1997. Defendants moved for summary disposition, claiming that the statute of limitations had run on plaintiff's claim. The trial court agreed with defendants that the alleged malpractice occurred in June 1994. Consequently, the trial court found that the claim was barred by the statute of limitations on malpractice tort claims. On appeal, plaintiff argues that the statute of limitations does not bar her claim because defendant's malpractice was part of a continuing act of omission that only ended when plaintiff's condition was properly diagnosed.

When reviewing a motion for summary disposition granted pursuant to MCR 2.116(C)(7), we accept as true the plaintiff's well-pleaded allegations and construe them in a light most favorable to the plaintiff. *Stabley v Huron-Clinton Metropolitan Park Authority*, 228 Mich App 363, 365; 579 NW2d 374 (1998). The motion should not be granted unless no factual development could provide a basis for recovery. *Id.* "The affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, must be considered by the court when the motion is based on subrule (C)(1)-(7) or (10)." MCR 2.116(G)(5).

Generally, a plaintiff in a medical malpractice case must bring a claim within two years of the claim's accrual or within six months of the discovery of the claim. MCL 600.5805(4); MSA 27A.5805(4). Medical malpractice claims accrue "at the time of the act or omission that is the basis for the claim of medical malpractice, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim." MCL 600.5838a(1); MSA 27A.5838(1)(1). See also *Solowy v Oakwood Hospital Corp.*, 454 Mich 214, 220; 561 NW2d 843 (1997). In this case, plaintiff alleges that defendants failed to follow up with necessary tests after her first barium enema. Therefore, the alleged omission occurred in June 1994, when the findings of the barium enema were prepared. Plaintiff had two years from the claim accrual date to bring her malpractice claim. MCL 600.5805(4); MSA 27A.5805(4). However, plaintiff filed her notice of intent November 1996, well after the statute of

limitations had lapsed. Because the statute of limitations had lapsed, the trial court did not err in granting defendants' motion for summary disposition. *Solowy, supra*, at 220.

In opposition to defendants' motion for summary disposition, plaintiff argued that she could still bring her complaint under the continuing violations doctrine. However, in *Traver Lakes Community Maintenance Ass'n v Douglas Co*, 224 Mich App 335, 341; 568 NW2d 847 (1997), this Court declined to extend the continuing violations doctrine, or continuing wrongful acts doctrine, to negligence claims. Furthermore, the *Traver* Court noted that the continuing violations doctrine was established by "continual tortious acts, not by continual harmful effects from an original, completed act." *Id.* at 340-341. Here, even if the continuing violations or continuing wrongful acts doctrine did apply to medical malpractice claims, plaintiff has failed to present documentary evidence of continual tortious acts. Rather, her documentary evidence reveals no further incidences of possible misdiagnosis; rather, the majority of plaintiff's contacts with defendants were for prescription refills. Accordingly, the trial court did not err in granting defendants' motion for summary disposition because the continuing violations doctrine has not been extended to medical malpractice or negligence actions, and even if the doctrine did apply, plaintiff's documentary evidence fails to establish a continuing violation or continuing wrongful acts. MCR 2.116(G)(4).

Lastly, in opposition to defendants' motion for summary disposition, plaintiff asserted that her claim was timely because the statute of limitations should commence when defendants last treated her or when she obtained relief from defendants' alleged malpractice by having her corrective surgery in April 1995. Plaintiff, however, failed to cite authority for this position. A statement of position without citation to authority is insufficient to bring an issue before the Court. *Mann v Mann*, 190 Mich App 526, 536-537; 476 NW2d 439 (1991). Furthermore, plaintiff's position was rejected by the Legislature. The last treatment rule provided that a claim of malpractice accrued at the time the defendant discontinued treating or otherwise serving the plaintiff. *Chase v Sabin* 445 Mich 190, 198 n 14; 516 NW2d 60 (1994). In *Morgan v Taylor*, 434 Mich 180, 194; 451 NW2d 852 (1990), the Supreme Court noted that the Legislature had repealed the last treatment rule. Accordingly, plaintiff's argument that her claim accrued either with defendants' last treatment or the correction of the alleged malpractice is without merit.

Affirmed.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Joel P. Hoekstra