STATE OF MICHIGAN

COURT OF APPEALS

GLORIA J. DANTZLER, Successor Guardian of DARRELL DANTZLER, and GLORIA DANTZLER, as Next Friend of LATASHA DANTZLER, and STEPHANIE DANTZLER,

Plaintiff–Appellants,

v

A.L. HUGHETT, M.D., and WYANDOTTE HOSPITAL AND MEDICAL CENTER,

Defendant–Appellees.

UNPUBLISHED
November 26, 1996

No. 183840
LC No. 93-328047 NM

Before: Gribbs, P.J., and Saad and J. P. Adair,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's orders granting defendants' motions for summary disposition pursuant to MCR 2.116(C)(7) in this medical malpractice action. We affirm in part and reverse in part.

Plaintiff Darrell Dantzler treated with defendants in 1989 for various psychological problems, and he now claims that defendants improperly administered electroconvulsive (ECT) treatments, which exacerbated his mental impairment. Darrell's children, Latasha and Stephanie, allege that defendants deprived them of the society, comfort, aid, support, and companionship of their father. Defendants' motions for summary disposition were granted on the grounds that plaintiffs' claims were barred by the two-year medical malpractice statute of limitations. See MCL 600.5805(4); MSA 27A.5805(4). The trial court was not persuaded that Darrell's alleged insanity tolled the statute of limitations pursuant to MCL 600.5851; MSA 27A.5851. Additionally, the trial court denied plaintiffs' request to amend their complaint.

I

Plaintiffs first contend that the trial court erred in finding, as a matter of law, that Darrell was not insane for purposes of tolling the applicable state of limitations. We disagree. Under MCL

* Circuit judge, sitting on the Court of Appeals by assignment.

600.5851(2); MSA 27A.5851(2), Darrell would be deemed insane if he could not comprehend legal rights he would otherwise be bound to understand. Claims of insanity are generally treated as questions of fact, unless it is incontrovertibly established that the plaintiff did not suffer from insanity at the time the claim accrued or that he had recovered from any such disability more than one year before he commenced his action, even if he again became insane thereafter. *Lemmerman v Fealk*, 449 Mich 56, 71-74; 534 NW2d 695 (1995); see also MCL 600.5851(1); MSA 27A.5851(1).[i] Based upon the lower court record, we believe that reasonable minds would agree that Darrell was capable of understanding his legal rights at some point more than one year before he filed suit on October 1, 1993. After his treatments with defendants ended on September 8, 1989, Darrell maintained a relationship with his girlfriend, became gainfully employed, moved to Denver, and pursued both a worker's compensation and a disability claim. He made numerous statements to medical personnel indicating that he knew the effects that the ECT had had on him, and that he believed he had legal rights against those whom he believed had wronged him. See *Jones v State Farm Ins Co*, 202 Mich App 393, 396-397; 509 NW2d 829 (1993). Accordingly, under *Lemmerman*, *supra*, the trial court did not err in granting defendants' motion to dismiss Darrell's medical malpractice cause of action.

II

Next, plaintiffs contend that because Latasha and Stephanie were under nineteen years of age at the time the complaint was filed, their loss of parental society and companionship claims were not barred by the statute of limitations. MCL 600.5851(1); MSA 27A.5851(1). Because defendants concede this issue on appeal, we reverse the trial court's dismissal of Latasha and Stephanie's respective loss of parental society and companionship claims and remand for proceedings on the merits.

III

Lastly, plaintiffs contend that the trial court abused its discretion in denying plaintiffs' request to amend their complaint in order to add a claim that defendant Wyandotte breached its contract with Darrell in failing to discharge him when he requested. The grant or denial of leave to amend is within the trial court's discretion. *Milnikel v Mercy-Memorial Medical Center, Inc*, 183 Mich App 221, 222; 454 NW2d 132 (1989). This Court will not reverse a trial court's decision regarding leave to amend unless it constituted an abuse of discretion which resulted in injustice. *Phillips v Deihm*, 213 Mich App 389, 393; 541 NW2d 566 (1995). We find that the trial court did not abuse its discretion in denying plaintiff's motion to amend where no agreement to perform a specific act existed between Darrell and Wyandotte which could be the basis of a breach of contract action and plaintiffs were merely trying to turn a tort case into a contract cause of action in order to avoid the statute of limitations. See *Penner v Seaway Hospital*, 169 Mich App 502, 509-510; 427 NW2d 584 (1988).

Affirmed in part and reversed and remanded in part. We do not retain jurisdiction.

/s/ Roman S. Gribbs
/s/ Henry William Saad
/s/ James P. Adair

[i] Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring an action under this act is. . . insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed . . . to . . . bring the action although the period of limitations has run. MCL 600.5851(1); MSA 27A.5851(1).