

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM M. NAGLER, M.D.,

Plaintiff-Appellant,

v

LEWIS WILSON SMITH, Ph.D.,

Defendant-Appellee.

UNPUBLISHED

July 25, 1997

No. 189530

Oakland Circuit Court

LC No. 93-459215 CK

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

By leave granted, plaintiff appeals an order of summary disposition in favor of defendant on the basis of the statute of limitations. This case is being decided without oral argument pursuant to MCR 7.214(E).

The parties were in a business relationship, a principal aspect of which was billing Blue Cross Blue Shield of Michigan for psychological and psychiatric services to patients. In litigation between plaintiff and Blue Cross Blue Shield of Michigan, Blue Cross made a claim for reimbursement for payments improperly obtained by both parties. Plaintiff settled that action in December, 1992, and brought this action for reimbursement of defendant's pro rata share in June, 1993.

If the Blue Cross claim against plaintiff were based on a tort theory, then this claim by plaintiff against defendant Smith would be one for contribution, to which a one year period of limitations applies, calculated from the date of payment of the common liability. RJA §2925c(4); *Royal Indemnity Co v H S Watson Co*, 93 Mich App 491; 287 NW2d 278 (1979). On that view of the case, this action is timely.

If, on the other hand, the Blue Cross claim against plaintiff was in contract, plaintiff's claim is one in assumpsit for money paid, *Norton v Colgrove*, 41 Mich 544; 3 NW 159 (1879); *Maryland Casualty Co v H A Moss & Son*, 276 Mich 219; 267 NW 819 (1936). Although currently treated under the rubric of quasi-contract, such an action is a contractual action to which a six year period of

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

limitations applies, RJA §5807(8). The limitations period is calculated from the date money was paid, as that is the nature of the action. Again, therefore, the present action was timely under this theory as well.

Accordingly, the trial court erred in granting summary disposition on the basis of the statute of limitations. This Court expresses no opinion on other defenses which defendant has pled.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn