

STATE OF MICHIGAN  
COURT OF APPEALS

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DIANE M. PERO,

Plaintiff-Appellant,

v

NORMAN LEE FAUGHT,

Defendant-Appellee.

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UNPUBLISHED

July 30, 2002

No. 231036

Shiawassee Circuit Court

LC No. 00-004722-NI

Before: Murray, P.J., and Sawyer and Zahra, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order dismissing her negligence claim based on the statute of limitations. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff argues that the circuit court erred by refusing to apply the discovery rule to toll the running of the limitations period. We disagree. "We review de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(7). Further, whether plaintiff's claim is statutorily time-barred is a question of law for this Court to decide de novo." *DiPonio Construction Co, Inc v Rosati Masonry Co, Inc*, 246 Mich App 43, 46-47; 631 NW2d 59 (2001) (citations omitted).

The discovery rule does not apply in a case of ordinary negligence in which a plaintiff merely misjudges the severity of a known injury. *Stephens v Dixon*, 449 Mich 531, 537-539; 536 NW2d 755 (1995). Like *Stephens*, this is a case of ordinary automobile negligence. There is no dispute that plaintiff's latest complaint was filed over eleven years after the automobile collision alleged to have injured plaintiff. There is also no dispute that plaintiff filed a complaint alleging injuries arising from the same accident within three years of that accident but allowed that action to lapse by failing to serve the complaint. Plaintiff was aware of injuries to her low back and hip, which could have been caused by the automobile accident well within three years of that accident. While plaintiff did not learn of her herniated discs until much later, this was a matter of misjudging the severity of the injury rather than not knowing of any injury or possible cause of action.

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Brian K. Zahra