

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY WILLIAM HOHENDORF and
KATHIE HOHENDORF,

Plaintiffs-Appellants,

v

JOHN THOMAS MEAGHER,

Defendant Appellee.

April 2, 1991
9:30 a.m.
FOR PUBLICATION

No. 123690

Before: McDonald, P.J., and MacKenzie and Wahls, JJ.

PER CURIAM.

This is a negligence action arising out of a July 19, 1982 automobile accident. Plaintiffs appeal as of right from an order granting summary disposition in favor of defendant on the bases that plaintiffs' suit was barred by the statute of limitations and the doctrine of res judicata. We affirm.

Immediately following the 1982 accident, plaintiff Jeffery Hohendorf began a course of medical treatment for what plaintiffs characterize as soft-tissue back and neck injuries caused by the accident.

On April 18, 1984, plaintiffs filed a negligence action alleging:

That your plaintiff suffered as a result of the wrongful acts severe, permanent and progressive injuries; to wit: injury to his back and neck as well as his knee and right tibia, along with his entire musculi skeletal system.

Following mediation, the case was removed to district court. The district court dismissed the case, apparently finding as a matter of law that Hohendorf did not sustain a serious impairment of body function.

Hohendorf continued medical treatment. On October 7, 1988, he was diagnosed as suffering from a herniated disc. This diagnosis was transmitted to Hohendorf's treating physician on May 15, 1989.

On July 18, 1989, plaintiffs filed the instant negligence action. Their complaint alleged:

As a direct and proximate result of the negligence of said defendant, plaintiff Jeffrey William Hohendorf was violently jostled, knocked and thrown about his vehicle, sustaining serious impairment of body function and/or permanent disfigurement, severe personal contusions, lacerations and abrasions of his body, neck, head, back, stomach, arms, legs and parts and extensions thereof, injury to the muscles, nerves, ligaments and discs of the neck and back, severe shock and injury to his nervous system and related sequelae thereof.

Defendant maintained that plaintiffs' second suit was barred by the doctrine of res judicata and the three-year statute of limitations for personal injury claims. See MCL 600.5805; MSA 27A.5805 and MCL 600.5827; MSA 27A.5827. Plaintiffs contended that this was a new unadjudicated claim, discovered in 1988 or 1989, when the physicians diagnosed Hohendorf's herniated disc. Plaintiffs further argued that, because this new claim was not discovered until 1988 or 1989, it was not barred by the statute of limitations. The trial court agreed with defendant.

On appeal, plaintiffs contend that the trial court erred in determining that their action was time-barred. Specifically, plaintiffs contend that the claim for damages for serious impairment of body function accrued when they discovered or should have discovered Hohendorf's herniated disc -- in October 1988 -- so that their July 1989 suit was timely. An identical argument was rejected by this Court in Sherrell v Bugaski, 169 Mich App 10, 15-16; 425 NW2d 707 (1988).

The facts in Sherrell, *supra*, are almost identical to those in this case. In Sherrell, the plaintiff sued the defendants for injuries, including lower back pain, sustained in a 1979 auto accident. The defendants were granted summary disposition on the ground that the plaintiff's injuries did not constitute a serious impairment of body function. In 1985, the plaintiff discovered that she had a herniated disc, and in 1986 she filed a second negligence action against the defendants. Responding to the plaintiff's proposition that her second cause of action accrued when she discovered her herniated disc, this Court stated:

Simply because plaintiff's injury failed to rise to the requisite level for recovery in the first suit does not mean her claim had not yet accrued. As the Supreme Court stated in Connelly v Paul Ruddy's Equipment Repair & Service Co, 388 Mich App 146, 151; 200 NW2d 70 (1972):

Once all of the elements of an action for personal injury, including the element of damage, are present, the claim accrues and the statute of limitations begins to run. Later damages may result, but they give rise to no new cause of action, nor does the statute of limitations begin to run anew as each item of damage is incurred.

Thus, plaintiff's cause of action accrued when she discovered the injuries for which she sued in the first action in 1980. [169 Mich App 16.]

See also Gagliardi v Flack, 180 Mich App 62; 446 NW2d 858 (1989) (In an automobile negligence case, the statute of limitations is not tolled until such time as the plaintiff discovered or should have discovered that his injury constituted a serious impairment of body function).

We find the reasoning of Sherrell and Gagliardi persuasive. Accordingly, we conclude that plaintiffs' cause of action accrued in 1982 and was not tolled until discovery of Hohendorf's herniated disc. The trial court therefore properly ruled that plaintiffs' 1989 lawsuit was barred by the three-year statute of limitations set forth at MCL 600.5805; MSA 27A.5805.

Our disposition of the above issue makes it unnecessary to consider plaintiffs' remaining claim, that the trial court erred in finding their suit barred by the doctrine of res judicata. We note, however, that similar arguments were rejected by this Court in Sherrell, *supra*, and Moore v Wicks, 184 Mich App 517; 458 NW2d 653 (1990).

Affirmed.

/s/ Gary R. McDonald
/s/ Barbara B. MacKenzie
/s/ Myron H. Wahls