STATE OF MICHIGAN

COURT OF APPEALS

TRULA SCHUTT, CATHERINE HILDRETH, and JOYCE CUMMINS,[1]	UNPUBLISHED April 19, 2002
Plaintiffs-Appellants,	
v	No. 228504 Kent Circuit Court LC No. 99-000172-CK
LOCAL UNION NO. 2074, COUNCIL 25, and UNION OF THE INTERNATIONAL FEDERATION OF STATE, COUNTY, and MUNICIPAL EMPLOYEES,	
Defendants-Appellees.	

Before: Owens, P.J., and Markey and Murray, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a trial court order granting defendants' motions for summary disposition pursuant to MCR 2.116(C)(7). Plaintiffs, as union members, had claimed that defendants' failure to file grievances on their behalf constituted a breach of contract, negligence, and gross negligence. We affirm.

Plaintiffs contend that the trial court erred by granting defendants' motions for summary disposition pursuant to MCR 2.116(C)(7), which was based on the trial court's conclusion that the six-month statute of limitation had expired before plaintiffs' complaint was filed. Generally, we review de novo a trial court's decision on a motion for summary disposition. *Todorov v Alexander*, 236 Mich App 464, 467; 600 NW2d 418 (1999). Similarly, absent disputed issues of fact, we review de novo a trial court's determination that a statute of limitation bars a cause of action. *Id.*

Specifically, plaintiffs challenge the trial court's conclusion that a six-month statute of limitation was applicable to their lawsuit. As a preliminary matter, we note that plaintiffs conceded that, although their claims were brought under various common law theories, the gravamen of their lawsuit is that the union breached its duty of fair representation, MCL 423.210(a). In *Ray v Organization of School Administrators & Supervisors, Local 28, AFL-CIO,*

[1] We note that this plaintiff signed her name "Cummings," rather than "Cummins."

141 Mich App 708, 711; 367 NW2d 438 (1985), we recognized that a six-month period of limitation applies to a union member's claim that his or her union breached its duty of fair representation. In fact, we applied this ruling in several subsequent cases.[2]

Here, plaintiffs were suspended from their employment at Grand Valley State University ("GVSU") on or about November 14, 1997. On November 21, 1997, two plaintiffs, Schutt and Hildreth, resigned, and several days later GVSU terminated plaintiff Cummings' employment. However, plaintiffs did not file the instant complaint until January 8, 1999. Thus, plaintiffs' lawsuit was commenced well beyond the applicable six-month statute of limitation.

However, plaintiffs contend that our Supreme Court's decision in *Rowry v University of Michigan*; 441 Mich 1, 8; 490 NW2d 305 (1992), was "an unequivocal and unambiguous repudiation" of *Ray* and its progeny, to the extent that these decisions mandated application of a six-month statute of limitation. We disagree. The *Rowry* Court reviewed the propriety of this Court's extension, by analogy, of the *Ray* decision to a situation where an employee filed a claim in circuit court seeking to enforce the terms of an arbitrator's decision on an unfair labor practice claim. *Id.* at 4-6. The *Rowry* Court merely found that the facts before it were not properly analogous, and overruled our extension of *Ray*. *Id.* at 8-9. Thus, we are not persuaded that the *Rowry* decision affected our decisions applying a six-month statute of limitation to a breach of a duty of fair representation claim. Accordingly, we reject defendants' contention that *Ray* and its progeny are no longer "good law." Consequently, we conclude that the trial court properly applied a six-month statute of limitation to plaintiffs' lawsuit.

Nevertheless, plaintiffs contend that, even if the six-month statute of limitation generally applies to their lawsuit, several principles of law render dismissal of their lawsuit erroneous. Specifically, plaintiffs reference the principles of accrual, tolling, and equitable estoppel.

Indeed, we have ruled that the limitation period is tolled "where a plaintiff-employee has no knowledge or reason to know of an unfair labor practice." *Huntington Woods v Wines*, 122 Mich App 650, 651; 332 NW2d 557 (1983). Similarly, in regard to "accrual," we opined that the "six-month limitation period begins to run from the time a final decision regarding the employees' grievance has been made or from the time the employees discovered, or in the exercise of reasonable care should have discovered, that no further action would be taken with respect to their grievance." *McClusky v Womak*, 188 Mich App 465, 469; 470 NW2d 443 (1990).

Here, plaintiffs contend that they did not know that grievances were not going to be filed on their behalf because the union steward knowingly mislead them by stating that he would "get back to them" regarding their grievances. However, we note that plaintiffs consulted an attorney in December 1997. This fact belies their implicit suggestion that they had no reason to know that the grievances were not going to be filed on their behalf. Moreover, plaintiffs do not allege that any contact occurred with the union steward that further delayed them, or their attorney, from

[2] See *Silbert v Lakeview Ed Ass'n, Inc*, 187 Mich App 21, 25; 466 NW2d 333 (1991); *Leider v Fitzgerald Ed Ass'n,* 167 Mich App 210, 214-217; 421 NW2d 635 (1988); *Meadows v Detroit*, 164 Mich App 418, 434; 418 NW2d 100 (1987); and *Carlson v North Dearborn Heights Bd of Ed,* 157 Mich App 653, 663; 403 NW2d 598 (1986).

ascertaining that grievances had not been filed on their behalf. Thus, while some tolling attributable to the union steward's purported misrepresentations might be justifiable, the amount of tolling that we would find reasonable under the circumstances would still fall well short of the several months of tolling necessary to make plaintiffs' lawsuit timely filed. Further, plaintiff Hildreth's affidavit indicates that she "got into an argument" with the union steward on November 21, 1997, because she suspected that he thought plaintiffs were "troublemakers." In other words, there was some indication at that early date that the union steward was not properly representing their interests. As such, it is far from clear that plaintiffs are necessarily entitled to tolling based on accrual principles. Regardless, we believe that any tolling that plaintiffs were entitled to was insufficient to allow their lawsuit to proceed.

A party may be equitably estopped from arguing a statute of limitation defense where it is established "that there has been a false representation or concealment of material fact, coupled with an expectation that the other party will rely upon this conduct, and knowledge of the actual facts on the part of the representing or concealing party." *Lothian v Detroit*, 414 Mich 160, 177; 324 NW2d 9 (1982). Again, however, even assuming the veracity of plaintiffs' allegations regarding the union steward's misleading conduct, we are not persuaded that plaintiffs were entitled to several months of tolling based on equitable estoppel. Indeed, plaintiffs promptly sought legal representation the following month, notwithstanding the union steward's alleged suggestion that grievances would be filed on their behalf. Therefore, we believe that the trial court did not err by refusing to toll plaintiffs' claims based on equitable estoppel principles. Consequently, we conclude that the trial court did not err as a matter of law by dismissing plaintiffs' lawsuit pursuant to MCR 2.116(C)(7).

Finally, plaintiffs contend that the trial court erred by denying their motion for leave to amend their pleadings. The trial court, having already concluded that the statute of limitation barred plaintiffs' lawsuit, denied the motion on the basis of futility.

Generally, a trial court's decision to deny a motion to amend a pleading is reviewed for an abuse of discretion. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). Although a motion to amend a pleading should ordinarily be granted, a trial court need not do so where the amendment would be futile. *Id.* at 658, quoting *Ben P Fyke & Sons v Gunter Co*, 390 Mich 649, 658; 213 NW2d 134 (1973). Here, plaintiffs' lawsuit was time barred no matter how sufficiently pleaded. As such, correcting any deficiencies in the pleadings was certainly futile. As a result, we conclude that the trial court did not abuse its discretion by denying plaintiffs' request to amend their pleadings.

Affirmed.

/s/ Donald S. Owens
/s/ Jane E. Markey
/s/ Christopher M. Murray