

IN THE COURT OF APPEALS OF IOWA

No. 1-463 / 91-0346

FILED

DEC 31 1991

CLERK SUPREME COURT

PAMELA NAPLES, ANTHONY NAPLES III, ANTHONY NAPLES IV, WENDY
MARIE NAPLES AND MARK ANTHONY NAPLES,

Plaintiffs-Appellants,

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vs.

LLOYD MCKINNEY,

Defendant-Appellee.

Appeal from the Iowa District Court for Polk County,
Robert A. Hutchison, Judge.

Plaintiff appeals a partial summary judgment granted by
the district court on the plaintiffs' claim of damages
resulting from an accident with defendant. **AFFIRMED.**

David S. Wiggins of Marcucci, Wiggins & Anderson, P.C.,
Des Moines, for appellants.

Michael F. Lacey, Jr. and Ronald Rankin of Patterson,
Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des
Moines, for appellee.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

Plaintiffs appeal a trial court's order sustaining a summary judgment finding plaintiffs-appellants' claims for personal injury and spousal and parental consortium were barred because they were not filed within two years of the accident. We affirm.

Plaintiff Pamela Naples was injured in an automobile accident when the car she and her husband, plaintiff Anthony Naples III, were in was rear ended by a car owned and operated by the defendant-appellee, Lloyd McKinney.

The accident happened on May 7, 1988. On May 16, 1988, Pamela saw a medical doctor who was of the opinion she had been injured in the accident. Suit was commenced on May 9, 1990, over two years after the accident but less than two years after Pamela was diagnosed by her doctor as having been injured in the accident.

After the suit was commenced the defendant filed a motion for summary judgment contending the claims of Pamela, her husband (Anthony III), and her son (Anthony Naples IV) were barred by the two-year statute of limitations. Her other children, Wendy Naples and Mac Naples, are minors whose claims were not dismissed. They are not parties to this appeal. The trial court sustained defendant's motion for summary judgment. This appeal followed.

Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c). The burden of proving the nonexistence of an issue of fact is on the moving party. See Daboll v. Hoden, 222 N.W.2d 727, 731 (Iowa 1974). We review the record in the light most favorable to the plaintiffs.

Iowa Code section 614.1(2) (1987) provides:

Actions may be brought within the times herein limited, respectively, after their cause 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, where based on contract or tort, or for a statute penalty, within two years.

Plaintiffs contend there is a factual issue as to when Pamela discovered her injury. They advance until it was diagnosed the two-year statute did not start to run.

The statute of limitations in tort cases commences when the injured person knows or can be charged with knowledge of the existence of a cause of action. See Baines v. Blenderman, 223 N.W.2d 199, 202 (Iowa 1974). Actual or imputed knowledge of facts that would place a party on inquiry that a cause of action exists commences the limitation period. See Nachazel v. Mira Co., Mfg., 466 N.W.2d 248, 252 (Iowa 1991).

The statute of limitations starts to run when the claimant has discovered his or her injury or should have discovered it through the exercise of reasonable diligence. See Scott v. City of Sioux City, 432 N.W.2d 144, 147 (Iowa 1988). An action accrues when all elements of the action are known or should have been known to the plaintiff. See LeBeau v. Dimig, 446 N.W.2d 800, 801 (Iowa 1989). See also, Connelly v. Paul Ruddy's Equip. Repair & Serv. Co., 200 N.W.2d 70, 72 (Mich. 1972).

Pamela contends she did not have knowledge of the damage element of her cause of action until she saw her doctor on May 16, 1988, and he told her she had been injured in the accident. Pamela was five months pregnant at the time of the accident. She contends originally she was only concerned about her fetus and she did not know she was injured in the accident because her pregnancy could have caused her problems.

The only conclusion that can be drawn from this record is Pamela knew or, in the exercise of reasonable care, should have known she was injured on the day of the accident. Pamela complained of sharp pains in her back and shoulders following the accident. Pamela was asked on deposition:

Q. And when you said, "At the time of the impact, I had some pain in between my shoulders and in my lower left back," you're talking about pain that came about as a result of the impact from the accident? A. Right, at the time of the accident.

Q. You're not talking about some pain or problems that you had before the accident but just happened to be having at the same time? A. No.

Q. So you're aware on May 7, 1988, on the day of the accident, that you were injured in the accident on that date; is that correct? A. Yes

The trial court correctly held Pamela's action occurred on May 7, 1988. The May 9, 1990, filing was not timely. The claim of Anthony III for spousal consortium occurred on the same day and was also barred.

Anthony IV contends the trial court erred in dismissing his claim because it was filed more than a year after his 18th birthday. Anthony IV was born on August 12, 1970. He had not reached his 18th birthday when the accident occurred on May 9, 1988. His claim for loss of parental consortium accrued on May 9, 1988, the same day as we have determined his mother's cause of action for personal injury accrued. See Schnebly v. Baker, 217 N.W.2d 708, 721 (Iowa 1974).

Because Anthony IV was a minor at the time of the accident Iowa Code section 614.8 afforded him one year after he reached his majority or two years after the claim occurred to bring his action, whichever was later. See Conner v. Fettkether, 294 N.W.2d 61, 62-63 (Iowa 1980). When the suit was filed both time periods had expired. There is no error.

AFFIRMED.