STATE OF MICHIGAN

COURT OF APPEALS

CYNTHIA PUDRITH and BRIAN PUDRITH,

Plaintiffs-Appellants,

v

JOSEPH S. GANTZ, D.D.S., and
JOSEPH S. GANTZ, D.D.S., P.C.,

Defendants-Appellees.

UNPUBLISHED
September 23, 1997

No. 183225
Oakland Circuit Court
LC No. 93-462250-NH

Before: Holbrook, Jr., P.J., and White and R.J. Danhof*, JJ.

PER CURIAM.

In this medical malpractice action, plaintiffs appeal as of right from the trial court order granting defendants' motion for partial summary disposition on the basis that the period of limitations had run. MCR 2.116(C)(7). We affirm.

In general, a plaintiff in a medical malpractice case must bring her claim within two years of when the claim accrued, or within six months of when she discovered or should have discovered the claim. MCL 600.5805(4); MSA 27A.5805(4); MCL 600.5838; MSA 27A.5838; *Solowy v Oakwood Hospital Corp*, 454 Mich 214, 219; 561 NW2d 843 (1997). In this case, plaintiffs rely solely on the six-month discovery rule. Under the discovery rule, a plaintiff has the burden of establishing that she did not discover or could not have discovered through the exercise of reasonable diligence the existence of a possible medical malpractice claim more than six months before she filed her complaint. MCL 600.5838a(3); MSA 27A.5838(1)(3); *Turner v Mercy Hospitals & Health Services of Detroit,* 210 Mich App 345; 533 NW2d 365 (1995). The possible cause of action standard does not require that the plaintiff know that the injury was in fact or even likely caused by the defendant-doctor's alleged omissions, nor does it require that the plaintiff be aware of the full extent of her injury before the limitations period begins to run. *Solowy*, *supra* at 224. The discovery rule does not act to hold a matter in abeyance indefinitely while a plaintiff seeks professional assistance to

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

determine the existence of a claim. *Grimm v Ford Motor Co*, 157 Mich App 633, 639; 403 NW2d 482 (1986). A plaintiff must act diligently to discover a possible cause of action and "cannot simply sit back and wait for others" to inform her of its existence. *Id.*

Here, the documentary evidence submitted by defendants to support their motion for summary disposition establishes, as a matter of law, that plaintiff discovered, or reasonably should have discovered, the existence of a possible medical malpractice claim against defendants more than six months before the filing of her complaint on September 14, 1993. In a deposition given in a case brought by plaintiffs against their insurance company, Dr. Gary Wolford, an oral surgeon, testified that he told plaintiff, during a consultation in November 1992:

> I said [to plaintiff], I suggest you go back and ask [plaintiff's primary care physician] for a referral to come here. You obviously are not getting better. You've got some choices.
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> * * *
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> [I]f they aren't going to give you a referral basically to get adequate treatment or appropriate treatment and or correct treatment, I guess you are going to have to change your primary physician. You are certainly not getting any better with the way you're going right now. That's all. I'm sorry I am telling you to do that, but that's our only choice.

Additionally, plaintiff testified at deposition regarding her initial consultation with Dr. Wolford in October 1992:

> Well, I went into his office and I just wanted his opinion on what was happening in my mouth, and he told me that I had a condition called bilateral posterior apertoganathia, that there was nothing wrong with my temporomandibular joint, which was the TMJ and –
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> * * *
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> He gave me the diagnosis code on the back of his card and told me to take it to [plaintiff's primary care physician] for a referral for oral surgery. He said there was nothing that could be done conservatively to stop the damage that was already done.

Even construed in a light most favorable to plaintiffs, the evidence established that they should have discovered a possible cause of action against defendants when plaintiff Cynthia Pudrith first consulted with Dr. Wolford in October or November 1992. Based on the foregoing deposition testimony, plaintiff was told by Dr. Wolford that she had received inadequate or inappropriate care from defendants, that she had a condition called bilateral posterior apertoganthia, not a TMJ problem as diagnosed by defendant and that based on the damage that had already occurred surgery was the next

option. At that point, a reasonable person would have been aware of an injury and a possible causal link between the injury and the defendant's alleged malpractice. See *Levinson v Trotsky*, 199 Mich App 110; 500 NW2d 762 (1993); *Griffith v Brant*, 177 Mich App 583; 442 NW2d 652 (1989). Accordingly, we conclude, as a matter of law, that defendants were entitled to summary disposition pursuant to MCR 2.116(C)(7).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Helene N. White
/s/ Robert J. Danhof