STATE OF MICHIGAN

COURT OF APPEALS

CHERYL STROEBEL and GEORGE STROEBEL,

Plaintiffs-Appellants,

v

JOHN S. BUCHHEISTER, D.D.S., P.C., and JOHN S. BUCHHEISTER, D.D.S.,

Defendants,

and

ESTATE OF ADOLPH A. FORTUNA, D.D.S., JAMES M. KENNEDY, D.D.S., DAVID DENTAL CLINIC and JAMES DAVID, D.D.S.,

Defendants-Appellees.

UNPUBLISHED
July 25, 1997

No. 195056
Macomb Circuit Court
LC No. 94-001552 NH

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

After stipulated dismissal of remaining defendants, thereby disposing of all claims against all parties, plaintiff appeals by right a Macomb Circuit Court order granting summary disposition in favor of defendant Estate of Adolph A. Fortuna, D.D.S., summary disposition being based on the statute of limitations. This case is being decided without oral argument pursuant to MCR 7.214(E).

Independently of the reasons for granting summary disposition on which the circuit court relied, summary disposition would be appropriate based on the six year statute of repose for medical malpractice actions, RJA §5838a(2). Under this provision, added by 1986 PA 178, §1, without regard to the six month date of discovery a medical malpractice action must be commenced within six years after the date of the act or omission which is the basis for the claim. Such a statute is one of repose, similar to that for architects, engineers, and land surveyors, RJA §5839(1) and (2), and operates to bar

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

an action even if the action has not been discovered before the period of repose has expired. *O'Brien v Hazelet & Erdal*, 410 Mich 1; 299 NW2d 336 (1980). Hence, even if the trial court had given incorrect reasons for granting summary disposition based on the statute of limitations, its decision would properly be affirmed. *Williams v Lakeland Convalescent Center*, 4 Mich App 477, 483; 145 NW2d 272 (1966).

However, the trial court was also correct in granting summary disposition based simply on the two year period of limitations. Plaintiff's attempt to rely on the six-month date of discovery provision is without merit where, in paragraph 11 of her complaint, she asserts that "immediately upon removal of the braces [installed by Dr. Fortuna], plaintiff began to experience extreme pain and suffering in her neck, jaw, shoulders and back." Plaintiff's complaint, which in this regard is an admission against interest, *Slocum v Ford Motor Co*, 111 Mich App 127; 314 NW2d 546 (1981), thus establishes that immediately upon termination of treatment by Dr. Fortuna, plaintiff became aware of an injury and, by virtue of the temporal proximity of the events described, of the possible cause of that injury, sufficient to put her on inquiry. As suit was not filed until ten years later, a six month date of discovery provision would in no event make this action timely. *Shawl v Dhital*, 209 Mich App 321, 325; 529 NW2d 661 (1995); *Solowy v Oakwood Hospital Corporation*, 454 Mich 214; 561 NW2d 843 (1997).

Affirmed.

/s/ Kathleen Jansen
/s/ Myron H. Wahls
/s/ Patrick R. Joslyn