

IN THE COURT OF APPEALS OF IOWA

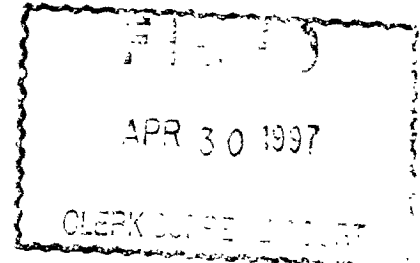
No. 6-594 / 95-1512

MARY DOE,
Plaintiff-Appellant,

vs.

FRANCIS VASQUEZ,
S.S. ORTEGA, and
C.G. WELLSO,
Defendants-Appellees,

W.J. MOERSHEL,
Defendant.



Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge.

Mary Doe appeals from a district court order granting summary judgment to the defendants and dismissing her medical malpractice claim. **AFFIRMED.**

Max E. Kirk of Ball, Kirk, Holm & Nardini, P.C., Waterloo, and Linda Hansen Robbins of Irvine & Robbins, Cedar Rapids, for appellant.

Raymond R. Stefani and Thomas F. Ochs of Gray, Stefani & Mitvalsky, Cedar Rapids, for appellees Ortega and Wellso.

Thomas J. Shields of Lane & Waterman, Davenport, and James R. Snyder and Webb L. Wassmer of Simmons, Perrine, Albright & Ellwood, P.L.C., Cedar Rapids, for appellees Ortega and Wellso.

Considered by Sackett, P.J., Cady, and Vogel, JJ.

PER CURIAM

This is an appeal by a plaintiff claiming the district court should not have granted summary judgment to defendants on her claims of medical malpractice. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Mary Doe was under the psychiatric care of Dr. Francis Vasquez from February 1974 to September 1975, when she was sixteen and seventeen years old. She claims Dr. Vasquez had improper sexual contact with her while she was under his care. Mary has always remembered this sexual contact. She has seen several therapists since she ended treatment with Dr. Vasquez.

In February 1989, Mary saw in article in the Cedar Rapids Gazette regarding an investigation of Dr. Vasquez by the Iowa Board of Medical Examiners. The investigation concerned allegations of sexual contact between Dr. Vasquez and six female patients. She claims that until this time, she believed she had an affair with Dr. Vasquez. After reading the article Mary experienced panic attacks and emotional turmoil. In March 1989, she gave a voluntary written statement to the Board in which she described the sexual contact and stated her belief Dr. Vasquez had caused her inestimable damage by his sexual abuse and manipulation.

Mary filed an action against Dr. Vasquez and his partners on February 22, 1993. Defendants filed a motion for summary judgment, raising the affirmative defense that the action was barred by the statute of limitations. The district court found the action was barred by the statute of limitations. Mary now appeals.

I. Mary claims the district court applied the wrong standard in evaluating the motion for summary judgment. In assessing whether summary judgment is proper, the court looks to the pleadings, depositions, answers to interrogatories, and admissions to see if there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Woodroffe v. Hansenclever*, 540 N.W.2d 45, 46 (Iowa 1995). The district court properly applied this standard in evaluating defendants' motion.

II. Mary contends section 614.1(12) or section 614.8A may be the proper statute of limitations in this case. Section 614.1(9) is the statute of limitations pertaining to medical malpractice claims. *Langner v. Simpson*, 533 N.W.2d 511, 516 (Iowa 1995). All injuries arising out of patient care are covered by the statute. *Id.* We conclude the district court properly applied section 614.1(9).

Section 614.1(9) provides that a medical malpractice action must be brought within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, of the injury. Mary's action is facially barred by this section. She has the burden to show an exception to the statute of limitations. *See Borchard v. Anderson*, 542 N.W.2d 247, 249 (Iowa 1996).

III. A. Mary first claims the phenomenon of transference made discovery of the injury very difficult for her. Transference is a term used by psychiatrists and psychologists to denote a patient's emotional reaction to a therapist and is generally

applied to the projection of feelings, thoughts and wishes on to the analyst, who has come to represent some person from the patient's past. *Langner*, 533 N.W.2d at 519 (citing *Simmons v. United States*, 805 F.2d 1363, 1364 (9th Cir. 1986)). A transference phenomenon may explain a patient's delayed knowledge he or she was sexually abused by a therapist. *Id.* In other cases, however, in which the transference phenomenon has applied, the therapy relationship continued, which made it unreasonable to expect the patient to independently investigate the cause of his or her problems. *Id.* Here, Mary did not continue in a therapy relationship with Dr. Vasquez, and thus, could reasonable be expected to investigate the cause of her problems.

B. Mary claims she suffers from post-traumatic stress disorder, which impaired her ability to discover her injury. There is no special exception to the statute of limitations for post-traumatic stress disorder. *Borchard*, 542 N.W.2d at 251.

C. Mary claims Dr. Vasquez fraudulently concealed his wrongful acts, which tolled the statute of limitations. To establish fraudulent concealment a plaintiff must show (1) the defendant did some affirmative act to conceal the cause of action, and (2) the plaintiff exercised diligence to discover the cause of action. *Van Overbeke v. Youberg*, 540 N.W.2d 273, 276 (Iowa 1995). However, the close relationship of trust and confidence between patient and physician gives rise to duties of disclosure which may obviate the need for a patient to prove an affirmative act of concealment. *Langner*, 533 N.W.2d at 522.

Despite this “special relationship,” which calls for a reduced level of proof, fraudulent concealment must nevertheless be independent of the alleged acts relied on to establish liability. *Van Overbeke*, 540 N.W.2d at 276. There must also be a temporal separation of the acts of negligence and the acts of alleged concealment; the concealment must take place after the alleged acts of negligence occurred. *Id.* In the present case, Mary has not alleged any independent act performed by Dr. Vasquez which could constitute fraudulent concealment. Additionally, she has alleged no acts which took place after the alleged acts of negligence occurred.

D. Mary claims she did not discover the medical malpractice until another therapist specifically stated Dr. Vasquez had committed malpractice by engaging in a sexual relationship with her. The supreme court has stated:

[T]he statute of limitations begins to run when a person gains knowledge sufficient to put the person on inquiry. On that date, the person is charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation. Moreover once a person is aware that a problem exists, the person has a duty to investigate even though the person may not have knowledge of the nature of the problem that caused the injury. Seen in this light, the period of limitations is the outer time limit for making the investigation and bringing the action.

Langner, 533 N.W.2d at 518. The law does not require knowledge of why and how abuse affected a plaintiff. *Borchard*, 542 N.W.2d at 251. The law requires only that the plaintiff be aware of the existence of a problem. *Id.*

We find Mary had sufficient knowledge at the time she gave her voluntary statement to the Board, March 1989, to put her on inquiry. At the time she gave the

statement she knew of the sexual abuse and that it had caused her problems. We conclude the statute of limitations began running at least by this date. Mary filed her petition more than two years after March 1989. We determine her petition is untimely under section 614.1(9).

We affirm the decision of the district court granting summary judgment to defendants. Plaintiff's action is barred by the statute of limitations. Costs of this appeal are assessed to plaintiff.

AFFIRMED.