

STATE OF MICHIGAN
COURT OF APPEALS

MARIE HAVILAND-JAMES,

Plaintiff-Appellant,

v

CONTINENTAL BIO MEDICAL LABORATORY
SERVICES, INC., a/k/a METPATH, INC.,

Defendant-Appellee.

UNPUBLISHED

July 10, 1998

No. 202706

Kent Circuit Court

LC No. 96-002525 NH

Before: Murphy, P.J., and Young, Jr. and M. R. Smith*, JJ.

MEMORANDUM.

Plaintiff appeals as of right summary disposition in favor of defendant in this malpractice action, predicated on the statute of limitations. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Plaintiff, as part of a routine physical examination, underwent a pap smear on February 5, 1993, which defendant laboratory reported to her family physician was normal. On July 11, 1994, plaintiff had a second pap smear that was positive for squamous cell carcinoma. An initial limited surgical procedure on July 26, 1994, failed to remove all the malignancy, and the first surgeon accordingly referred plaintiff to Dr. Downey, a gynecological oncologist, who performed a complete hysterectomy on August 16, 1994. At some point in time near the second surgery, Dr. Downey informed plaintiff that the type of cancer from which she was suffering was "slow growing."

Based on these undisputed facts, the circuit court properly granted summary disposition. Defendant laboratory is subject to licensure under Part 205 of the Public Health Code, MCL 333.20501 *et seq.*; MSA 14.15(20501) *et seq.* This type of license does not make defendant amenable to a suit for medical malpractice, which would apply only to health facilities or agencies licensed under Art 17 of the Public Health Code, §§ 20101 to 22260. However, because defendant is subject to licensure, it is subject to suit for malpractice by virtue of MCL 600.5838; MSA 27A.5838.

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

Adkins v Annapolis Hosp, 420 Mich 87; 360 NW2d 150 (1984). Accordingly, a two-year period of limitations applies. MCL 600.5805(4); MSA 27A.5805(4).

As defendant provided a one-time service, the two-year period began running on the date of defendant's report to plaintiff's family physician. However, plaintiff failed to initiate a malpractice claim until more than two years thereafter. She contends, however, that she is entitled to the benefit of the six-month date of discovery exception of MCL 600.5838(2); MSA 27A.5838(2). The six-month discovery rule period begins to run when the plaintiff, on the basis of objective facts, is aware of a possible cause of action, or should be so aware; this occurs as a matter of law when the plaintiff is aware of an injury and a possible causal link between the injury and the act or omission of which complaint is made. *Solowy v Oakwood Hospital*, 454 Mich 214, 232; 561 NW2d 843 (1997).

Here, plaintiff knew by August 1994 that she had suffered an injury, namely, cervical cancer, precisely the type of cancer that a pap smear is designed to detect at an early stage. She also then knew that the type of cancer from which she was suffering was "slow growing." With the exercise of reasonable diligence plaintiff should have discovered, therefore, the possible cause of her injury, and the six-month discovery period began running not later than August 1994. *Gebhardt v O'Rourke*, 444 Mich 535, 545; 510 NW2d 900 (1994). Plaintiff has failed to meet her burden of proving that as a result of physical discomfort, appearance, condition, or otherwise, she neither discovered nor should have discovered the existence of the claim at least six months before suit was initiated. *Poffenbarger v Kaplan*, 224 Mich App 1, 12; 568 NW2d 131 (1997). Plaintiff had absolute knowledge of the injury and information providing the crucial link to the claimed negligence of defendant as a contributing factor and the extent of that injury not later than August 1994 and inasmuch as suit was filed more than six months thereafter, the six-month discovery provision does not save plaintiff's cause of action.

Affirmed.

/s/ William B. Murphy
/s/ Robert P. Young, Jr.
/s/ Michael R. Smith