

STATE OF MICHIGAN  
COURT OF APPEALS

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HABIB JAPPAYA, a/k/a HABIB GIRGIS,

Plaintiff-Appellant,

v

GEORGE JAPPAYA and RAMZYA JAPPAYA,

Defendants-Appellees.

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UNPUBLISHED

June 6, 2000

No. 212362

Oakland Circuit Court

LC No. 97-545660-CZ

Before: Murphy, P.J., and Collins and Owens, JJ.

PER CURIAM.

This action arises from an alleged misappropriation of funds from a joint bank account. The trial court granted defendants' motion for summary disposition on the basis that plaintiff's action was barred by the applicable statute of limitations. See MCR 2.116(C)(7). Plaintiff appeals as of right. We affirm.

Although plaintiff's complaint alleges several different claims, on appeal plaintiff only challenges the dismissal of his fraud claim as untimely. The applicable period of limitations for a fraud action is six years. MCL 600.5813; MSA 27A.5813; *Kuebler v Equitable Life Assur Soc*, 219 Mich App 1, 6; 555 NW2d 496 (1996). While the alleged fraudulent conduct occurred in 1982, 1988, and May 1991, plaintiff alleges that he did not discover the conduct until the fall of 1992. Plaintiff argues that, under either the discovery rule or the fraudulent concealment statute, MCL 600.5855; MSA 27A.5855, the period of limitations did not begin to run until he discovered the alleged fraud in the fall of 1992. We disagree. This is an issue of law which we review de novo. *Maiden v Rozwood*, 461 Mich 109, 118-119; 597 NW2d 817 (1999).

The fraudulent concealment statute, MCL 600.5855; MSA 27A.5855, operates to extend the period for filing suit where "the action would otherwise be barred by the period of limitations." Accepting plaintiff's argument that the fraudulent concealment statute is applicable, the statute merely provides that a plaintiff may commence the action "within [two] years after the person . . . discovers, or should have discovered, the existence of the claim." MCL 600.5855; MSA 27A.5855. Because the alleged wrongful conduct was discovered in the fall of 1992, and because the present action was not commenced *within two years* of this discovery, plaintiff's action is not timely under the fraudulent concealment statute.

Where applicable, the judicially created “discovery rule” tolls the statute of limitations until a claim is discovered. *Shields v Shell Oil Co*, 237 Mich App 682, 691; 604 NW2d 719 (1999). However, because this rule tends to undermine the policies behind the statute of limitations, courts considering its application “must carefully balance when the plaintiff learned of [his] injuries, whether [he] was given a fair opportunity to bring [his] suit, and whether defendant’s equitable interests would be unfairly prejudiced by tolling the statute of limitations.” *Stephens v Dixon*, 449 Mich 531, 536; 536 NW2d 755 (1995); see also *Goodridge v Ypsilanti Twp Bd*, 451 Mich 446, 454; 547 NW2d 668 (1996).

We conclude that there is no basis for applying the discovery rule to plaintiff’s 1988 and 1991 claims because, given the six-year statute of limitations for fraud actions, after discovering the alleged wrongful conduct in 1992, plaintiff “had more than ample time *within the [applicable] limitation period* to file suit and did not.” *Stephens, supra* at 538 (emphasis added).

With regard to the alleged 1982 fraudulent conduct, although the general period of limitations expired in 1988, which is before plaintiff allegedly discovered the conduct, we conclude that other considerations militate against applying the discovery rule to this conduct.

The elements of a fraud claim are a material representation, that is false and was made with knowledge of its falsity or with recklessness as to its truth, and was made with the intent that the plaintiff rely on it, which the plaintiff did, and that the plaintiff thereby suffered injury. *Kuebler, supra* at 6. Here, plaintiff alleges that his brother fraudulently induced him to sign a power of attorney, and that he used plaintiff’s money for his own benefit. In those cases in which courts have applied the discovery rule to extend the statute of limitations, “the dispute between parties has been based on evaluation of a factual, tangible consequence of action by the defendant, measured against an objective external standard . . . such as the standard of care in the relevant profession or industry, at the time of the injury.” *Lemmerman v Fealk*, 449 Mich 56, 68; 534 NW2d 695 (1995). Those cases referenced by the Court, in which such criteria had been met, involved claims on which liability was primarily predicated on easily verifiable evidence. See *Chase v Sabin*, 445 Mich 190; 516 NW2d 60 (1994) (negligence action brought against hospital and its agent before statutory characterization of such negligence as medical malpractice); *Moll v Abbott Laboratories*, 444 Mich 1; 506 NW2d 816 (1993) (pharmaceutical products liability action); *Larson v Johns-Manville Sales Corp*, 427 Mich 301; 399 NW2d 1 (1986) (asbestos-related products liability action).

In this case, by contrast, although the consequences of the tort alleged are probably tangible and easily determinable from verified record evidence, lacking is “an objective standard [that] can be recreated for evaluation by the factfinder.” *Id.* Rather, liability in a fraud case such as this will depend in large part on a factual determination of what the parties said to each other, what they understood, what they believed, and what they intended. “Where the existence of injury, as well as the existence and reliability of any evidence of a causal link to the defendants, turns simply on one person’s word against another, assurance of a reliable resolution of the relevant issues is problematic.” *Id.* at 76.

The presence of an objective external standard addresses the concern for reliable fact finding that is the underlying rationale for precluding untimely claims. *Id.* at 68. Under these circumstances,

therefore, we conclude that the discovery rule is inapplicable to plaintiff's claim concerning the fraudulent conduct occurring in 1982. Accordingly, the trial court properly granted defendants' motion for summary disposition under MCR 2.116(C)(7).

Affirmed.

/s/ William B. Murphy

/s/ Jeffrey G. Collins

/s/ Donald S. Owens