

STATE OF MICHIGAN
COURT OF APPEALS

DAWN RICK and RICHARD RICK,

Plaintiffs-Appellants,

v

THUMB MEDICAL IMAGING, P.C., DAVID
CARTER, M.D., and HILLS & DALES
GENERAL HOSPITAL,

Defendants-Appellees.

UNPUBLISHED

October 26, 2004

No. 247526

Tuscola Circuit Court

LC No. 02-020919-NH

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendants' motion for summary disposition and dismissing this medical malpractice case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On December 26, 2000, Dawn Rick underwent a mammogram that revealed a cancerous lesion. On October 8, 2001, plaintiffs became concerned that a mammogram performed on October 21, 1999, had been interpreted incorrectly. Plaintiffs filed a notice of intent to bring a malpractice action on October 15, 2001, and filed suit on May 2, 2002, alleging that defendants committed malpractice by failing to interpret the October 21, 1999, mammogram properly and to detect the presence of cancer at that time.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiffs' action was barred by the general two-year statute of limitations, and that the six-month discovery rule did not apply because plaintiffs could not establish that Dawn Rick did not discover and should not have discovered her cause of action until six months before plaintiffs filed the notice of intent. The trial court granted the motion, concluding that a reasonable person in Dawn Rick's position would have discovered the existence of a possible claim no later than December 26, 2000. The trial court determined that the limitations period expired on October 21, 2001, and that notwithstanding the extension of the expiration date to April 22, 2002, plaintiffs' complaint, filed on May 2, 2002, was untimely.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The statute of limitations for medical malpractice actions is two years. MCL 600.5805(6).¹ The limitations period is subject to a six-month discovery rule exception under which a claim may be commenced after the expiration of the two-year period if it is commenced within six months after the plaintiff discovered or should have discovered the claim. MCL 600.5838a(2). The discovery rule does not require the plaintiff to know with certainty that the defendant committed malpractice. It requires that the plaintiff know of the act or omission giving rise to the malpractice and that the plaintiff had reason to believe that it was improper. A claim accrues once the plaintiff is aware of the injury and its possible cause. *Solowy v Oakwood Hosp Corp*, 454 Mich 214, 222; 561 NW2d 843 (1997). The burden of proving that the plaintiff neither discovered nor should have discovered the claim at least six months before the expiration of the limitations period is on the plaintiff. MCL 600.5838a(2). The determination of whether and when a plaintiff discovered or should have discovered a claim is a question of fact for the jury, unless the facts are undisputed and the trial court can properly decide the issue as a matter of law. *Solowy*, *supra* at 230.

Plaintiffs argue that the trial court erred by granting defendants' motion for summary disposition. We disagree. Whether a plaintiff should have discovered a claim is tested objectively by application of a reasonable person standard. *Levinson v Trotsky*, 199 Mich App 110, 112; 500 NW2d 762 (1993). In order to have discovered a claim a plaintiff need not know that his or her injury was caused by the defendant's negligence and need not be aware of the details of the evidence necessary to prove the claim. *Solowy*, *supra* at 224. The discovery rule applies to the discovery of an injury, rather than to a later realized consequence of the injury. *Moll v Abbott Laboratories*, 444 Mich 1, 18; 506 NW2d 816 (1993).

The evidence showed that on December 26, 2000, Dawn Rick learned that her mammogram had detected the presence of a cancerous lesion. The fact that at that time Dawn Rick was not aware that Dr. Carter had allegedly misinterpreted the October 21, 1999, mammogram was not necessary for her to have discovered her claim. *Solowy*, *supra*. The trial court correctly found that the undisputed evidence showed that Dawn Rick should have been aware of her injury, i.e., the presence of undiscovered breast cancer, and its possible cause no later than December 26, 2000, and that the claim accrued at that time. *Id.* at 222. The trial court correctly decided the issue as a matter of law, *id.* at 230, and properly granted summary disposition in favor of defendants on the ground that plaintiffs' action was barred by the statute of limitations. MCL 600.5805(6); MCL 600.5838a(2).

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood

¹ Formerly MCL 600.5805(5).