

STATE OF MICHIGAN
COURT OF APPEALS

NORMAN MILLER,

Plaintiff-Appellant,

v

HEPWORTH LAND SURVEYING, L.L.C.,

Defendant-Appellee.

UNPUBLISHED

May 20, 2008

No. 277057

Oceana Circuit Court

LC No. 06-006040-CH

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

In this action alleging negligent preparation of a land survey, plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and (10) on the basis that the action was barred by the statute of limitations and that defendant's alleged negligence was not the proximate cause of plaintiff's damages. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff first argues that the trial court erred in finding that his action was not timely filed.

This Court reviews de novo a trial court's decision on a motion for summary disposition and questions of statutory interpretation. *Ostroth v Warren Regency, GP, LLC*, 474 Mich 36, 40; 709 NW2d 589 (2006).

"A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section." MCL 600.5805(1). MCL 600.5805(14) provides, "The period of limitations for an action against a state licensed architect, professional engineer, land surveyor, or contractor based on an improvement to real property shall be as provided in section 5839." Section 5839(2) states:

No person may maintain any action to recover damages based on error or negligence of a state licensed land surveyor in the preparation of a survey or report more than 6 years after the delivery of the survey or report to the person for whom it was made or the person's agent. [MCL 600.5839(2).]

The parties do not dispute that this provision applies to plaintiff's action.

Plaintiff's arguments focus on the date of accrual pursuant to MCL 600.5838(1). However, the event that triggers the commencement of the six-year limitations period is specified in § 5839(2), that being the date of "delivery of the survey or report to the person for whom it was made or the person's agent." The period commences at that time, regardless of other statutory provisions governing the accrual of a claim. See *Citizens Ins Co v Scholz*, 268 Mich App 659, 671; 709 NW2d 164 (2005); *Ostroth, supra*. "[T]he delivery of the survey or report" that is the basis for plaintiff's claim occurred on March 22, 2000. Plaintiff did not file his complaint until December 7, 2006. Therefore, the action was untimely and the trial court properly granted summary disposition under MCR 2.116(C)(7).

In light of our decision, it is unnecessary to address whether summary disposition was also appropriate under MCR 2.116(C)(10) because defendant's alleged negligence was not the proximate cause of plaintiff's damages.

Affirmed.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ William B. Murphy