

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Estate of DAWN MARIE
RAYMENT, Deceased.

CHRISTOPHER RAYMENT, Personal
Representative of the Estate of DAWN MARIE
RAYMENT, Deceased,

Plaintiff-Appellant,

v

NORTHFIELD PLACE, a/k/a INTERNATIONAL
HEALTHCARE PROPERTIES 72 LTD
PARTNERSHIP,

Defendant-Appellee.

UNPUBLISHED
March 16, 2004

No. 244252
Washtenaw Circuit Court
LC No. 00-001407-NO

Before: Sawyer, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) on the ground that plaintiff's claim of malpractice was barred by the statute of limitations. We affirm.

This Court reviews a trial court's grant of summary disposition brought pursuant to MCR 2.116(C)(7) de novo. *Fournier v Mercy Community Health Care System-Port Huron*, 254 Mich App 461, 465; 657 NW2d 550 (2002).

In reviewing whether the moving party was entitled to judgment as a matter of law, this Court considers all affidavits, pleadings, and other documentary evidence submitted by the parties and construes the pleadings in the light most favorable to the nonmoving party. *Id.* "Absent a disputed question of fact, the determination whether a cause of action is barred by a statutory period of limitation is a question of law that this Court reviews de novo." *Id.*

At issue on appeal is whether defendant's failure to implement and require compliance with proper rules, policies, and procedures to resolve guardianship issues constitutes malpractice or ordinary negligence. Plaintiff argues that the trial court erred when it held that plaintiff's

cause of action against defendant was one of malpractice rather than ordinary negligence and applied the two-year statute of limitations to the claim. MCL 600.5805(6). We disagree.

Whether a malpractice limitations period applies depends on the basis of the plaintiff's allegations; thus, the gravamen of an action is determined by reading the claim as a whole. *Simmons v Apex Drug Stores, Inc*, 201 Mich App 250, 253; 506 NW2d 562 (1993). Therefore, the applicable limitations period is determined by the theory actually pleaded. *Wilkerson v Carlo*, 101 Mich App 629, 631-632; 300 NW2d 658 (1980).

The key to whether a claim sounds in malpractice or ordinary negligence is “whether it is alleged that the negligence occurred within the course of a professional relationship.” *Dorris v Detroit Osteopathic Hospital Corp*, 460 Mich 26, 45; 594 NW2d 455 (1999). Further, whether a claim is subject to the procedural requirements of a malpractice claim instead of an ordinary negligence claim “depends on whether the facts allegedly raise issues that are within the common knowledge and experience of the jury or, alternatively, raise questions involving [professional] judgment.” *Id.* at 46. “In other words, if a claim arises out of ‘professional judgment’ or a ‘professional relationship,’ then it involves malpractice, not ordinary negligence.” *Stover v Garfield*, 247 Mich App 456, 463-464; 637 NW2d 221 (2001), rev’d on other grounds, 446 Mich 887 (2002).

The alleged negligence here occurred during plaintiff’s decedent’s professional relationship with defendant. Further, an expert witness would be needed to explain the proper procedures to be employed by a health care facility in determining incompetence and weighing its legal implications, resolving other guardianship issues and discharging patients. These issues are not within the common knowledge and experience of the jury; they raise questions involving specialized professional judgment.

Therefore, plaintiff’s claim is one alleging malpractice, not ordinary negligence. See, e.g., *Penner v Seaway Hospital*, 102 Mich App 697; 302 NW2d 285 (1981) (medical malpractice was alleged against a hospital for breaching its duties to review the conduct of staff physicians and require the physicians to comply with hospital rules, state law, and the standard of the hospital community). An action based on the negligent provision of the kinds of professional services at issue here is a malpractice action. The trial court correctly concluded that the malpractice statute of limitations barred this cause of action.

We affirm.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Richard A. Bandstra