STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH MICIELLI and GALE MICIELLI,

Plaintiffs-Appellants,

v

RAYMOND HEINKEN, M.D. and SELECT HEALTH CENTERS, a/k/a DEMAC CORPORATION,

Defendants-Appellees.

UNPUBLISHED
November 2, 2001

No. 225552
Macomb Circuit Court
LC No. 99-003844-NH

Before: Doctoroff, P.J., and Wilder and Chad C. Schmucker*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). When reviewing a motion decided under MCR 2.116(C)(7), this Court accepts as true the well-pleaded allegations in the plaintiff's complaint and construes them in the plaintiff's favor. The Court must consider the pleadings, affidavits, and other documentary evidence to determine whether a genuine issue of material fact exists. "Where a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate. Otherwise, where no material facts are in dispute, this Court may decide the question as a matter of law." *Traver Lakes Community Maintenance Ass'n v Douglas Co*, 224 Mich App 335, 340; 568 NW2d 847 (1997).

The limitations period for a malpractice claim is two years from the time the claim accrues. MCL 600.5805(1), (5). A medical malpractice claim accrues at the time of the act or omission that gave rise to the claim "regardless of the time the plaintiff discovers or otherwise has legal knowledge of the claim." MCL 600.5838a(1). A medical malpractice claim may be filed within the two-year period or within six months after the plaintiff discovers or should have discovered the claim, whichever is later. MCL 600.5838a(2). The act or omission giving rise to the claim occurred in July 1996 at the latest. Plaintiff Joseph Micielli admittedly did not file suit

* Circuit judge, sitting on the Court of Appeals by assignment.

by July 1998, so his claim would be time-barred unless he could not have discovered the claim until August 1998.

When the plaintiff discovered his cause of action is necessarily determined by a subjective test. However, when the plaintiff should have discovered the existence of his claim is determined by an objective test: "would a *reasonable person* in plaintiff's circumstances have discovered the claim?" *Levinson v Trotsky,* 199 Mich App 110, 112; 500 NW2d 762 (1993) (emphasis in original). The plaintiff need only be aware of a possible cause of action, i.e., an injury and its possible cause, to have the knowledge necessary to preserve and pursue the claim. *Solowy v Oakwood Hosp Corp,* 454 Mich 214, 222-223; 561 NW2d 843 (1997). The plaintiff need not know that his injury was in fact or even likely caused by the defendants' alleged negligence and need not be aware of the details of the evidence necessary to prove his claim. *Id*. at 224; *Shawl v Dhital,* 209 Mich App 321, 327; 529 NW2d 661 (1995). The plaintiff has the burden of proving that, as a result of physical discomfort, appearance, condition, or otherwise, he neither discovered nor should have discovered the existence of the claim at least six months before he filed his complaint. MCL 600.5838a(2); *Poffenbarger v Kaplan,* 224 Mich App 1, 12; 568 NW2d 131 (1997).

The evidence showed that plaintiff's subsequent treating physicians were concerned about methotrexate-induced liver damage and recommended a liver biopsy in March 1997. Plaintiff learned that he had sustained such damage in July 1997. At that time, plaintiff should have been aware of his injury (liver damage) and its possible cause (the methotrexate and Heinken's failure to advise him that it could cause liver damage, to monitor him for development of liver damage, and to diagnose the condition). Such information was sufficient to enable him to diligently pursue his claim. *Solowy, supra* at 224-225. The trial court did not err in granting defendants' motion.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder
/s/ Chad C.Schmucker