FILED
MAY 2 3 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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WENDY LeBEAU, n/k/a
WENDY LaDUE

Plaintiff-Appellee,

vs.

DIANE DIMIG,

Defendant-Appellant.

9-133
88-1191

Appeal from the Iowa District Court for Plymouth County (25957), James L. McDonald, Judge.

Defendant in this personal injury case appeals the trial court's denial of her motion for summary judgment. **REVERSED.**

Thaddeus Cosgrove, Holstein, and Joe Cosgrove, Sioux City, of Yaneff & Cosgrove, for defendant-appellant.

Rodney D. Vellinga, of Corbett, Anderson, Corbett & Daniels, Sioux City, for plaintiff-appellee.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ., but decided en banc.

SACKETT, J. 187

Defendant appeals the trial court's denial of her motion for summary judgment on plaintiff's claim for injuries suffered while a passenger in an automobile defendant owned and operated brought more than two years after the accident. The question we address is whether a plaintiff who knows of defendant's negligence and knows he or she is injured but does not learn the extent of the injury until later can rely on the discovery rule adopted by our court in Chrischilles v. Griswold, 260 Iowa 453, 463, 150 N.W.2d 94, 100 (1967). We hold they cannot. We determine plaintiff's claim is barred by the statute providing actions founded on injury to a person be brought within two years. Iowa Code § 614.1(2). We reverse the trial court and dismiss plaintiff's cause of action.

On July 31, 1987, plaintiff commenced this action against the defendant seeking compensatory damages as a result of injuries proximately resulting from an automobile accident which occurred on November 12, 1983. Defendant by answer asserted in defense the bar of section 614.1(2) the Code which provides in relevant part:

> Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially 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, or for a statute penalty, within two years.

Defendant filed a Motion for Summary Judgment. The motion claimed there was no dispute of facts and plaintiff's action was barred by the Statute of Limitations as a matter of law. Plaintiff resisted the Motion for Summary Judgment on the basis her cause of action did not accrue until the full extent of her injuries first became known, which she alleges was August 1985.

The trial court held a question of fact existed as to whether plaintiff discovered, or should have discovered, her present condition within the time prescribed by the Statute of Limitations and denied the defendant's Motion for Summary Judgment.

The undisputed facts are on November 12, 1983, an automobile owned and operated by the defendant, in which plaintiff was a passenger, slid into a ditch on the passenger's side of the road, and overturned on its top. As a result of the accident, plaintiff was treated for head and neck injuries. Plaintiff allegedly developed epilepsy which she asserts was caused by injuries she received in the automobile accident of November 12, 1983. Plaintiff alleged she first discovered the epileptic condition in August 1985.

Generally, the Statute of Limitations for injuries to a person is two years. Code of Iowa § 614.1(2). Plaintiff asserts an exception to that rule. Plaintiff contends since the full extent of the injuries suffered by her were

not discovered until August 1985, her action did not accrue and the Statute of Limitations did not being to run until that time. Plaintiff seeks to come under the discovery doctrine first adopted by the Iowa court in Chrischilles, 260 Iowa at 463, 150 N.W.2d at 100, when "a rule was determined to be a cause of action based on negligence does not accrue until plaintiff has in fact discovered he has suffered injury, or by the exercise of reasonable diligence should have discovered it . . . . (emphasis supplied).

In adopting the rule in Chrischilles, the court was careful to point out at 150 N.W.2d at 100, Chrischilles was not a case where defendant's negligence was known to plaintiff at the time of defendant's act, but the extent of damage which ensued was not ascertained until months or years thereafter. Therefore, it is clear in adopting the discovery rule it was the intent of the Iowa court not to extend the rule to persons in plaintiff's situation.

We determine the Statute of Limitations begins to run when the aggrieved party first has knowledge, actual or constructive, of a tort-related injury, even though the injured party may not know the full extent of the injury. See Connelly v. Paul Ruddy's Equipment Repair & Service Co., 388 Mich. 146, 151, 200 N.W.2d 70 (1972) (the court determined where all elements for personal injury suit are present, statute begins to run and later damages may result but do not give rise to new cause of action nor does the statute run anew as new damages incur).

We agree with plaintiff's argument the Statute of Limitations does not begin to run until the aggrieved party has actual or constructive knowledge of all the elements of a cause of action. Franzen v. Deere & Company, 377 N.W.2d 660, 662 (Iowa 1985). A party's cause of action does not accrue until that party has discovered, or reasonably should have discovered, all the essential elements of his or her cause of action, i.e., duty, breach, causation, damages. Slater v. Farmland Mutual Ins., 334 N.W.2d 728 (Iowa 1983).

However, a cause of action comes into existence or accrues at the moment a person is injured, if that person is aware of the injuries at the moment they are inflicted, and the Statute of Limitations begins to run from that time, even though such person may not be fully aware as to the full extent of the injury or the precise extent of his damage. See Ogg v. Robb, 181 Iowa 145, 155, 162 N.W. 217 (1917) (court determined where there is an act which injures plaintiff, no matter how slight, statute begins to run on present damages and subsequently developing damages not ascertainable at time of wrong). See also Schnebly v. Baker, 217 N.W.2d 708, 722-23 (Iowa 1974); Sherrell v. Bugaski, 425 N.W.2d 707, 710 (Mich. App. 1988); Ashley v. United States, 413 F.2d 490, 493 (9th CCA, 1969).

The facts show, without dispute, plaintiff was aware of the essential elements of a cause of action immediately

after the accident. She knew then she was injured. For her action to accrue it is only necessary for her to know or by the exercise of reasonable diligence discover she has suffered injury. Sandbuldt v. Farm Bureau Mutual Ins, 343 N.W.2d 457, 462 (Iowa 1984). It was sufficient she knew a problem existed. Franzen, 337 N.W.2d at 662. See also Flynn v. Lucas County Memorial Hospital, 203 N.W.2d 613, 616-17 (Iowa 1973) (court determined mere difference in diagnosis between two doctors as to extent of any injury does not alter the fact plaintiff knew he had an injury from the moment it was inflicted).

Furthermore, plaintiff advanced no facts the epileptic condition was not discoverable earlier or that it was not an ailment normally considered to have any casual connection to the head injury suffered in the accident. Plaintiff only alleges none of her doctors told her about the condition earlier. Consequently, we find this case clearly distinguishable from Mancuso v. Mancuso, 506 A.2d 1253, 1257 (N.J. Supr AD 1986) where the court applied the discovery rule finding there was evidence a potential casual connection between a severe exacerbation of Parkinson's disease and an apparent minor trauma sustained in an automobile accident is a matter of highly specialized medical knowledge and Parkinson's disease is not normally considered to have any casual connection to trauma.

Plaintiff was obligated to commence her action within two years of November 12, 1983, or by November 12, 1985. Plaintiff did not commence her action until August 1987. The filing of plaintiff's petition in 1987 was barred by the two-year Statute of Limitations. There being no issue as to material fact, the defendant was entitled to summary judgment as a matter of law.

We reverse. Plaintiff's petition is dismissed.

REVERSED.

All judges concur except Oxberger, C.J., and Hayden, J., who dissent; Habhab, J., specially concurs.

I respectfully dissent. I would adopt the holding in Mancuso v. Mancuso, 506 A.2d 1253 (N.J. Super. A.D. 1986):

> If a finding were made that plaintiff had no reason, by way of medical advice or otherwise, to associate her neurological condition with the trauma and if she could show that even with the exercise of reasonable diligence that causal connection would have remained unknown to her until that time, then a trial judge could be persuaded that this is indeed an extraordinary case eligible for the application of the discovery rule.

I would not grant relief to a plaintiff who merely misjudges the severity of a known injury or who suffers consequent symptoms or aliments reasonably related to the originally known causually-connected injury.

However in this case we do not have sufficient evidence to determine when the nature of the minor injuries received in the collision were sufficient to have put a reasonable person on notice of the potential for epilepsy.

I would reverse the ruling on summary judgment and remand for a full hearing on this issue.

Hayden, J., joins this dissent.

HABHAB, J. (specially concurring)

I specially concur. This cause was before the court by way of motion for summary judgment. I concur with the majority that the plaintiff failed to advance facts at the hearing that the epileptic condition was not discoverable earlier or that it was not an ailment normally considered to have any casual connection to the head injury suffered in the accident. Although her affidavit touches on the subject of epilepsy, it fails to create the issue of fact that formed the basis of the court's ruling in Mancuso v. Mancuso, 506 A.2d 1253, 1257 (N.J. Supr. A.D. 1986). To this extent I concur with the majority for without this issuable fact, the statute of limitations had clearly run.