

STATE OF MICHIGAN
COURT OF APPEALS

JAMES W. GREENSHIELDS,

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF PLYMOUTH,
PLYMOUTH TOWNSHIP PLANNING
COMMISSION, PLYMOUTH TOWNSHIP
ZONING BOARD OF APPEALS, MICHAEL
GOODYEAR, NANCY GOODYEAR, DAVID
STANBURY, CAROL STANBURY, DAVID
RYMPH, KRISTI RYMPH, KEVIN GALVIN,
JOAN GALVIN, and WALNUT CREEK
HOMEOWNERS ASSOCIATION,

Defendants-Appellees,

and

ESTATE OF RAY FIGLEWICZ,

Defendant.

UNPUBLISHED

August 4, 2005

No. 261544

Wayne Circuit Court

LC No. 04-421613-NZ

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On May 30, 2000, plaintiff wrote a letter to the Plymouth Township Building Department complaining that the filling in of a drainage ditch and the construction of a berm over the ditch caused flooding on his property. On July 15, 2004, plaintiff filed suit alleging that defendants' acts of filling in the ditch and constructing the berm, and failing to enforce applicable statutes and zoning ordinances, constituted gross negligence and a nuisance. He asserted that the full scope of the damages from defendants' actions became apparent on or about March 1, 2003.

Defendants Rymph moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff's claims were barred by the three-year statute of limitations applicable to negligence and nuisance claims. MCL 600.5805(8).¹ The trial court granted summary disposition in favor of all defendants, finding that plaintiff's cause of action accrued in 2000, and therefore was barred by the three-year statute of limitations.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A claim such as that alleged by plaintiff, based on flooding, accrues at the time the land is first visibly damaged. The fact that the ultimate damages cannot be measured at that time does not toll the limitations period. Furthermore, damages that occur at a later date do not renew the limitations period or give rise to a new cause of action. *Horvath v Delida*, 213 Mich App 620, 624-626; 540 NW2d 760 (1995); *Garg v Macomb Co Community Mental Health Services*, 472 Mich 263, 281-285; 696 NW2d 646, amended ___ Mich ___ (2005) (rejecting the use of the continuing violations doctrine to extend the three-year statute of limitations under MCL 600.5805(8)).

On May 30, 2000, plaintiff wrote a letter to the township complaining that defendants' act of filling in a drainage ditch and constructing a berm caused flooding on his property. Plaintiff's letter demonstrates that he noticed damage to his property allegedly caused by defendants' actions no later than May 30, 2000. His claim accrued at that time, notwithstanding the fact that his ultimate damages were not measurable as of that date. *Id.* The yearly flooding that plaintiff attributes to defendants' act of filling in the drainage ditch and constructing a berm constitutes continued harmful effects, and do not extend the limitations period. *Id.* Plaintiff asserted in an affidavit submitted in support of his response to the motion for summary disposition that he noticed that flooding reoccurred after defendants made landscaping changes and placed more dirt in the ditch; however, he did not assert that that any damage was different from that allegedly caused by defendants' original acts. The trial court correctly concluded that plaintiff's claim was barred by the three-year statute of limitations. *Jackson County Hog Producers v Consumers Power Co*, 234 Mich App 72, 81; 592 NW2d 112 (1999).

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray

¹ Defendants Stanbury, Galvin, and the municipal defendants concurred in the motion for summary disposition. The trial court entered a stipulated order dismissing defendant Estate of Ray Figlewicz from the action.