

STATE OF MICHIGAN
COURT OF APPEALS

MARY E. SCHULTZ,
Plaintiff-Appellant,

FOR PUBLICATION
January 19, 1996
9:20 a.m.

v

No. 190127
LC No. 92-070905-NI

JOHN J. BLACK and KIDS 'R US, INC.,
a Delaware Corporation, Individually,
Jointly and/or Severally,

Defendants-Appellees.

Before: Hood, P.J., and Murphy and Neff, JJ.

NEFF, J.

This case is before us on remand from the Supreme Court in light of its opinion in Stephens v Dixon, 449 Mich 531; 536 NW2d 755 (1995), reversing 199 Mich App 73; 500 NW2d 749 (1993). On remand, we again find error in the trial court's grant of summary disposition to defendants pursuant to MCR 2.116(C)(7). The trial court's ruling was based on the ground that plaintiff's claim was barred by the three-year statute of limitations provided in MCL 600.5805(1) and (8); MSA 27A.5805(1) and (8). Accordingly, we reverse and remand for further proceedings.

I

In our previous opinion, we succinctly set forth the facts of this case:

In her January 21, 1992, complaint, plaintiff alleged that she was involved in a car accident on August 27, 1987. According to the complaint, defendant Black, while in the employ of defendant Kids R Us, Inc., ran a red light, causing a collision between his vehicle and that in which plaintiff was a passenger. Plaintiff alleged a serious impairment of body function consisting of injuries to her back, shoulder, neck, right arm and right hand. She further alleged that the serious impairment of body function did not manifest itself until February 1991. Plaintiff sought damages for noneconomic loss and economic loss in excess of no-fault benefits.

Defendants moved for summary disposition on the ground that plaintiff's claim was barred by the three-year statute of limitations. Defendants contended that, pursuant to MCL 600.5827; MSA 27A.5827, plaintiff's claim accrued at the time of the wrong on which the claim was based; i.e., at the time of the accident. Plaintiff contended that the claim accrued at the time the injury first manifested itself. She submitted an affidavit in which she stated that she went to the emergency room after the collision and no abnormalities were found. She further averred that she led a normal life and had no significant problems until February 1991, at which time she sought treatment. She had neurosurgical intervention to repair a ruptured disc. Her physician averred that it was possible for plaintiff to have enjoyed good health and to have experienced little or no

pain during a period in which her injuries lay dormant. He also stated that, in his opinion, plaintiff's injuries are causally related to the automobile accident. The trial court accepted defendants' argument and granted their summary disposition motion. [Schultz v Black, unpublished opinion per curiam of the Court of Appeals, issued March 30, 1994 (Docket No. 154134).

II

The issue before us now, as it was in our previous opinion, is whether to apply the discovery rule to toll the limitation period in which plaintiff could bring her cause of action. The discovery rule is an equitable tool used to toll the statute of limitations in a case where a plaintiff is not aware of a potential cause of action. See Stephens, 449 Mich at 536.

In our previous opinion, we relied on this Court's holding in Stephens v Dixon, which provided, in essence, that in a no-fault cause of action for injuries, the statute of limitations is tolled where a plaintiff alleges a latent injury, but not where a plaintiff merely misjudges the severity of a known injury. Stephens, 199 Mich App 79.

After close inspection of the Supreme Court's opinion in Stephens, we conclude that the rule of law set forth by this Court in Stephens remains intact. Indeed, the Supreme Court held "that the discovery rule is not available in a case of ordinary negligence where a plaintiff merely misjudges the severity of a known injury." Stephens, supra at 537. The Court merely determined that this Court's application of the discovery rule in Stephens was improper; after setting forth the facts, the Court stated that "this plaintiff knew or should have known from the day of the accident that a possible cause of action existed for a neck injury resulting from the accident." Stephens, 449 Mich 537-538. The Court specifically stated that it expressed no opinion regarding whether the discovery rule applies to a case in which a plaintiff did not know of her injuries at the date of the accident. Stephens, 449 Mich 538, n *.

We conclude that this case presents a factual scenario that fits within the definition of latent injury as set forth in this Court's opinion in Stephens, and as clarified by our Supreme Court's opinion in Stephens. Plaintiff presented un rebutted evidence that she did not know, nor should she have known, that she sustained any injuries as a result of the automobile accident until February 1991, approximately 3-1/2 years after the accident, but only one year before she filed her complaint. Accordingly, we conclude that the trial court erred in failing to apply the discovery rule to this case, and thus erred in granting summary disposition to defendants. Plaintiff's complaint was filed within three years of the date plaintiff discovered her latent injury.

Reversed and remanded. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Harold Hood
/s/ William B. Murphy