STATE OF MICHIGAN

COURT OF APPEALS

JUDY HOLLEY,

Plaintiff-Appellee/Cross Appellee,

v

CLARK SEED, INC.,

Defendant/Cross Appellant,

and

CAUDILL SEED COMPANY,

Defendant-Appellant.

UNPUBLISHED
September 21, 2001

No. 223749
Midland Circuit Court
LC No. 99-009885-NO

Before: Cavanagh, P.J., and Markey and Cooper, JJ.

PER CURIAM.

Defendant, Caudill Seed Company, appeals by leave granted from an order denying its motion for summary disposition brought jointly with defendant Clark Seed, Inc. Clark Seed has filed a cross-appeal aligned with Caudill Seed's position. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff ate at a restaurant on May 27, 1995, and became ill on June 1, 1995. A June 10, 1995, culture revealed that she had contracted salmonella food poisoning. By June 14, 1995, plaintiff learned that her food poisoning was the result of ingesting tainted alfalfa sprouts, and those sprouts were then traced to the restaurant. Initially, investigating authorities believed the contamination was caused by improper handling. Accordingly, plaintiff filed suit against the restaurant on January 29, 1996. Later, the authorities believed that the contamination was the result of improper packaging. Plaintiff therefore amended her complaint to add the distributor and supplier of the sprouts. During a February 24, 1998, deposition of a health department official, plaintiff learned that the authorities suspected that the seeds used by the alfalfa sprout supplier were contaminated. Plaintiff claimed that she did not discover defendants' identity as

the seed suppliers until mid to late 1998.[1]

Plaintiff filed her action against defendants on March 29, 1999. Defendants moved for summary disposition under MCR 2.116(C)(7), arguing that plaintiff's action was barred by the three-year limitation period. The trial court denied the motion, concluding that plaintiff's claim did not accrue until she "reasonably identified that these Defendants may have had some responsibility for the injury." On appeal, defendants argue that the trial court erred in applying the discovery rule because that rule applies to the discovery of a cause of action, not to the discovery of the identity of tortfeasors. We agree.

The general accrual statute provides that a claim accrues "at the time the wrong upon which the claim is based was done regardless of the time when damage results." MCL 600.5827. Our Supreme Court has interpreted this language to mean that a claim does not accrue until all the necessary elements of a cause of action have occurred and can be alleged in a proper complaint. *Connelly v Paul Ruddy's Equipment Repair & Service Co*, 388 Mich 146, 150; 200 NW2d 70 (1972). Where an element of a cause of action has occurred, but cannot be pleaded in a proper complaint because it is not yet discoverable with reasonable diligence, courts have applied the discovery rule. *Travelers Ins Co v Guardian Alarm Co of Michigan*, 231 Mich App 473, 479-480; 586 NW2d 760 (1998). Under the discovery rule, a claim accrues when, on the basis of objective facts, the plaintiff should have known of a possible cause of action. *Solowy v Oakwood Hosp Corp*, 454 Mich 214, 222; 561 NW2d 843 (1997); *Moll v Abbott Laboratories*, 444 Mich 1, 23-25; 506 NW2d 816 (1993). "Once a claimant is aware of an injury and its possible cause, the plaintiff is aware of a possible cause of action." *Id*. at 24. It is not necessary that a plaintiff know the specifics of the evidence for a cause of action to accrue; it is enough that she knows a cause of action exists in her favor. *Id*.

It is well settled that accrual of a cause of action is not delayed until the plaintiff discovers the identity of the tortfeasor that might be ultimately liable for her injuries. In *Brown v Drake-Willock Int'l, Ltd*, 209 Mich App 136, 142; 530 NW2d 510 (1995), this Court held that the discovery rule pertains to discovering a specific injury, not to discovering the identities of all potential parties. Similarly, in *Poffenbarger v Kaplan*, 224 Mich App 1, 12; 568 NW2d 131 (1997), this Court observed that "[t]he discovery period applies to discovery of a possible claim, not the discovery of the defendant's identity." See, also, *Thomas v Process Equipment Corp*, 154 Mich App 78, 88; 397 NW2d 224 (1986); *Reiterman v Westinghouse, Inc*, 106 Mich App 698, 704; 308 NW2d 612 (1981); and *Thomas v Ferndale Laboratories, Inc*, 97 Mich App 718, 722; 296 NW2d 160 (1980).

In *Lefever v American Red Cross*, 108 Mich App 69; 310 NW2d 278 (1981), the plaintiff received a blood platelet transfusion that was tainted with serum hepatitis and she was diagnosed with the disease approximately five months later, on August 2, 1976. *Id*. at 71. She brought a negligence claim against the defendant, the supplier of the tainted platelets, in October 1979. *Id*. This Court concluded that her cause of action accrued no later than August 2, 1976, because once

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[1] Defendants dispute this claim and assert that materials plaintiff received in October 1996 pursuant to a Freedom of Information Act request put her on notice of defendant Caudill's status as a seed supplier.

she was diagnosed, all the elements of a cause of action had occurred and could have been alleged in a proper complaint. *Id*. at 72-73. In concluding that the plaintiff's claim was untimely, this Court rejected the argument that her cause of action did not accrue until she learned of the defendant's connection to the case. *Id*. at 73.

The trial court in this case declined to follow these cases and applied the discovery rule because of the complexity of evaluating which entity along the chain of production and distribution of the alfalfa sprouts bore responsibility for the contamination that led to plaintiff's illness. That analysis, however, is simply a reformulation of the proposition that plaintiff was entitled to rely on the discovery rule because she did not know the identity of the ultimate tortfeasor. The case law makes it clear that a cause of action accrues regardless of the plaintiff's ability to identify a particular defendant or the precise mechanism that led to her injury. As in *Lefever*, plaintiff knew she was injured on June 14, 1995, when she was informed that her food poisoning was caused by tainted alfalfa sprouts. The fact that a complex investigation was required to determine which entity along the distribution chain was ultimately responsible for the contamination does not alter the fact that she could have pleaded a proper cause of action in 1995. Accordingly, we reverse the trial court's order denying defendants' motion for summary disposition.

Reversed.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Jessica R. Cooper