

STATE OF MICHIGAN
COURT OF APPEALS

W. FRANK TIMMONS, d/b/a TIMMONS
LANDSCAPING,

UNPUBLISHED
January 26, 2001

Plaintiff-Appellant,

v

MT. MORRIS TOWNSHIP and LARRY GREEN,

No. 213701
Genesee Circuit Court
LC No. 97-057773-CB

Defendants-Appellees.

Before: Jansen, P.J., and Doctoroff and O’Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(7). We remand for further proceedings.

This case arises out of the award of a contract by Mt. Morris Township for weed abatement and trash removal in 1994. In the spring of 1994, the township requested bids for the contract and opened the sealed bids on April 22, 1994, at a township meeting that was open to the public. On May 23, 1994, at a regular public meeting of the township’s board, the board voted to award the weed abatement and trash removal contract to James Trovillion. Plaintiff averred in his affidavit that he contacted the township on or after July 4, 1994, and was told that he was not the low bidder and that he did not receive the contract. Plaintiff then filed his lawsuit against defendants on July 1, 1997, alleging racial discrimination pursuant to 42 USC 1981 and 42 USC 1983.

Plaintiff’s only issue on appeal is whether the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(7) to defendants, on the basis that plaintiff’s action was barred by the statute of limitations. There is no dispute that the applicable statute of limitations for claims based on violations of 42 USC 1981 and 42 USC 1983 is a state’s statute of limitations governing personal injury, *Goodman v Lukens Steel Co*, 482 US 656, 676; 107 S Ct 2617; 96 L Ed 2d 572 (1987); *Wilson v Garcia*, 471 US 261, 276; 105 S Ct 1938; 85 L Ed 2d 254 (1985), which in this state is three years. MCL 600.5805(8); MSA 27A.5805(8).

The question here is when the statute of limitations began to run. Under the general accrual statute, a statute of limitations does not begin to run until the claim accrues, and a “claim accrues at the time the wrong upon which the claim is based was done regardless of the time

when damage resulted.” MCL 600.5827; MSA 27A.5827. In a personal injury case, a claim does not accrue until “all the elements of an action for personal injury, including the element of damage, are present.” *Connelly v Paul Ruddy’s Equipment Repair & Service Co*, 388 Mich 146, 151; 200 NW2d 70 (1972).

The trial court ruled, consistent with defendants’ argument, that the statute of limitations began to run on May 23, 1994, when the contract was awarded at the township’s meeting.¹ Plaintiff argues that the statute of limitations should not have begun to run until he was aware that he did not receive the contract, which he claims occurred sometime after July 4, 1994. We believe that both positions miss the mark and that the proper inquiry is when the township actually entered into the contract with Trovillion. In other words, the statute of limitations in this case began to run when the township entered into the contract with Trovillion, not when it merely awarded the contract to him because the discriminatory act, if any, occurred when the contract was entered into between the township and Trovillion. However, we are unable to determine from the lower court record when this occurred. Consequently, we must remand this case to the trial court for the parties to present evidence regarding the date that the township entered into a written agreement with the successful bidder. The three-year statute of limitations will begin to run from that date.²

We further find that plaintiff’s argument that the statute of limitations did not begin to run until after July 4, 1994, because defendants were engaged in a continuing violation of plaintiff’s rights is without merit. The decision of the township to enter into a contract with Trovillion and that date of that contract is the discriminatory act. There were no continuing acts by defendants following the making of the contract that resulted in a continuing violation. See generally, *Summer v Goodyear Tire & Rubber Co*, 427 Mich 505; 398 NW2d 368 (1986).

Remanded for further proceedings. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Peter D. O’Connell

¹ Defendants also assert on appeal that plaintiff must have had notice of the award of the contract to Trovillion by no later than June 8, 1994, because the minutes of the May 23, 1994, board meeting were published in the *Genesee County Herald*. The newspaper article attached to defendants’ appellate brief, however, was not presented as an exhibit to the trial court and defendants never made this argument below. Because this document was not part of the record below, defendants have improperly attempted to expand the record on appeal and we will disregard this newspaper article. See *Isagholian v Transamerica Ins Corp*, 208 Mich App 9, 18; 527 NW2d 13 (1994). In any event, we do not find this information to be dispositive of the question when plaintiff’s cause of action accrued.

² We note that if the three-year statute of limitations is found to not have expired on remand, then the trial court should rule on the alternative arguments raised by defendants in their motion for summary disposition.