

STATE OF MICHIGAN
COURT OF APPEALS

LAURA M. BONUCCHI,

Plaintiff-Appellee,

v

MICHIGAN STATE UNIVERSITY BOARD OF
TRUSTEES and OLIN HEALTH CENTER,

Defendants-Appellants.

UNPUBLISHED

March 28, 2006

No. 256233

Court of Claims

LC No. 03-000096-MH

LAURA M. BONUCCHI,

Plaintiff-Appellee,

v

R. RAJAN, M.D. and KATHY KLINGENSMITH,

Defendants-Appellants.

No. 257966

Ingham Circuit Court

LC No. 03-002192-NP

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

In this medical malpractice action, defendants appeal by leave granted from the trial court's order denying defendants' motion for summary disposition brought pursuant to MCR 2.116(C)(7). We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1995, plaintiff suffered a medication-induced psychosis after being prescribed Tavist-D for treatment of a sinus infection. One of the ingredients in Tavist-D at that time was phenylpropanolamine (PPA). On October 7, 1999, plaintiff sought treatment at Michigan State University's Olin Health Center for a painful knee and a cold. Plaintiff informed the staff at Olin that she was allergic to Tavist-D, but her treatment providers failed to inquire as to the cause or consequences of this allergy. As a result of this visit, plaintiff was prescribed Entex LA, which also contained PPA. On October 16, 1999, plaintiff was hospitalized for mania with psychotic symptoms.

Plaintiff served defendants with a notice of intent on February 25, 2003 and filed the complaint in the instant action on May 27, 2003. Defendants moved for summary disposition, asserting that the applicable statute of limitation, MCL 600.5805(6), barred the action. Plaintiff opposed the motion on the ground that the claim was not time-barred under the discovery rule, MCL 600.5838a(2), because she did not discover her claim until informed by her attorney on September 20, 2002 that Entex LA contained PPA.

A trial court's ruling on a motion for summary disposition brought pursuant to MCR 2.116(C)(7) is reviewed de novo "to determine whether the moving party was entitled to judgment as a matter of law." *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001). This Court also reviews de novo whether a statute of limitation bars an action if there is no disputed issue of fact. *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 456; 674 NW2d 731 (2003).

Generally, the period of limitation for commencing a malpractice action is two years. MCL 600.5805(6). However, a medical malpractice action is considered timely after the general period of limitation has expired if it is commenced within six months of when the plaintiff discovers or should have discovered through the exercise of reasonable diligence that an injury occurred and that there is a causal connection between the injury and the defendant's breach of duty to the plaintiff. MCL 600.5838a(2); *Lemmerman v Fealk*, 449 Mich 56, 64; 534 NW2d 695 (1995), quoting *Moll v Abbott Laboratories*, 444 Mich 1, 16; 506 NW2d 816 (1993).

In this case, plaintiff was hospitalized on October 16, 1999 after having been prescribed Entex LA nine days earlier. Plaintiff should have been familiar with the reaction she had to Entex LA, a drug prescribed for treatment of a cold, because it was similar to the reaction she had in 1995 to Tavist-D, which had been prescribed for the treatment of a sinus infection. This should have aroused plaintiff's suspicion that the psychosis she experienced in 1999 was related to her ingestion of Entex LA. See *Solowy v Oakwood Hosp Corp*, 454 Mich 214, 228; 561 NW2d 843 (1997) (concluding that the plaintiff's suspicions should have been aroused that a lesion was cancerous when she suffered symptoms identical to those she had suffered when she had cancer five years earlier).

Moreover, plaintiff filed suit against the manufacturer of Tavist-D in May 2000 alleging that the PPA contained therein caused her psychotic reaction in 1995. Prior to filing such a suit, a reasonably diligent person would have undertaken steps to determine whether they might have ingested PPA at any other time. An obvious place to begin such an investigation is with those drugs prescribed in close proximity to the second episode of psychosis plaintiff suffered in 1999. Yet plaintiff failed to undertake any steps at the time she filed suit against the manufacturer of Tavist-D to determine whether she ingested PPA on any other occasion. Furthermore, the FDA issued a drug safety alert in November 2000 noting that Entex LA contained PPA. While an individual may not pay attention to drug safety alerts in general, plaintiff had an ongoing lawsuit concerning the subject matter of the drug safety alert, i.e., the safety of PPA. A reasonably diligent person would pay attention to an FDA alert concerning a drug that is the subject matter of a lawsuit they are pursuing.

Plaintiff asserts that she did not discover the connection between her 1999 hospitalization and defendants' breach of duty until she was informed in September 2002 that Entex LA contained PPA. Plaintiff asserts that this connection was not discovered because she reasonably

believed that her condition in 1999 was a result of her ingestion of PPA in 1995. We find plaintiff's assertion unpersuasive.

The evidence presented in the trial court establishes that following her initial psychosis in 1995, plaintiff developed episodic depression. However, no evidence was presented that plaintiff suffered from reoccurring psychosis between the 1995 and 1999 episodes. A reasonable person who, after ingesting a newly prescribed medication for treatment of a cold, experiences troubling symptoms similar to those they experienced after ingesting a different medication on a previous occasion for treatment of a sinus infection should have known of a possible connection between the medications and their symptoms. A reasonably diligent person would have undertaken steps to determine what this connection was. If plaintiff had taken a reasonable step such as determining the ingredients of Entex LA from the manufacturer or pharmacist, she would have discovered that it contained PPA. The fact that plaintiff was diagnosed as suffering from bi-polarism in October 1999, rather than as suffering from a reaction to the ingestion of Entex LA, does not alter our conclusion that plaintiff's complaint was not timely filed considering the totality of the information available to plaintiff more than six months prior to the commencement of this action. See *Solowy, supra* at 227. Plaintiff should have known of her injury and a possible causal connection between that injury and defendants' breach of duty more than six months prior to the filing of the notice of intent in this case. Defendants were entitled to summary disposition on the ground that plaintiff's claim was not timely filed. MCR 2.116(C)(7).

Reversed and remanded for entry of an order of summary disposition in favor of defendants. We do not retain jurisdiction.

/s/ Jessica R. Cooper

/s/ Kathleen Jansen

/s/ Jane E. Markey