

STATE OF MICHIGAN
COURT OF APPEALS

JOANN E. MILLER,

Plaintiff-Appellant,

v

MOHAMMAD ALI, M. D.,

Defendant-Appellee.

UNPUBLISHED

May 29, 2001

No. 221534

Oakland Circuit Court

LC No. 99-013587-NH

Before: Jansen, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff consulted with defendant on November 18, 1996. Defendant allegedly failed to diagnose a serious condition, which another doctor diagnosed within days. Pursuant to MCL 600.2912b; MSA 27A.2912(2), plaintiff served defendant and his partner with notice of intent to file suit on December 16, 1997. Plaintiff filed suit on October 20, 1998, but that action was dismissed as to defendant on March 19, 1999, for lack of service of process within the life of the summons. Plaintiff then filed this action on March 26, 1999.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). When reviewing a motion for summary disposition under MCR 2.116(C)(7), a court must accept the plaintiff's well-pleaded factual allegations as true. "If no facts are in dispute, and reasonable minds could not differ regarding the legal effect of those facts, whether the plaintiff's claim is barred by the statute of limitations is a question for the court as a matter of law. However, if a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate." *Baker v DEC Int'l*, 218 Mich App 248, 252-253; 553 NW2d 667 (1996), aff'd in part, rev'd in part on other grounds 458 Mich 247 (1998).

The limitations period for a medical malpractice claim is two years from the time the claim accrues. MCL 600.5805(1), (5); MSA 27A.5805(1), (5). A medical malpractice claim accrues at the time of the act or omission that gave rise to the claim "regardless of the time the plaintiff discovers or otherwise has knowledge of the claim." MCL 600.5838a(1); MSA

27A.5838(1)(1). A medical malpractice claim may be filed within the two-year period or within six months after the plaintiff discovers or should have discovered the claim, whichever is later. CL 600.5838a(2); MSA 27A.5838(1)(2). Pursuant to these provisions, plaintiff's claim against defendant accrued on November 18, 1996, when he failed to diagnose her condition. Because plaintiff discovered her claim shortly after it accrued, the limitations period was two years and expired on November 18, 1998, approximately four months before she filed this action.

Plaintiff contends that the limitations was tolled under MCL 600.5856; MSA 27A.5856, which provides that the statutes of limitations are tolled:

(a) At the time the complaint is filed and a copy of the summons and complaint are served on the defendant.

(b) At the time jurisdiction over the defendant is otherwise acquired.

(c) At the time the complaint is filed and a copy of the summons and complaint in good faith are [sic] placed in the hands of an officer for immediate service, but in this case the statute is not tolled longer than 90 days after the copy of the summons and complaint is received by the officer.

(d) If, during the applicable notice period under section 2912b, a claim would be barred by the statute of limitations or repose, for not longer than a number of days equal to the number of days in the applicable notice period after the date notice is given in compliance with section 2912b. [MCL 600.5856; MSA 27A.5856.]

The limitations period was not tolled under subsection (a) because defendant was never served with process in the prior action, *Sanderfer v Mt Clemens General Hosp*, 105 Mich App 458, 462; 306 NW2d 322 (1981), and plaintiff does not contend, nor has she shown, that the period was tolled under subsection (c).

Plaintiff does contend that jurisdiction was "otherwise acquired" over defendant at the time she filed the prior action because defendant was subject to the court's jurisdiction under MCL 600.705; MSA 27A.705. That statute invests this state's courts "with the power to exercise personal jurisdiction" over nonresident defendants. *Green v Wilson*, 455 Mich 342, 367; 565 NW2d 813 (1997) (Kelly, J.). It is service of process on the defendant that actually enables the court to exercise its jurisdiction over him. *Lucking v Welbilt Corp*, 353 Mich 375; 385; 91 NW2d 346 (1958). Thus, § 5856(a) requires both the filing of the complaint and service of process in order to toll the limitations period. Subsection (b) simply recognizes that the court may gain jurisdiction over a defendant by means other than service of process, as where the defendant consents to the court's exercise of jurisdiction or the defendant voluntarily appears in the action. *Mair v Consumers Power Co*, 419 Mich 74, 82; 348 NW2d 256 (1984); *Lucking, supra*; *Penny v ABA Pharmaceutical Co (On Remand)*, 203 Mich App 178, 181; 511 NW2d 896 (1993). Because plaintiff did not serve defendant with process in the prior action and there is no indication that he consented to the court's jurisdiction or filed a general appearance, the mere filing of the prior action against defendant did not toll the limitations period. *Sanderfer, supra*.

Plaintiff also contends that the court acquired jurisdiction over defendant when she served him with the notice of intent to sue. Plaintiff's "failure to cite any authority in support of this novel proposition precludes our appellate review." *Sowels v Laborers' Int'l Union of North America*, 112 Mich App 616, 624; 317 NW2d 195 (1981).

Finally, plaintiff claims that the limitations period was tolled under subsection (d). That provision only applies if the limitations period would expire during the notice period required under § 2912b. Because plaintiff served defendant with the notice more than 182 days before the end of the limitations period and the notice period elapsed before the limitations period expired, § 5856(d) was inapplicable. *Omelenchuk v City of Warren*, 461 Mich 567, 574; 609 NW2d 177 (2000).

Plaintiff contends that because she was deprived of the right to file suit for 182 days during the limitations period, she did not obtain the benefit of the full limitations period and thus those twenty-six weeks should be tacked on to the limitations period. Because plaintiff has not cited any case law or other authority in support of her argument, the issue has not been preserved for appeal. *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993). That aside, plaintiff had the full two-year period allowed under § 5805 in which to file suit; the limitations period did not expire any earlier than it would have absent the notice requirement of § 2912b. Although plaintiff lost the right to file suit at any time during the limitations period, she did not lose the right to file suit up to two years after her cause of action accrued.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Donald S. Owens