

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN TAD MIKKO,

Plaintiff-Appellant,

v

THOMAS VICTOR MIKKO,

Defendant-Appellee.

UNPUBLISHED

December 19, 2006

No. 264507

Ingham Circuit Court

LC No. 04-001583-NO

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and awarding attorney fees to defendant under MCL 600.2591. We affirm.

Plaintiff, who appeared in propria persona, is incarcerated in a state prison. He brought this action in 2004 against defendant, his father, seeking to recover damages for negligence and intentional infliction of emotional distress. The claims stem from defendant's alleged failure to assist plaintiff after plaintiff was sexually abused in 1973 by a babysitter's husband. According to plaintiff, the abuse and defendant's failure to assist him in dealing with the abuse led plaintiff to a life of drugs, alcohol, and crime. The trial court dismissed the action, finding that the statute of limitations had elapsed. We agree.

A trial court's decision on a motion for summary disposition under MCR 2.116(C)(7) is reviewed de novo. *Doe v Roman Catholic Archbishop of the Archdiocese of Detroit*, 264 Mich App 632, 638; 692 NW2d 398 (2004). Claims of negligence and intentional infliction of emotional distress are subject to a three-year limitation period. MCL 600.5805(10); *Doe, supra* at 638-639. Therefore, absent some exception, the statute of limitation applicable to plaintiff's claims began to run in 1973. However, because the alleged wrongs occurred when plaintiff was under the age of majority, he had one year after the disability of infancy was removed to bring the action. MCL 600.5851(1); *Doe, supra* at 639. But that period elapsed in 1981. Plaintiff argues that the discovery rule saves his suit from being time-barred because he did not learn of his potential cause of action until a conversation with his mother in December 2003.

Assuming that the discovery rule can even be invoked in this action, it fails to prevent the dismissal of the action. See *Lemmerman v Faulk*, 449 Mich 56, 66; 534 NW2d 695 (1995)

(discovery rule applied in limited, specific situations). Under the discovery rule, the statute of limitations “begins to run when the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered a possible cause of action.” *Moll v Abbott Laboratories*, 444 Mich 1, 5; 506 NW2d 816 (1993). This occurs once a plaintiff is aware of an injury and its possible cause. *Id.* at 24; see also *Solowy v Oakwood Hosp Corp*, 454 Mich 214, 222; 561 NW2d 843 (1997). Plaintiff was aware that his father did nothing to assist him in dealing with the sexual abuse back in the 1970s, he was aware of the downward spiral his life took after the abuse, he was informed by a jail psychologist in the early 1980s that his behavioral problems were a consequence of the abuse, and plaintiff did not make sufficient inquiries given this background. Accordingly, plaintiff discovered or, through the exercise of reasonable diligence, should have discovered a possible cause of action in the early 1980s at the latest. Therefore, the discovery rule does not save plaintiff’s action that was commenced in 2004. We reject all of plaintiff’s arguments under the discovery rule as they are legally untenable.

Plaintiff’s remaining argument on appeal is that the trial court erred by granting defendant’s motion for attorney fees pursuant to MCL 600.2591(1), which allows the imposition of sanctions for filing a frivolous civil action. A trial court’s determination that an action is frivolous is reviewed for clear error. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). Considering the nature of the claims pursued by plaintiff and that the claims were clearly time-barred, plaintiff’s legal position in this lawsuit was devoid of arguable legal merit and was thus frivolous. MCL 600.2591(3)(a)(iii). Accordingly, the trial court did not clearly err in sanctioning plaintiff and awarding defendant attorney fees.

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly