

STATE OF MICHIGAN
COURT OF APPEALS

LINDA BLOVITS, f/k/a LINDA FELDE, and
LARRY BLOVITS,

UNPUBLISHED
March 27, 2001

Plaintiffs-Appellants,

v

No. 221575
Court of Claims
LC No. 99-017270-CM

STATE OF MICHIGAN and DEPARTMENT OF
TRANSPORTATION,

Defendants-Appellees.

Before: Talbot, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiff¹ appeals as of right from an order granting summary disposition to defendants on the basis that plaintiff failed to file her complaint within the time allowed by the applicable statute of limitations, MCL 691.1402(1); MSA 3.996(102)(1). MCR 2.116(C)(7). We affirm.

Plaintiff claims that the principles of equitable estoppel and the fraudulent-concealment statute, MCL 600.5855; MSA 27A.5855, should have prevented the trial court from granting defendants' motion for summary disposition. Plaintiff asserts that defendants' failure to honestly comply with plaintiff's Michigan Freedom of Information Act (FOIA) requests regarding the scene of the accident precludes defendants from asserting the period of limitation as a legitimate defense. MCL 15.231(2); MSA 4.1801(1). Plaintiff's theory of the case is based on the premise that she had a duty pursuant to MCR 2.114 to conduct a reasonable inquiry into the factual and the legal viability of her claim before pleading it and submitting it to the court. Plaintiff claims that her repeated FOIA requests to ascertain who was responsible for her injuries and what, factually, had occurred at the location of the accident were diligent efforts to comply with the duty imposed by MCR 2.114 and to avoid the possibility of sanctions. Thus, plaintiff asserts that defendants negligently or intentionally withheld information requested in plaintiff's numerous FOIA requests, and that such conduct is sufficient to invoke principles of equitable estoppel, and

¹ Plaintiff Larry Blovits brought a loss of consortium claim against defendants and he was not involved in the accident that is the subject of this lawsuit. Thus, reference will be made only to plaintiff Linda Blovits throughout this opinion.

alternatively, to invoke the statutory remedies available for fraudulent concealment under MCL 600.5855; MSA 27A.5855. We disagree.

Plaintiff's complaint was filed two months and two days after the two-year period of limitation for actions under the highway exception to governmental immunity. MCL 691.1402(1); MSA 3.996(102)(1). The trial court granted defendants' motion for summary disposition, reasoning that a complaint could have been filed to compel FOIA compliance before the expiration of the limitation period and plaintiff could have also alleged negligence based on an expert's testimony concerning the existing condition of the roadway.

Plaintiff argues that the trial court should have applied the principle of equitable estoppel and ruled against defendants' motion for summary disposition. Equitable estoppel arises where one party has knowingly concealed or falsely represented a material fact, while inducing another's reasonable reliance on that misapprehension, under circumstances where the relying party would suffer prejudice if the representing or concealing party were subsequently to assume a contrary position. *Adams v Detroit*, 232 Mich App 701, 708; 591 NW2d 67 (1998). Our Supreme Court has been reluctant to recognize an estoppel in the absence of conduct clearly designed to induce the plaintiff to refrain from bringing an action within the period fixed by statute. *Id.*

In the instant cases, defendants did not conceal plaintiff's cause of action, nor did they withhold information that would have induced plaintiff to refrain from filing a complaint or that would have caused plaintiff to be unaware that a cause of action might exist. The letters submitted by defendants on June 6, 1997, in response to plaintiff's May 16, 1997, FOIA request indicate a high number of accidents at the location of the accident before defendant took measures to increase safety—namely, placement of a painted island in the center lane and an overhead warning sign. The letters also indicate that those safety measures were successful in reducing the number of accidents at this location. Furthermore, it was an established fact that at the time of the disputed accident, there were no paint markings, nor was there an overhead sign. The roadway had been resurfaced in the summer and fall of 1996 and the safety measures had not been replaced by February 27, 1997, the date of the accident. We conclude that there was sufficient evidence in June 1997 to prompt plaintiff to file a complaint and pursue the case over the well traveled routes of expert testimony and discovery. Moreover, we also agree with the trial court's conclusion that plaintiff had an additional remedy available—that is, a complaint could have been filed against defendants within the two-year limitations period to compel defendants' answers to the FOIA requests.

Periods of limitation are grounded in important public policies such as providing plaintiffs with a reasonable opportunity to bring viable claims, providing defendants with a fair opportunity to defend against those claims, preventing the court system from being overburdened with stale claims, and protecting potential defendants from prolonged litigation. *Turner v Mercy Hospitals & Health Services of Detroit*, 210 Mich App 345, 349-350; 533 NW2d 365 (1995). Consequently, the trial court correctly ruled for defendants.

Next plaintiff argues that defendants fraudulently concealed a cause of action from plaintiff, contrary to the provisions of MCL 600.5855; MSA 27A.5855. For fraudulent concealment to postpone the running of the period of limitations, the fraud must be manifested

by an affirmative act or misrepresentation. *Witherspoon v Guilford*, 203 Mich App 240, 248; 511 NW2d 720 (1994). A plaintiff must show that the defendants engaged in some arrangement or contrivance of an affirmative character designed to prevent subsequent discovery. *Id.*

Accepting all plaintiff's allegations as true, the trial court properly granted defendants' motion for summary disposition. As noted above, there is no evidence that defendants acted to affirmatively misrepresent the nature and existence of plaintiff's cause of action. Moreover, the exception to this rule is inapplicable. *Brownell v Garber*, 199 Mich App 519, 527; 503 NW2d 81 (1993). There is no fiduciary relationship between defendants and plaintiff. Therefore, plaintiff's reliance on *Brownell* is distinguishable.

Affirmed.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Jane E. Markey