STATE OF MICHIGAN

COURT OF APPEALS

BABASHOLA ABE,

Plaintiff-Appellant,

v

MICHIGAN STATE UNIVERSITY,

Defendant-Appellee.

UNPUBLISHED
July 7, 1998

No. 203365
Ingham Circuit Court
LC No. 96-082140 NZ

Before: Jansen, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7), ruling that plaintiff's claims were barred by the statute of limitations. We affirm in part, reverse in part, and remand for further proceedings.

Plaintiff enrolled in defendant's college of osteopathic medicine in the fall of 1987. Beginning in December 1987, the parties commenced a repeating pattern whereby plaintiff was dismissed for academic reasons and later reinstated, this pattern persisting through four cycles. On July 26, 1991, plaintiff voluntarily withdrew from the school. According to defendant, he unsuccessfully applied for readmission on January 15, 1993. Plaintiff filed the instant lawsuit on January 11, 1996, alleging that defendant's adverse actions concerning him constituted a pattern of discrimination based on national origin.

Defendant moved for summary disposition under MCR 2.116(C)(8), arguing that the complaint failed to state a claim in clear and concise terms, but the trial court denied the motion and ordered discovery to proceed. However, when defendant moved for dismissal under 2.116(C)(7), on the grounds that plaintiff had failed to state a claim dating from within the applicable period of limitations, the court granted the motion. We review a trial court's decision on a motion for summary disposition de novo as a matter of law. *Miller v Farm Bureau Mutual Ins Co*, 218 Mich App 221, 233; 553 NW2d 371 (1996).

Plaintiff argues he commenced his cause of action within the statute of limitations because he filed his complaint within three years of defendant's denial of readmission, and that because that final

adverse action on defendant's part was but the last in a series of related discriminatory actions, plaintiff remains free to press his claim as concerns all allegations of discriminatory conduct.

The parties do not dispute that that MCL 600.5805(8); MSA 27A.5805(8), applies to plaintiff's cause of action, establishing a three-year limitations period. As a general rule, the statute of limitations begins to run when a claim accrues, meaning at the time the wrong is done. MCL 600.5827; MSA 27A.5827. However, independent acts of discrimination that otherwise lie outside the statute of limitations can escape that bar if they form part of an ongoing pattern of such acts at least one of which occurs within the limitations period. In such cases, the entire cause of action, including parts relating to actions falling outside of the limitations period, will be deemed timely filed. *Sumner v Goodyear Tire & Rubber Co,* 427 Mich 505, 553; 398 NW2d 368 (1986). For a continuing violation to exist, the timely claims must be so closely connected to the otherwise time-barred claims that the continuing nature of the discrimination is apparent. *Id.*

Plaintiff points out that he filed his complaint on January 11, 1996, which was within three years of January 15, 1993, the date he alleges he was discriminatorily denied readmission to defendant's college of medicine. In reviewing a grant of summary disposition pursuant to MCR 2.116(C)(7), we consider all pleadings, affidavits, and other documentary evidence of record in the light most favorable to the plaintiff to ascertain if the claim is barred by the applicable statute of limitations. See *Patterson v Kleiman*, 447 Mich 429, 433-435; 526 NW2d 879 (1994). Although in the instant case defendant submitted an affidavit stating that plaintiff had not been involved with the school since his withdrawal on July 26, 1991, plaintiff alleged, in documentation appended to his complaint, that he was discriminatorily denied readmission on January 15, 1993. Because that allegation of discrimination falls within the limitations period, we hold that the trial court erred in granting summary disposition in favor of defendant as to that specific claim.

However, we reject plaintiff's argument that his entire cause of action falls within the statute of limitations because he has suffered a continuing wrong from 1987 until defendant denied him readmission. Uncontroverted evidence shows that plaintiff withdrew as a student of defendant on July 26, 1991, and has had no formal affiliation with defendant since that time. More than seventeen months elapsed between plaintiff's withdrawal and his allegedly being denied readmission in January 1993. This break in the pattern of alleged discrimination, a break mostly if not entirely of plaintiff's own making, destroys plaintiff's claim that the final allegation was a continuation of an ongoing pattern dating back to 1987. Although plaintiff, in documentation appended to his complaint, alleges continuing contacts and dealings with certain of defendant's personnel during that break, plaintiff speaks favorably of the advice and cooperation he received from defendant's agents during that time. Because plaintiff alleges no discriminatory action on defendant's part during the many months of plaintiff's non-student status that preceded defendant's allegedly improper denial of plaintiff's request to be readmitted for a fifth time, the latter event is not sufficiently closely connected to allegations occurring before plaintiff withdrew from school to revive them as part of a timely filed cause of action. Accordingly, we hold that the continuing wrong theory does not apply to plaintiff's claims of discrimination preceding the allegation of January 11, 1993, and accordingly, that the circuit court properly granted defendant's MCR 2.116(C)(7) motion with respect to them.

We need not reach plaintiff's issues on appeal concerning equal protection, governmental immunity, and defendant's discovery obligations. Because these issues were not raised before the trial court, they are not preserved for appellate consideration. See *Vander Bossche v Valley Pub*, 203 Mich App 632, 641; 513 NW2d 225 (1994); *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98-99; 494 NW2d 791 (1992).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Jane E. Markey
/s/ Peter D. O'Connell