

STATE OF MICHIGAN
COURT OF APPEALS

GLORIA J. SCHNEIDER, TRUSTEE of the
GLORIA STRATTON REVOCABLE TRUST,

UNPUBLISHED
January 16, 2014

Plaintiff-Appellant,

v

No. 310419
Oakland Circuit Court
LC No. 2010-114814-CH

BOARD OF OAKLAND COUNTY ROAD
COMMISSIONERS,

Defendant/Cross-Plaintiff/Third-
Party Plaintiff/Appellee,

and

COMMERCE CONSTRUCTION AND
LANDSCAPING, INC.,

Defendant/Cross-Defendant/Third-
Party Plaintiff/Appellee,

and

DENNIS C. ACRE, THOMAS G. BLUST, and
GERALD W. HOLMBERG,

Defendants/Third-Party
Plaintiffs/Appellees,

and

AL'S ASPHALT PAVING CO. a/k/a AL'S
ASPHALT PAVING, INC.,

Defendant/Third-Party Defendant/
Cross-Defendant/Appellee.

Before: STEPHENS, P.J., and M. J. KELLY and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right the orders granting defendants' motions for summary disposition. We affirm.¹

This case arises from the paving of a roadway by defendants in front of plaintiff's property and the subsequent flooding in the yard of the property and failure of the septic system rendering the property uninhabitable. Specifically, plaintiff argues that the trial court erred in granting summary disposition to defendants because defendants' gross negligence in paving the roadway invoked the one-year discovery rule statute of limitations, pursuant to the earlier version of MCL 600.5839.² This Court finds that it does not need to reach the issue of gross negligence because, even if the one-year statute of limitations is applicable, plaintiff's complaint is still barred.

This Court reviews de novo a trial court's grant of summary disposition based on the statute of limitations under MCR 2.116(C)(7). *Furr v McLeod*, ___ Mich App ___; ___ NW2d ___ (Docket No. 310652, issued October 24, 2013) (slip op at 3). "With regard to a motion for summary disposition pursuant to MCR 2.116(C)(7), this Court reviews the affidavits, pleadings, and other documentary evidence presented by the parties and accepts the plaintiff's well-pleaded allegations, except those contradicted by documentary evidence, as true." *Oliver v Smith*, 290 Mich App 678, 683; 810 NW2d 57 (2010) (citations and internal quotation marks omitted).

In her complaint and through her witness's deposition, plaintiff concedes that she discovered the alleged defect in the road construction more than a year before she filed this lawsuit, obviating the need for this Court to reach the issue of the applicability of the one-year statute of limitations. The applicable version of MCL 600.5839 provides, in relevant part:

No person may maintain any action to recover damages for any injury to property, real or personal . . . arising out of the *defective and unsafe condition of an improvement to real property* . . . against any state licensed . . . professional engineer performing or furnishing the design or supervision of construction of the improvement , or against contractor making the improvement, more than 6 years after the . . . use, or acceptance of the improvement, or 1 year after *the defect is discovered or should have been discovered*. [Emphasis added.]

The parties do not dispute that the six-year statute of limitation period, typically applicable to the current action, expired before plaintiff filed her lawsuit. The one-year statute of limitation period for gross negligence also expired before plaintiff filed her lawsuit. The one-year statute of limitations began to run at the time when the "the defect [was] discovered or should have been discovered." MCL 600.5839. The alleged defect in the road construction involved the manner in which the water drained off the road and onto plaintiff's property.

¹ This Court affirms a trial court's decision when it reaches the right result for a different reason. *Fisher v Blankenship*, 286 Mich App 54, 70; 777 NW2d 469 (2009).

² The Legislature amended MCL 600.5839, effective January 1, 2012. 2011 PA 162. For ease of reference, references to the statute in this opinion are to the earlier version of the statute.

Plaintiff admitted that she was aware of the flooding and resulting septic system failure as early as December 2008. Similarly, plaintiff's husband, Robert Schneider, testified that he noticed the septic problem and flooding in the yard in December of 2008. He knew as early as the late spring of 2009 that the septic tank was not the problem. When asked if he immediately connected the septic problems with the paving, he responded, "I always thought the road was a problem . . . [f]or water. I always thought that road would be a problem sometime so, yes, as soon as that septic failed, that's why I called the health department. Because now look what it's done here." Plaintiff did not file her complaint until November 9, 2010, nearly two years after she admittedly discovered the alleged defect. Therefore, plaintiff's complaint is barred by the one-year statute of limitations period.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Michael J. Kelly
/s/ Michael J. Riordan