STATE OF MICHIGAN

COURT OF APPEALS

MILTON PERRY,

Plaintiff-Appellee,

v

DR. HOWARD RESNICK, a/k/a DR. HOWARD REZNICK, DR. BARTH WOLF and DR. HOWARD A. RESNICK & ASSOCIATES, P.C.,

Defendants-Appellants.

UNPUBLISHED
April 6, 2001

No. 222494
Washtenaw Circuit Court
LC No. 98-004604-NH

Before: Talbot, P.J., and Sawyer and F.L. Borchard*, JJ.

PER CURIAM.

Defendants appeal by leave granted the trial court's order denying their motion for summary disposition. We reverse and remand for entry of judgment in favor of defendants. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff presented to defendants for treatment of a sore heel in March 1995. He underwent surgery on May 12, 1995. Plaintiff's condition did not improve after further treatment and surgery. In his deposition, plaintiff stated that during this period, defendants reassured him that his physical problems could be resolved. On June 25, 1997 plaintiff began treating elsewhere for post-surgical complications.

Plaintiff served defendants with a notice of intent to sue on August 7, 1997, and on April 21, 1998 filed suit alleging that defendants committed medical malpractice in their treatment of his foot. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10), arguing that plaintiff failed to initiate his action within the two-year statutory limitations period or within six months of his discovery of a possible claim. The trial court denied defendants' motion, concluding that under the totality of the circumstances, the information available to plaintiff prior to June 1997 was insufficient to allow him to believe that he had a possible cause of action.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

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

The statute of limitations for an action charging medical malpractice is two years. MCL 600.5805(5); MSA 27A.5805(5). A medical malpractice claim accrues "at the time of the act or omission that is the basis for the claim . . . regardless of the time the plaintiff discovers or otherwise has knowledge of the claim." MCL 600.5838a(1); MSA 27A.5838(1)(1). The statute of limitations is subject to a six-month discovery exception, under which a claim may be commenced within the applicable limitations period, or within six months after the plaintiff discovers or should have discovered the claim, whichever is later. MCL 600.5838a(2); MSA 27A.5838(1)(2). The discovery rule does not require that a plaintiff know with certainty or likelihood that the defendant committed malpractice. *Solowy v Oakwood Hosp Corp*, 454 Mich 214, 222; 561 NW2d 843 (1997). Rather, the rule requires that the plaintiff know of the act or omission giving rise to the malpractice, and have reason to believe that the act or omission was improper or was performed in an improper manner. A claim accrues once the plaintiff is aware of the injury and its possible cause. *Id*.; *Griffith v Brant*, 177 Mich App 583, 587-588; 442 NW2d 652 (1989).

Defendants argue that the trial court erred by denying their motion for summary disposition. We agree, reverse the trial court's order, and remand for entry of an order granting judgment in favor of defendants. A physician's explanations of possible causes for or diagnoses of a condition are part of the totality of the information that a court must consider in applying the possible cause of action standard. *Solowy*, *supra* at 227. By his own admission, plaintiff first suspected that defendants had rendered improper treatment in June 1995, approximately one month after his initial surgery. Contrary to plaintiff's assertion, statements by defendants to the effect that his continuing problems could be corrected were not statements denying any misdiagnoses or problems with treatment. Rather, those statements appear to have been reassurances that any continuing problems would be corrected. Under an objective test, plaintiff should have acted with diligence in pursuing his belief that he had a possible cause of action within one month of his initial surgery. *Poffenbarger v Kaplan*, 224 Mich App 1, 11-12; 568 NW2d 131 (1997). Plaintiff's complaint was not timely under the six-month discovery rule. MCL 600.5838a(2); MSA 27A.5838(1)(2).

The trial court's order denying defendants' motion for summary disposition is reversed, and this case is remanded for entry of an order granting judgment in favor of defendants. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard