STATE OF MICHIGAN

COURT OF APPEALS

LINDA DEGG and DANIEL DEGG,

Plaintiffs-Appellants and
Cross-Appellees,

and

BLUE CROSS/BLUE SHIELD OF MICHIGAN,

Plaintiff,

v

DOW CORNING CORPORATION, DOW CORNING WRIGHT CORPORATION, and DOW CHEMICAL CORPORATION,

Defendants-Appellees,

and

MCGHAN MEDICAL CORPORATION, INAMED, INC., and MINNESOTA MINING AND MANUFACTURING (3M),

Defendants-Appellees and
Cross-Appellants.

UNPUBLISHED
May 26, 1998

No. 200945
Wayne Circuit Court
LC No. 93-309109 NP

Before: Whitbeck, P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

Plaintiffs, Linda Degg and Daniel Degg (hereinafter "plaintiffs"), appeal as of right from an order granting summary disposition in favor of defendants, McGhan Medical Corporation, Inamed, Inc., and Minnesota Mining and Manufacturing Company (3M) (hereinafter "defendants"), under MCR 2.116(C)(7). Defendants filed a cross appeal. We affirm.

Plaintiffs filed an individual action on March 30, 1993, claiming that Linda Degg suffered injuries and damages arising out of silicone breast implants that were defectively designed, manufactured, and/or distributed by defendants. Plaintiffs opted out of a federal class action that was filed on January 24, 1992. It is undisputed that plaintiffs discovered a possible cause of action no later than January 29, 1990. Defendants moved for summary disposition under MCR 2.116(C)(7), arguing that plaintiffs' cause of action was barred by the three-year limitations period applicable to product liability claims under MCL 600.5805(8) and (9); MSA 27A.5805(8) and (9). The trial court held that the statute of limitations was not tolled by virtue of the federal class action, and that plaintiffs' suit was therefore time-barred. See *Warren Schools v WR Grace & Co*, 205 Mich App 580; 518 NW2d 508 (1994).

Plaintiffs argue on appeal that the trial court erred in determining that the statute of limitations was not tolled by the federal class action. On cross appeal, defendants contend that the trial court could have granted summary disposition for the alternative reason that, even if tolling were available by virtue of the federal class action, plaintiffs discovered or should have discovered a possible cause of action against defendants on March 16, 1989, more than three years before defendants were added to the class action on April 29, 1992. Because we find that the issue raised in defendants' cross appeal controls the resolution of this case, we decline to reach the merits of plaintiffs' argument.

We review a trial court's grant or denial of a motion for summary disposition pursuant to MCR 2.116(C)(7) de novo to determine whether the moving party was entitled to judgment as a matter of law. *Huron Tool & Engineering Co v Precision Consulting Services, Inc*, 209 Mich App 365, 376-377, 532 NW2d 541 (1995). In reviewing a trial court's grant of summary disposition, we may affirm the decision for reasons other than those expressed by the trial court. See *Webb v First of Michigan Corp*, 195 Mich App 470, 472; 491 NW2d 851 (1992).

The limitations period governing plaintiffs' product liability action is three years. MCL 600.5805(8) and (9); MSA 27A.5805(8) and (9). Under the so-called discovery rule, "a products liability claim accrues when the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered that it has a possible cause of action." *Warren Schools*, *supra* at 582-583. Our review of the record reveals that on March 16, 1989, plaintiff Linda Degg first became aware that her breast implants were a possible cause of her medical problems. Specifically, in moving for summary disposition, defendants submitted the medical records and the affidavit of Linda Degg's physician that established that, on that date, he alerted her to a possible connection between her symptoms and her breast implants. Defendants also submitted Linda Degg's deposition testimony in which she admitted that she could not recall exactly when her physician shared this information with her. Further, Linda Degg's own affidavit reveals that it was possible that on March 16, 1989, her physician told her about an article linking breast implants and the symptoms of which she was complaining. Although Linda

Degg later averred that the conversation with her physician concerning a possible connection between her breast implants and her symptoms did not occur on March 16, 1989, this is not sufficient to create a genuine issue of material fact. *Schultz v Auto-Owners Ins Co*, 212 Mich App 199, 202; 536 NW2d 784 (1995).

Accordingly, because plaintiffs' claim is time-barred by the three-year limitation period, we affirm the trial court's decision to grant summary disposition in favor of defendants.

Affirmed.

/s/ William C. Whitbeck
/s/ Barbara B. MacKenzie
/s/ William B. Murphy