[Cite as *Pazdernik v. Wells*, 2019-Ohio-5345.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

RICHARD J. PAZDERNIK, :

Plaintiff-Appellant, :

No. 108325

v. :

ANGELA WELLS, :

Defendant-Appellee. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: December 26, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-18-907126

Appearances:

R.C. Swencki & Associates, L.L.C., and Ronald C. Swencki, *for appellant*.

Ankuda, Stadler and Moeller, Ltd., and Colin P. Moeller, *for appellee*.

LARRY A. JONES, SR., J.:

{¶ 1} In his sole assignment of error, plaintiff-appellant Richard Pazdernik ("Pazdernik") challenges the trial court's February 19, 2019 judgment granting the motion of defendant-appellee Angela Wells ("Wells") to dismiss the case under Civ.R. 12(B)(6). For the reasons that follow, we affirm.

Factual and Procedural History

{¶ 2} On November 16, 2018, Pazdernik filed this action, alleging personal injuries he suffered as a result of a November 2, 2016 motor vehicle accident he had with Wells. Wells filed a motion to dismiss based on the expiration of the two-year statute of limitations. Pazdernik opposed the motion contending that he was not aware until December 1, 2016, that his injuries were caused by the November 2 accident. Pazdernik argued that, under the "discovery rule," the two-year statute of limitations was tolled.

{¶ 3} The record shows that shortly before the November 2 accident at issue here, in September 2016, Pazdernik was involved in another motor vehicle accident. As a result of the September accident, he began treating with Dr. Todd Hochman ("Dr. Hochman"). During the course of his treatment, Pazdernik had an MRI on November 4, 2016, two days after the subject incident. He continued his treatments during the month of November; the notes from the treatments do not mention the November 2 accident.

{¶ 4} On December 1, 2016, Pazdernik had another appointment with Dr. Hochman, at which time Pazdernik informed the doctor about the November 2 accident. Also at that visit, Dr. Hochman informed Pazdernik that, based on the results of the MRI, Pazdernik had cervical and lumbar degenerative disc diseases, which were aggravated by the September and November 2016 accidents.

{¶ 5} In January 2017, Pazdernik visited Dr. Hochman again. After that visit, Dr. Hochman issued a report stating that Pazdernik's condition was

complicated by the November accident. The report described the November accident, based on Pazdernik's reporting, as follows: Pazdernik "was proceeding with the right of way when another vehicle ran a red light, striking the rear driver's side of his car. He described a fairly significant impact. He experienced a significant increase in his pain." Evidence in the record shows that Pazdernik was transported from the accident scene to the hospital.

Law and Analysis

{¶ 6} We review a judgment granting a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. In reviewing a motion to dismiss for failure to state a claim, we accept as true all factual allegations in the complaint. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). A complaint should not be dismissed unless it appears "beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him [or her] to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. A motion to dismiss based upon a statute of limitations may be granted only when the complaint shows conclusively on its face that the action is time-barred. *Velotta v. Leo Petronzio Landscaping, Inc.*, 69 Ohio St.2d 376, 433 N.E.2d 147 (1982), paragraph three of the syllabus.

{¶ 7} R.C. 2305.10 governs the statute of limitations for personal injuries and provides in relevant part that "an action for bodily injury * * * shall be brought within two years after the cause of action accrues. * * * [A] cause of action accrues

under this division when the injury or loss to person * * * occurs." R.C. 2305.10(A). It is a long-established rule that a "[s]tatute of limitations commences to run so soon as the injurious act complained of is perpetrated, although the actual injury is subsequent * * *." *Kerns v. Schoonmaker*, 4 Ohio 331 (1831), syllabus; *O'Stricker v. Jim Walter Corp.*, 4 Ohio St.3d 84, 87, 447 N.E.2d 727 (1983); *Flagstar Bank, F.S.B. v. Airline Union's Mtge. Co.*, 128 Ohio St.3d 529, 2011-Ohio-1961, 947 N.E.2d 672, ¶ 13.

{¶ 8} There are exceptions to the rule, however; as mentioned, the one at issue here is the discovery rule. Under that rule,

> [w]hen an injury does not manifest itself immediately, the cause of action does not arise until the plaintiff knows or by the exercise of reasonable diligence should have known, that he [or she] had been injured by the conduct of the defendant, for purposes of the statute of limitations.

O'Stricker at paragraph two of the syllabus.

{¶ 9} The discovery rule only applies in "narrow circumstances." *LGR Realty, Inc. v. Frank & London Ins. Agency*, 152 Ohio St.3d 517, 2018-Ohio-334, 98 N.E.3d 241, ¶ 26. Specifically, the Ohio Supreme Court has held that the exceptions to the statute of limitations can apply where an "'unconscionable result'" would be had if a plaintiff's right to recovery was barred by the statute of limitations before he or she was even aware of his or her injuries. *Id.*, quoting *Wyler v. Tripi*, 25 Ohio St.2d 164, 168, 267 N.E.2d 419 (1971). Some examples of narrow circumstances

include a plaintiff's discovery of cancer from asbestos exposure,[1] toxic gas exposure,[2] and a mother and her daughters' discovery of numerous injuries after the mother took the drug Diethylstilbestrol during her pregnancies with the daughters.[3] Those cases allowing for a plaintiff to use the discovery rule involve situations where the plaintiff had a latent disease with a gestation period of years, decades. That is not the case here. In our review, we did not find a case in which the discovery rule was applied to an automobile accident, and Pazdernik has not presented one to us.

{¶ 10} The record shows that Pazdernik knew, or should have known, of his injuries at the time of the November 2 accident. We are not persuaded by his contention that he did not know, and that his contention is supported by the November medical notes, which did not mention the November accident, and Dr. Hochman's diagnosis relative to the November 2 accident, which did not occur until December 1. He reported his injury to the police on the scene and was transported by ambulance from the scene to the hospital.[4] The record belies his contention.

{¶ 11} This case is analogous to *Barker v. Gibson*, 5th Dist. Stark No. 1998CA00144, 1999 Ohio App. LEXIS 765 (Feb. 8, 1999). In *Barker*, the plaintiff was involved in an automobile accident on March 20, 1996. The following day, the

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[1]*O'Stricker*.

[2]*Liddell v. SCA Serv. of Ohio, Inc.*, 70 Ohio St.3d 6, 635 N.E.2d 1233 (1994).

[3]*Burgess v. Eli Lilly & Co.*, 66 Ohio St.3d 59, 609 N.E.2d 140 (1993).

[4]Pazdernik's contention that he went to the hospital only at the recommendation of one of the first responders who suggested it because of the severity of the damage to his vehicle is outside of the record and unpersuasive in any event.

plaintiff experienced neck and back pain. On March 23, 1998, the plaintiff filed an action against the alleged tortfeasor. The case was dismissed as being time-barred. The Fifth Appellate District upheld the dismissal, stating that the plaintiff

> knew she was involved in an automobile accident on March 20, 199[6]. In a police report written at the scene and filed in the record on April 30, 1998, appellant stated she felt "stiff and shaky." There can be no doubt that at the time of the accident, appellant knew "by the exercise of reasonable diligence" when the cause of action arose. To extend the discovery rule to all bodily injury claims other than products liability/exposure claims would thwart the purpose and spirit of the statute of limitations. Parties would never have an assurance of when the statute would be applicable. To accept appellant's argument would create a forever moving window for the accrual of a cause of action dependent solely on the plaintiff's acts.

Id. at 5.

{¶ 12} Pazdernik did not have to be aware of the full extent of his injuries in order to trigger the running of the statute of limitations. *Zimmie v. Calfee, Halter & Griswold*, 43 Ohio St.3d 54, 58, 538 N.E.2d 398 (1989). Rather, some "noteworthy," "cognizable" event, which would have alerted a "reasonable person" that a wrong took place needed to occur. *Id.* That happened here, on the date of the accident, and Pazdernik's action, which was filed outside of the statute of limitations, was time-barred.

{¶ 13} In light of the above, Pazdernik's sole assignment of error is without merit.

{¶ 14} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., JUDGE

PATRICIA ANN BLACKMON, P.J., and
ANITA LASTER MAYS, J., CONCUR