IN THE COURT OF APPEALS OF IOWA

No. 1-563 / 00-1868
Filed December 12, 2001

CLIFTON RODENBURG and DONNA RODENBURG,
Plaintiffs-Appellants,

vs.

MARK LATHROP
Respondent-Appellee.

FILED
DEC 12 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Dallas County, Dale B. Hagen, Judge.

Plaintiffs appeals from a district court order dismissing their negligence action against defendant based on a finding the action was brought following the expiration of the applicable statute of limitations. **AFFIRMED.**

Clifton Rodenburg and Donna Rodenburg, Fargo, North Dakota, pro se.

Jonathan M. Kimple, Dallas Center, for appellee Mark Lathrop.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

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ZIMMER, J.

William Hart shot Clifton Rodenburg in 1996. More than four years later, Clifton and his wife, Donna filed suit in Iowa against defendants Mark Lathrop, Amelia Oponski, and Patrick Parker for personal injuries suffered in the shooting. The defendants responded by contending the action was precluded by the applicable statute of limitations. The district court agreed and dismissed the lawsuit. The Rodenburgs appealed. They have dismissed their appeal against Oponski and Parker, but continue to contend the district court erred in concluding the statute of limitations barred their suit against Lathrop. We affirm.

I. Background Facts and Proceedings

William Hart shot Clifton Rodenburg on March 26, 1996, in Fargo, North Dakota. Prior to the shooting, Mark Lathrop, and his girlfriend, Amelia Oponski, bailed Hart out of jail in Des Moines, Iowa. Hart told them that if he was released from jail, he could repay money he owed them as the result of an unsuccessful business deal. Hart assured Lathrop he could obtain a large sum of money from some acquaintances in North Dakota who were indebted to him. Lathrop and Oponski agreed to accompany Hart to North Dakota.

Before leaving Iowa, Lathrop, Oponski, and Hart went to the home of Patrick Parker to borrow a handgun and a box of ammunition ostensibly to protect them while returning to Iowa with a large sum of money. The handgun was later used by Hart to shoot Clifton Rodenburg.

On March 9, 1996, Hart, Lathrop, and Oponski traveled to North Dakota. Hart was unsuccessful in securing any money and they returned to Des Moines. Sometime around March 16, 1996, Hart, Lathrop, and Oponski again traveled to

North Dakota. This venture also proved unproductive and the trio returned to Iowa. Because they planned to return to North Dakota, they did not check out of the hotel room Hart rented when they arrived in Fargo. Lathrop left the handgun belonging to Parker in a bag in the rented room. Approximately ten days later, Hart made a third trip to Fargo without Lathrop and Oponski. On this trip, Hart shot Rodenburg several times at the YMCA in Fargo with Parker's handgun. Rodenburg survived the shooting, but was seriously injured.

During the criminal investigation of Hart's actions, Lathrop and Oponski told law enforcement officials Hart had stolen Parker's handgun from the basement of their home. Hart was charged with a number of federal criminal offenses as a result of the shooting. At his criminal trial, Lathrop and Oponski admitted they had lied to investigators about how Hart acquired the gun and ammunition. Their recantation occurred on or about August 4, 1998.

In January of 1999, Rodenberg and his wife brought an action in North Dakota against the YMCA, Hart, Lathrop, Oponski, and Parker seeking personal injury damages as a result of the shooting. Following trial, a jury apportioned 100% of the fault to William Hart.

On August 3, 2000, Clifton Rodenburg, joined by his wife, filed a negligence action in Dallas County, Iowa. The petition named Mark Lathrop, Amelia Oponski, and Patrick Parker as defendants. Specifically, the petition alleged the defendants were negligent in the following particulars: (a) securing Hart's release from incarceration; (b) providing the handgun and bullets to Hart; (c) providing transportation for Hart's trips to North Dakota; (d) providing money

for Hart's trips to North Dakota; and (e) failing to warn Rodenburg or law enforcement authorities of Hart's intentions and actions.

Parker and Lathrop moved to dismiss the Rodenburgs' negligence claim asserting the action was beyond the scope of the applicable statute of limitations. Oponski raised the same issue as an affirmative defense in her answer to the plaintiffs' petition. By agreement, the district court treated Oponski's answer as the equivalent of a motion to dismiss. Following hearing, the court concluded the Rodenburgs' petition failed to state a claim upon which relief could be granted because it was filed after the expiration of the statute of limitations established in Iowa Code section 614.1(2).

The Rodenbergs appealed contending first, that the discovery rule should apply to section 614.1(2) and toll the statute of limitations; and second, that the statute of limitations should be tolled according to the doctrine of fraudulent concealment.

The Rodenburgs have voluntarily dismissed their appeals against defendants Patrick Parker and Amelia Oponski. Therefore, the only issue on appeal concerns the timeliness of their negligence action against the remaining defendant, Mark Lathrop.

II. Scope of Review

Our review of a district court's ruling on a motion to dismiss is for correction of errors at law. Iowa R. App. P. 4; *Henry v. Shober,* 566 N.W.2d 190, 191 (Iowa 1997). A district court's order sustaining or overruling a motion to dismiss does not depend on the court's discretion. *Venard v. Winter,* 524 N.W.2d 163, 165 (Iowa 1994). The ruling must rest on legal grounds and is

subject to review by us. *Id.* (citing *Weber v. Madison,* 251 N.W.2d 523, 525 (Iowa 1977)). The district court's findings of fact are binding on appeal unless not supported by substantial evidence. *McCormick v. Meyer,* 582 N.W.2d 141, 144 (Iowa 1998). We are not bound by the district court's application of legal principles or its conclusions of law. *Id.*

III. Analysis

Statutes of limitations are legislatively prescribed restrictions on the time period in which a plaintiff may initiate a particular cause of action. The underlying purpose of Iowa Code section 614.1(2), like any other statute of limitations, is well established:

> Statutes of limitations are primarily designed to assure fairness to defendants. Such statutes "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." Moreover, the courts ought to be relieved of the burden of trying stale claims when a plaintiff has slept on his rights.

Wetter v. Dubuque Aerie No. 568 of the Fraternal Order of Eagles, 588 N.W.2d 130, 132 (Iowa Ct. App. 1998) (citations omitted).

The applicable statue of limitations is determined by the nature of the cause of action, which is in turn determined by the rights sued upon. *Venard,* 524 N.W.2d at 165 (Iowa 1994) (citing *Sandbulte v. Farm Bureau Mut. Ins. Co.,* 343 N.W.2d 457, 462 (Iowa 1984)). The Rodenbergs' claims against defendant Lathrop seek damages for personal injuries and spousal consortium suffered as a result of the defendant's alleged negligence. Therefore, the plaintiffs' action for personal injury is restricted by the time limits set forth in Iowa Code section 614.1(2). This section provides:

> Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specifically declared. . .
>
> 2. *Injuries to person or reputation – relative rights – statute penalty.* Those founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort. . . within two years.

Iowa Code § 614.1.

The Rodenbergs assert this two year statute of limitations did not begin to run on March 26, 1996, the date of the injury for which they seek redress. Instead, they claim the statute should be tolled until August 4, 1998. They contend this is the earliest date on which they could have discovered they had a cause of action against Mark Lathrop. If the statue was tolled until August 4, 1998, as the Rodenbergs contend, then the Iowa negligence action filed on August 3, 2000 would fall within the two-year statute of limitations even though it was filed more that four years after Clifton Rodenburg was injured.

To the extent that the Rodenburgs attempt to establish a factual and legal basis for being excused from timely filing, they must shoulder the burden of proving such an exception. *See Frazen v. Deere & Co.*, 334 N.W.2d 730, 732 (Iowa 1983).

IV. Application of the Discovery Rule

The Rodenbergs initially claim the district court erred in failing to recognize that the two-year statute of limitations for personal injury actions under Iowa Code section 614.1(2) is subject to the discovery rule. The common law discovery rule provides the statute of limitations does not begin to run until the plaintiff knows, or in the exercise of reasonable care should know, both the facts

of the injury and the nexus between the injury and the alleged negligence. *Borchard v. Anderson,* 542 N.W.2d 247, 250 (Iowa 1996). While fairness to the plaintiff provides justification for the discovery rule, we have held that fairness to a defendant must temper the application of this rule. *Woodroffe v. Hasenclever,* 540 N.W.2d 45, 49 (Iowa 1995) (quoting *LeBeau v. Dimig*, 446 N.W.2d 800, 802-03 (Iowa 1989)). The law favors the application of one statute of limitations for actions based on a particular incident. *LeBeau v. Dimig,* 446 N.W.2d 800, 802 (Iowa 1989).

Courts have been reluctant to adopt a broad application of the discovery rule for fear that creating "rolling statute of limitations" would effectively obliterate the intended protection of legislatively established time limits. While recognizing the wisdom of its application under certain circumstances such as professional malpractice, workers compensation, and injuries resulting from sexual abuse, courts have been quick to point out that these are exceptions to the general rule. *See Bochard,* 542 N.W.2d at 251.

Even if we assume, for purposes of the Rodenbergs' appeal, that the discovery rule could be used to toll the statute of limitations in a general personal injury action, their claim would nonetheless be time barred. The statute of limitations begins to run when an action "accrues," that is when all of the elements are known, or in the exercise of reasonable care should have been known to the plaintiff. *See Frazen* 377 N.W.2d at 662.

We recognize that situations may arise when a person suffers an injury, but is oblivious to significant facts surrounding the event. The array of potentially responsible parties may be open to question until certain facts are revealed. The

time period for discovering new pertinent facts is quite possibly limitless. This situation has been resolved by tolling the statute of limitations based on the discovery rule until the time when a plaintiff may reasonably be charged with knowledge of facts sufficient to trigger awareness of a cause of action against a particular defendant. *Vachon v. State*, 514 N.W.2d 442, 446 (Iowa 1994). Knowledge is imputed to a claimant when he gains information sufficient to alert a reasonable person of the need to investigate. *Ranney v. Parawax Co.*, 582 N.W.2d 152, 155 (Iowa 1998) (citations omitted). As of that date, we have found that a plaintiff is on inquiry notice of all facts that would have been disclosed by a reasonably diligent investigation. *Id.* (citations omitted).

Challenged to maintain a balance between the competing interests supporting the discovery rule and the statute of limitations, our supreme court has stated:

> The underlying purpose of the discovery rule is that a statute of limitations should not bar the remedies of claimants who have been excusably unaware of their rights to sue. Such purpose would be thwarted if we allowed claimants to ignore the statute of limitations when it becomes obvious they have an actionable claim based on one or more theories of action, and then later permit them to sue when additional facts are uncovered supporting additional theories. We therefore hold that once claimants have knowledge of facts supporting an actionable claim they have no more than the applicable period of limitations to discover all the theories of action they may wish to pursue in support of that claim.

Sparks v. Metalcraft, Inc., 408 N.W.2d 347, 352 (Iowa 1987) (citations omitted).

In this case, the Rodenburgs' petition alleges one count of negligence against Lathrop. Contained within this single count, are five separate acts the Rodenburgs contend amount to breaches of the duty of reasonable care owed to them by the defendant. The petition alleges breach in that the defendant: (a) secured Hart's release from incarceration; (b) provided the handgun and bullets

to Hart; (c) provided transportation for Hart's trips to North Dakota; (d) provided money for Hart's trips to North Dakota; and (e) failed to warn Rodenberg or law enforcement authorities of Hart's intentions and actions. Only one of the five alleged breaches has any connection to information withheld from the Rodenbergs regarding Parker's handgun.

Based on information untainted by Lathrop's misrepresentations about how Hart obtained the gun, the Rodenburgs' negligence action against the defendant became ripe no later than 1997. As the district court noted, the record reveals Clifton Rodenburg began his own investigation of the facts surrounding the shooting as early as March 15, 1997. At that time, Rodenburg initiated conversations with Patrick Parker, Amelia Oponski, and Mark Lathrop. He questioned them about their involvement with Hart, and the shooting.

When he commenced his investigation, Clifton Rodenburg was already aware he had been shot by William Hart, a convicted criminal. His investigation in 1997 revealed there was a relationship between Hart, Lathrop, and Oponski. He confirmed the handgun used in the shooting belonged to Parker and was loaned to Lathrop. He was aware that Parker knew Hart had a history of trouble with law enforcement. Finally he had knowledge that Lathrop and Oponski bailed Hart out of jail using Oponski's house as collateral. At the least, Rodenburg's knowledge of these facts was sufficient to place him and his wife on inquiry notice for purposes of the discovery rule and the calculation of time for the statute of limitations. We conclude the district court correctly ruled the Rodenburgs' negligence action initiated on August 3, 2000 is time barred.

Personal injury plaintiffs are frequently confronted with a situation in which the statute of limitations period begins to run before the specifics of negligence and the full depth of the injuries are known. Plaintiffs must nonetheless initiate the action within the limitations period, and the problem of acquiring later knowledge is dealt with through procedural mechanisms. *Woodroffe*, 540 N.W.2d at 48. In this case, plaintiffs could have filed their negligence action alleging four breaches of duty, and then later amended the petition to include a fifth when the truth was revealed about how Hart obtained the weapon. *See Pease v. Zazza*, 295 N.W.2d 43, 49 (Iowa 1980).

V. Fraudulent Concealment

The Rodenburgs also claim the statute of limitation should be tolled based on a theory of fraudulent concealment. The root of this argument lies in the misrepresentations made by the defendant, Mark Lathrop, to federal investigators and Clifton Rodenburg personally, about how Hart obtained the gun used in the shooting. Fearing any association with Hart or the shooting, Lathrop lied to investigators by telling them that Hart had stolen the gun from his basement. Lathrop maintained this version of the events until he was slated to testify at Hart's criminal trial. Then, sometime between August 4, 1998 and August 17, 1998, the Rodenburgs learned that Lathrop was going to recant his original story. He would admit that he inadvertently left the gun and ammunition in the North Dakota hotel room where the parties were staying. Based on Lathrop's misrepresentation of the facts leading up to shooting, the Rodenburgs claim they were prevented from discovering their cause of action against the

defendant. They argue that the statue of limitations should be tolled until August 4, 1998, when Lathrop revealed the truth.

Iowa case law recognizes that the statute of limitations should be tolled when a claim is fraudulently concealed from the plaintiff. *Brown v. Public Employment Relations Bd.*, 345 N.W.2d 88, 96 (Iowa 1984) (citations omitted). Iowa Code section 614.1(2) is subject to the same exception. Like a plaintiff claiming protection under the aforementioned discovery rule, a plaintiff relying on the extraordinary circumstance of fraudulent concealment must prove the facts which the exception requires. To prove fraudulent concealment, a plaintiff must show: (1) that the defendant engaged in some affirmative act to conceal the cause of action from the plaintiff; and (2) that the plaintiff exercised reasonable diligence to discover the cause of action. *Pride v. Peterson*, 173 N.W.2d 549, 555 (Iowa 1970) (citations omitted). Consequently, the Rodenburgs' complaint will be deemed timely if they can prove that Lathrop's misrepresentation regarding how Hart obtained the gun concealed the entire negligence action until August 4, 1998, notwithstanding their due diligence to discover the facts on which they based their complaint.

The Rodenburgs are unable to provide this proof. Their negligence action against the defendant delineates five separate breaches of duty. Only one of the five was even arguably affected by the misrepresentations of the defendant. The remaining four alleged breaches were ripe for action no later than 1997. Therefore, we conclude the negligence action brought against Lathrop, alleging five separate breaches of duty, was not affected by fraudulent concealment. The general two-year statute of limitations under Iowa Code section 614.1(2) should

apply and bar the Rodenbergs' claim. The district court properly found that the plaintiffs' action should be dismissed because it was initiated after the statute of limitations bar.

AFFIRMED.