

STATE OF MICHIGAN
COURT OF APPEALS

BONNIELYNN WILCHER and MARCELLA
WILCHER

UNPUBLISHED
January 24, 1997

Plaintiffs-Appellants,

v

No. 187656
Wayne Circuit Court
LC No. 94-409170-NH

CITY OF HIGHLAND PARK, a/k/a HIGHLAND
PARK GENERAL HOSPITAL,

Defendant-Appellee.

Before: Markman, P.J., and Smolenski and G.S. Buth,* JJ.

PER CURIAM.

In this medical malpractice action, plaintiffs, Marcella Wilcher, individually and as conservator for her daughter, Bonnielynn Wilcher, a developmentally disabled individual, appeal as of right the April 21, 1995, order of the Wayne Circuit Court granting summary disposition in favor of defendant, the City of Highland Park, pursuant to MCR 2.116(C)(10) and on the ground of laches. We affirm.

This case arose out of a power outage occurring at the Highland Park General Hospital on April 25, 1975. At the time of the power outage, an emergency cesarean section was about to be performed on plaintiff, Marcella Wilcher. As a result of the power outage, the cesarean section could not be immediately performed and plaintiff, Marcella Wilcher, was transferred by ambulance to another hospital for the performance of the operation. Plaintiffs alleged that defendant breached its duty to have an operable emergency power system at the hospital and that plaintiff, Bonnielynn Wilcher, was born with developmental disabilities as a result of the delay in the performance of the cesarean section.

Plaintiffs first argue that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10). We disagree.

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

On appeal, an order granting summary disposition is reviewed de novo. *Michigan Mut Ins Co v Dowell*, 204 Mich App 81, 86; 514 NW2d 185 (1994). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests whether there is factual support for a claim. *Michigan Mut, supra* at 85. The motion may be granted when, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence presented. *Id.* Giving the benefit of reasonable doubt to the nonmoving party, the court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Id.*

To establish defendant's negligence, plaintiffs must prove the following elements: 1) the applicable standard of care, 2) breach of the standard of care by the defendant, 3) injury, and 4) proximate causation between the alleged breach and the injury. *Locke v Pachtman*, 446 Mich 216, 222; 521 NW2d 786 (1994). In the present case, plaintiffs failed to establish that defendant breached the applicable standard of care. The parties agreed that defendant was required to have "a regularly tested autonomous emergency power source that is sufficient to provide necessary lighting and power when the usual electrical supply is interrupted." Plaintiffs have presented no evidence to show that defendant did not have such an emergency power system on April 25, 1975. Furthermore, assuming such a system was in place, plaintiffs have presented no evidence to show why the system did not operate on April 25, 1975. Although circumstantial evidence may be sufficient to establish a case, a party opposing a motion for summary disposition must present more than mere conjecture and speculation to meet its burden of providing evidentiary proof to establish a genuine issue of material fact. *Libralter Plastics, Inc v Chubb Group of Insurance Companies*, 199 Mich App 482, 486; 502 NW2d 742 (1993).

Furthermore, because the hospital building, the emergency generator, and many of the records concerning the physical condition of the hospital have been destroyed over the years, it does not appear that plaintiffs will be able to support their negligence claims at trial. Because plaintiffs failed to raise a genuine issue of material fact for trial, the trial court properly granted summary disposition pursuant to MCR 2.116(C)(10).

Plaintiffs also argue that the trial court's grant of summary disposition on the ground of laches was improper. We disagree.

"The doctrine of laches reflects 'the exercise of the reserved power of equity to withhold relief otherwise regularly given where in the particular case the granting of such relief would be unfair and unjust.'" *Lothian v Detroit*, 414 Mich 160, 168; 324 NW2d 9 (1982), quoting Walsh, Equity, §102, p 472. Unlike a statute of limitations which is concerned with the fact of a delay, the doctrine of laches is concerned with the effect of the delay. *Eberhard v Harper-Grace Hospitals*, 179 Mich App 24, 38; 445 NW2d 469 (1989). To properly invoke the doctrine of laches, the defendant must show 1) a passage of time, 2) prejudice to the defendant, and 3) lack of diligence on the part of the plaintiff. *Id.* The doctrine of laches may be applied in actions at law if "compelling equities" or "exceptional circumstances" exist. *Id.* at 37. A lack of diligence on the part of a plaintiff may provide the

“compelling equities” necessary to invoke the doctrine of laches in an action at law. *Id.* at 39. Furthermore, in cases displaying “compelling equities,” laches may be invoked without reference to any statute of limitations period and, therefore, a claim may be held to be barred by laches early in a lawsuit before the applicable statute of limitations period has expired. *Lothian, supra* at 170.

The incident giving rise to the instant case occurred on April 25, 1975, and plaintiffs did not file the present lawsuit until March 25, 1994. The delay in filing the lawsuit resulted in prejudice to defendant. Highland Park General Hospital closed in 1976, and the building remained vacant until 1986, when it was purchased and renovated for use as an apartment building. Defendant presented evidence that all evidence of the hospital’s emergency lighting system was destroyed during the renovations. Furthermore, defendant presented affidavits showing that the records of the City of Highland Park, The Michigan Department of Public Health, and the joint Commission on Accreditation of Healthcare Organizations concerning the hospital have either been destroyed or are incomplete.

Finally, it appears that plaintiffs lacked diligence in pursuing their claims. Marcella Wilcher’s deposition testimony indicated that she was aware of the power outage on April 25, 1975, which required her transfer to another hospital. Furthermore, Marcella Wilcher was informed of her daughter’s developmental disabilities in 1979-1980. Under the facts of this case, it appears that plaintiffs did not exercise diligence in pursuing their claims and, therefore, the trial court properly granted summary disposition on the ground of laches.

Affirmed.

/s/ Stephen J. Markman
/s/ Michael R. Smolenski
/s/ George S. Buth