

STATE OF MICHIGAN
COURT OF APPEALS

ANNA THOMPSON,

Plaintiff-Appellant,

v

STEVEN DRAYER, M.D.,

Defendant-Appellee,

and

EDWARD W. SPARROW HOSPITAL and BRIAN
MCCARDEL, M.D.,

Defendants.

UNPUBLISHED

September 25, 1998

No. 200126

Ingham Circuit Court

LC No. 96-084032 NH

Before: Hood, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order dismissing her medical malpractice action on the ground that plaintiff failed to bring action within the applicable period of limitations. MCR 2.116(C)(7). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff argues that the trial court erroneously determined that she failed to commence her cause of action within six months of the discovery of her claim against Dr. Drayer. We disagree. Generally a party alleging medical malpractice must commence action within two years of when the claim accrued, or within six months of when the claim was, or should have been, discovered. *Soloway v Oakwood Hospital Corp.*, 454 Mich 214, 219; 561 NW2d 843 (1997), citing MCL 600.5805(4); MSA 27A.5805(4); MCL 600.5838; MSA 27A.5838. A medical malpractice claim accrues "at the time of the act or omission that is the basis for the claim of medical malpractice, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim." MCL 600.5838a(1); MSA 27A.5838(1)(1). The six-month discovery rule provides that a medical malpractice claim initiated outside the normal period of limitations may nonetheless proceed if commenced "within 6 months after

the plaintiff discovers or should have discovered the existence of the claim, whichever is later.” MCL 600.5838a(2); MSA 27A.5838(1)(2). A party alleging medical malpractice is deemed to be aware of the possible cause of action when, upon an objective assessment of the facts, the party has become aware of the injury and its possible cause. *Solowy, supra* at 222-223; *Shawl v Dhital*, 209 Mich App 321, 325; 529 NW2d 661 (1995).

Accepting plaintiff’s well-pleaded allegations as true, and considering the documentation that Drayer submitted, *Shawl, supra* at 323-324, we conclude that plaintiff should have discovered her possible cause of action against Drayer no later than May 28, 1993. Plaintiff was aware of her injury as of her post-operative office visit with Drayer on May 26, 1993, at which time plaintiff’s arm was nearly rigid and Drayer expressed concern about the arm and that his instructions had not been followed. By May 28, 1993, plaintiff further understood that Drayer performed the surgery, that Drayer prepared written instructions concerning her post-operative care but failed personally to take any action to ensure that defendant received these instructions, that Drayer delegated the duty of providing post-operative instructions to Dr. McCardel and hospital personnel, and that plaintiff in fact received erroneous instructions that caused her arm to heal improperly. In light of these facts, plaintiff should have been aware of the possible causal connection between her injury and Drayer’s failure personally to deliver, or otherwise ensure that plaintiff would receive, his instructions for her post-operative care. Accordingly, as of May 28, 1993, plaintiff was aware of both her injury and the possible causal connection between that injury Drayer’s acts or omissions. Because Plaintiff waited more than six months after this date to file suit, the trial court properly found her claim time barred.

Assuming, without deciding, that that the trial court erroneously refused to consider plaintiff’s affidavit, the error was harmless. Plaintiff’s actual knowledge is irrelevant to a determination of when the discovery period commenced in this case. *Solowy, supra* at 222. Instead, the dispositive question is when plaintiff should have known of a possible cause of action against Drayer. *Id.*; *Shawl, supra* at 325. The facts as alleged in plaintiff’s complaint indicate that plaintiff should have known of the existence of a possible cause of action as of May 28, 1993. Because plaintiff commenced action only on November 16, 1996, the action was time barred.

Affirmed.

/s/ Harold Hood
/s/ Richard Allen Griffin
/s/ Peter D. O’Connell