

STATE OF MICHIGAN
COURT OF APPEALS

BRANDON HASTINGS,

Plaintiff-Appellant

v

ROBERT DAVIS, DDS,

Defendant-Appellee

UNPUBLISHED

July 15, 1997

No. 192198

Wayne Circuit Court

LC No. 95-529096 NH

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the summary dismissal of his malpractice claim under MCR 2.116(C)(7), following a determination that his claim was barred by the statute of limitations. We affirm, although for a reason other than the one relied upon by the trial court. This case is being decided without oral argument pursuant to MCR 7.214(E).

The question we are asked to answer in this appeal is upon what date did plaintiff's malpractice action accrue. Because defendant's cause of action arose after October 1, 1986, the date his claim accrued is the date of the act or omission upon which the claim is based. *Solowy v Oakland Hospital Corp*, 454 Mich 214, 220; ___ NW2d ___ (1997); *Lumley v Bd of Regents for the University of Michigan*, 215 Mich App 125, 131; 544 NW2d 692 (1996). We look, therefore, to plaintiff's complaint to determine the acts or omissions that serve as the bases for plaintiff's malpractice claim.

Our review of the complaint reveals that plaintiff's malpractice action is predicated on allegations of defendant's failure to take certain actions while in the presence of plaintiff and during the examination or treatment of plaintiff or during consultation with plaintiff. Defendant's affidavit submitted in support of his motion for summary disposition indicates that the last date upon which defendant "saw, treated or discussed the Plaintiff's condition with him was on May 3, 1993." Plaintiff's dental records do not contradict defendant's affidavit. Moreover, plaintiff failed to submit any documentary evidence to rebut the contents of defendant's affidavit. In light of the fact that plaintiff's malpractice claim is premised on allegations of defendant's failure to take certain actions while in plaintiff's presence and that

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

the documentary evidence indicates that plaintiff was last in defendant's presence on May 3, 1993, the date plaintiff's malpractice claim accrued could not have been later than May 3, 1993, as a matter of law. MCL 600.5838a(1); MSA 27A.5838(1)(1); *Solowy, supra*; *Lumley, supra*; *Hazelton v Lustig*, 164 Mich App 164, 167; 416 NW2d 373 (1987).

Given that plaintiff's claim accrued on May 3, 1993, the limitation period expired on May 3, 1995, absent an application of a tolling provision. MCL 600.5805(4); MSA 27A.5805(4). Plaintiff filed his initial action on January 26, 1995 and, thereafter, placed the complaint and summons with an officer for immediate service. Service was not obtained, however, within the life of the summons. Consequently, the action was dismissed on April 27, 1995, without a decision on the merits, by operation of MCR 2.102(E)(1). Under these circumstances, by placing the complaint and summons in the hands of the officer for immediate service, plaintiff tolled the limitations period for ninety days. MCL 600.5856(c); MSA 27A.5856(c); *Dorsey v Kasyonan*, 193 Mich App 711, 713-715; 484 NW2d 415 (1992); *Lausman v Benton Twp*, 169 Mich App 625, 629-630; 426 NW2d 729 (1988). This ninety-day grace period extended the limitations period into early August, 1995. Plaintiff failed to refile his malpractice action until October 3, 1995, some two months after the limitations period ran. Accordingly, plaintiff has failed to demonstrate that his action is saved by the application of any tolling provision. We will not reverse the trial court where the right result is reached for the wrong reason. *Glazer v Lamkin*, 201 Mich App 432, 437; 506 NW2d 570 (1993).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Donald A. Teeple