

MICHIGAN COURT OF APPEALS

Pendell v. Jarka, 156 Mich. App. 405

402 N.W.2d 23 (Mich. Ct. App. 1986) · No. 85807 · Decided December 1, 1986

SUMMARY

The Michigan Court of Appeals held that the plaintiff’s medical malpractice claims against an orthopedic physician and a hospital were barred by the applicable statutes of limitations. The court concluded that the physician-patient relationship ended when the physician referred the plaintiff to a neurologist, and that later provision of medical records and a referral letter did not constitute continued treatment or service. The court also held that the plaintiff knew or should have known of the asserted malpractice more than six months before filing suit.

CASE DETAILS

COURT	Michigan Court of Appeals
WRITING FOR THE COURT	D.E. Holbrook, Jr., P.J.; Wahls, J.; M.E. Dodge, J.
JURISDICTION	Michigan
DECIDED	December 1, 1986
DOCKET	85807
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed as of right from an order granting defendants' motion for summary disposition under MCR 2.116(C)(7) on statute-of-limitations grounds.
STANDARD OF REVIEW	Summary disposition under MCR 2.116(C)(7) is proper when the undisputed facts establish that the action is barred by the statute of limitations; whether undisputed facts establish limitations is a question of law for the court.
PRECEDENTIAL VALUE	published and precedential Michigan Court of Appeals opinion
PARTIES	Harold J. Pendell v. Robert W. Jarka, M.D., St. Mary's Hospital

TOPICS

- medical malpractice
- statute of limitations
- summary judgment
- statutory interpretation
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Pendell's claims were barred by the two-year medical-malpractice limitations period measured from the date defendants discontinued treating or serving him.
2. Whether Jarka's later provision of medical records, referral information, and review of another physician's reports constituted continued treatment or service that delayed accrual under MCL 600.5838.
3. Whether Pendell timely commenced the action under the six-month discovery rule in MCL 600.5838(2).

HOLDINGS

1. Pendell's claim against St. Mary's Hospital accrued no later than the hospital's last treatment of him in late September 1981, and the action filed on February 21, 1984, was barred by the two-year limitations period.
2. Jarka discontinued treating or otherwise serving Pendell on December 29, 1981, when he referred Pendell to another physician; providing medical records, preparing a referral letter, and reviewing another physician's reports did not restart or toll the limitations period.
3. Pendell's claims against both defendants were also barred by the six-month discovery rule because the undisputed evidence showed that he knew of a possible malpractice claim more than six months before filing suit.

KEY QUOTATIONS

“Bosel follows the essence of the last treatment rule which is that the cessation of the ongoing patient-physician relationship marks the point where the statute of limitations begins to run.” (at 410)

“To allow such a minor act to constitute “treating or otherwise serving” the patient within the meaning of § 5838 would invite abuse.” (at 411)

FACTUAL BACKGROUND

Pendell injured his shoulder in April 1981 and was treated by orthopedist Robert Jarka through late 1981, including a closed manipulation and later surgery at St. Mary's Hospital. On December 29, 1981, Jarka referred Pendell to a neurologist for complaints of finger numbness, after which Pendell independently sought treatment at the Mayo Clinic. In February 1982, Jarka provided Pendell with medical records and a referral letter to facilitate Mayo Clinic treatment. Pendell filed suit on February 21, 1984, after later concluding that the closed manipulation had been improperly performed.

PROCEDURAL HISTORY

Pendell filed a medical-malpractice action in the Kent Circuit Court on February 21, 1984. The circuit court granted defendants' motion for summary disposition, holding that the applicable limitations period barred the action. The Michigan Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- DeGrazia v. Johnson, 105 Mich. App. 356, 306 N.W.2d 512 (1981)
- Shane v. Mouw, 116 Mich. App. 737, 323 N.W.2d 537 (1982)
- Bosel v. Babcock, 153 Mich. App. 592, 396 N.W.2d 448 (1986)
- Heisler v. Rogers, 113 Mich. App. 630, 318 N.W.2d 503 (1982)
- Juravle v. Ozdagler, 149 Mich. App. 148, 385 N.W.2d 627 (1985)
- Penner v. Seaway Hospital, 102 Mich. App. 697, 302 N.W.2d 285 (1981), leave denied, 417 Mich. 974 (1983)
- Leary v. Rupp, 89 Mich. App. 145, 280 N.W.2d 466 (1979)
- Jackson v. Vincent, 97 Mich. App. 568, 296 N.W.2d 104 (1980)
- Leyson v. Krause, 92 Mich. App. 759, 285 N.W.2d 451 (1979)