

STATE OF MICHIGAN
COURT OF APPEALS

MORRIS PRICE and LINDA PRICE,

Plaintiffs-Appellees,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellant.

UNPUBLISHED

November 13, 1998

No. 199529

Wayne Circuit Court

LC No. 93-321830 NP

Before: Gage, P.J., and Kelly and Hoekstra, JJ.

PER CURIAM.

Defendant makes this interlocutory appeal by leave granted from the trial court's denial of defendant's motion for summary disposition. We reverse and remand.

In August 1992, plaintiff Morris Price was injured in California while moving a chassis manufactured by defendant. In August 1993, plaintiffs filed a complaint against defendant containing negligence and breach of warranty counts. The parties in February 1994 stipulated to the dismissal without prejudice of plaintiffs' complaint. In August 1995, plaintiffs filed a second complaint against defendant that also contained negligence and breach of warranty counts. The trial court dismissed this second complaint on the basis that it was barred by the applicable statute of limitations. However, the court also reinstated plaintiffs' original 1993 complaint, and provided plaintiffs with a ninety-day discovery period in which to investigate defendant's alleged failure to disclose information plaintiffs had requested after filing their first complaint. Without clearly explaining the basis for its decision, the trial court subsequently denied defendant's motion for summary disposition regarding the 1993 complaint pursuant to MCR 2.116(C)(7), (8) and (10).

Defendant contends that the trial court erred in denying its motion for summary disposition regarding plaintiffs' reinstated 1993 claims because no authority supported the court's order of reinstatement. We review motions for summary disposition de novo. *Singerman v Municipal Service Bureau, Inc.*, 455 Mich 135, 139; 565 NW2d 383 (1997).

First, defendant argues that the trial court must have improperly based its decision to reinstate plaintiffs' 1993 complaint on MCR 2.612. Plaintiffs concede that this court rule, which addresses relief

from a judgment or order, is irrelevant to the instant dispute. We note that this Court has previously held, in the context of addressing MCR 2.612's predecessor rule, that the rule applies only to final judgments or final orders, and not to voluntary dismissals without prejudice. *McDaniel v Jackson*, 78 Mich App 218, 223; 259 NW2d 563 (1977). Thus, to the extent the trial court relied on MCR 2.612 in reinstating plaintiffs' original, voluntarily dismissed complaint, this reliance was misplaced.

Next, defendant claims that the trial court erred in denying its motion for summary disposition pursuant to MCR 2.116(C)(7) because the court's order of reinstatement ignores the applicable statute of limitations, which operates to bar revisitation of plaintiff's 1993 complaint. Michigan's borrowing statute, MCL 600.5861; MSA 27A.5861, provides that a cause of action accruing in another state or jurisdiction commenced in Michigan by a nonresident of this state is barred if either state's statute of limitations has expired. *Hover v Chrysler Corp*, 209 Mich App 314, 317-318; 530 NW2d 96 (1995). The underlying injury occurred in California, and plaintiffs were residents of Ohio. Therefore, as the trial court recognized in analyzing the statute of limitations applicable to plaintiffs' 1995 complaint, California's one-year statute of limitations on the filing of negligence claims applies, and clearly operates to bar reinstatement of plaintiffs' 1993 complaint.

Defendant further argues that it engaged in no fraudulent concealment that would permit plaintiffs to file suit outside the applicable statute of limitations. Plaintiffs also seem to concede that no valid claim of fraudulent concealment existed in this case. However, because the trial court apparently did reinstate the 1993 complaint "for purposes of discovery on that issue, on the fraudulent concealment," we will very briefly address defendant's argument.

Under Michigan's fraudulent concealment statute, MCL 600.5855; MSA 27A.5855, a statute of limitations period is tolled when a party conceals the fact that the plaintiff has a cause of action. *Phinney v Perlmutter*, 222 Mich App 513, 562; 564 NW2d 532 (1997). Plaintiffs were obviously aware in 1993 of their negligence and breach of warranty claims against defendant, and defendant has not attempted to conceal any other claim against it. Plaintiff only alleges that defendant attempted to prevent plaintiffs' discovery of certain facts relevant to their claims. Therefore, because defendant never fraudulently concealed a claim, the trial court erred to the extent that it reinstated plaintiffs' 1993 complaint on this basis.

In support of the trial court's order of reinstatement, plaintiffs contend that MCR 1.105 and 2.502, read together, authorized the trial court to reinstate their time-barred 1993 complaint. MCR 1.105 simply explains that "[t]hese rules are to be construed to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties." MCR 2.502(A) and (B) authorize a court to dismiss actions without prejudice for a party's lack of progress. MCR 2.502(C) permits the court to "reinstate an action dismissed for lack of progress on terms the court deems just."

Plaintiffs interpret these rules as granting the trial court discretion to remedy defendant's alleged wrongful failure to disclose factual information by reinstating their 1993 complaint, even though they had previously agreed to dismiss their complaint without prejudice, and although their complaint would otherwise be barred by the statute of limitations. We reject plaintiffs' interpretation. As plaintiffs

themselves acknowledge, “there is no court rule which specifically addresses the exact circumstances presented by the case at bar.” MCR 1.105 and 2.502 are not controlling in the instant case; plaintiffs’ 1993 complaint was not dismissed for lack of progress. The Michigan Court Rules simply do not vest courts with discretion to reinstate voluntarily dismissed actions otherwise barred by the applicable statutes of limitation. While plaintiffs argue that dismissal of their 1993 complaint would reward allegedly improper behavior by defendant, plaintiffs’ own lack of diligence has deprived them of their opportunity to seek relief.

We conclude that the trial court erred in denying defendant’s motion for summary disposition pursuant to MCR 2.116(C)(7). In light of this conclusion, we need not address plaintiffs’ further argument regarding the scope of reinstatement.

Reversed and remanded for entry of judgment in favor of defendant.

/s/ Hilda R. Gage

/s/ Michael J. Kelly

/s/ Joel P. Hoekstra