

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD THOMPSON,

Plaintiff-Appellant,

v

No. 117255

RICK ANTHONY VANDEWERKER and
RENEE DUNIFIN, f/k/a RENEE
WINCHESTER,

Defendants-Appellees.

Before: Maher, P.J., and Gribbs and Murphy, JJ.

PER CURIAM.

In this tort action under the no-fault act, MCL 500.3135(1); MSA 24.13135(1), plaintiff appeals by right from a March 10, 1988 order granting summary disposition under MCR 2.116(C)(7) in favor of defendants and a subsequent order denying plaintiff's motion for reconsideration. The trial court granted the motion for summary disposition based on the three-year statute of limitations in MCL 600.5805(8); MSA 27A.5805(8). We affirm.

As a preliminary matter, we note that plaintiff has not briefed the issue of whether the trial court abused its discretion in denying his motion for reconsideration. MCR 2.119(F); Charbeneau v Wayne Co General Hospital, 158 Mich App 730, 733; 405 NW2d 151 (1987). Hence, any issue pertaining to that motion, including those issues pertaining to the affidavits filed by plaintiff in support thereof, is deemed abandoned. Hull & Smith Horse Vans, Inc v Carras, 144 Mich App 712, 720; 376 NW2d 392 (1985), lv den 424 Mich 895 (1986).

Turning to the trial court's ruling at the February 26, 1988 hearing on defendants' motion for summary disposition, we disagree with the trial court's ruling that DiFranco v Pickard, 427 Mich 32; 398 NW2d 896 (1986), does not cover plaintiff's action. DiFranco expressly applies to summary dispositions entered after that decision.

However, we do not agree with plaintiff's assertion that the statute of limitations should be deemed to commence on the day DiFranco was decided. Although DiFranco modified the legal standard for determining whether a "serious impairment of body function" exist, this statutory requirement under the no-fault act, MCL 500.3135(1); MSA 24.13135(1), has not changed. A resolution of the statute of limitations issue does not depend on whether the plaintiff is aware of the judicially determined legal standard for determining a serious impairment of body function. If plaintiff wished to challenge that standard, he could have done so, as was successfully done in DiFranco.

Plaintiff also claims on appeal that the trial court erred by granting a summary disposition based on the statute of limitations since plaintiff claims that he did not suffer a serious impairment until sometime after the date of the accident. Plaintiff, relying on Horan v Brown, 148 Mich App 464; 384 NW2d 805 (1986), lv den 425 Mich 876 (1986), and Mielke v Waterman, 145 Mich App 22; 377 NW2d 328 (1985), lv den 424 Mich 873 (1985), argues that the date of the serious impairment should control the commencement of the running of the statute of limitations. Defendant counters that the date of the accident commences the running of the period of limitations, relying on Gagliardi v Flack, 180 Mich App 62; 446 NW2d 858 (1989), lv den 433 Mich 921 (1989). The Supreme Court's order denying leave in Gagliardi indicates it is not persuaded that a conflict exists with the cited appellate decisions. In this case, we need not become embroiled in that discussion. Simply, our review of the record satisfies us that plaintiff has failed to establish by competent evidence a factual question on the record before the trial court that the claim of serious injury manifested itself less than three years from the date that the complaint was filed.

Having considered the standard applicable to motions for summary disposition under MCR 2.116(C)(7), Executone Business Systems Corp v IPC Communications, Inc, 177 Mich App 660, 665;

442 NW2d 755 (1989), Palenkas v Beaumont Hospital, 432 Mich 527, 550; 443 NW2d 354 (1989) and MCR 2.116(G)(3)(a) and (I), we find that the trial court reached the right conclusion in holding that the three-year limitations period applicable to plaintiff's action barred plaintiff's claim.

Affirmed.

/s/ Richard M. Maher
/s/ Roman S. Gibbs
/s/ William B. Murphy