[Cite as *Mason v. Bowman*, 2010-Ohio-2325.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Willye M. Mason,	:	
Plaintiff-Appellant,	:	
		No. 09AP-995
v.	:	(C.P.C. No. 09CV05-7559)
Tom Bowman et al,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on May 25, 2010

Blue + Blue, LLC, and *Douglas J. Blue*, for appellant.

Bricker & Eckler, LLP, *Stephen C. Gray* and *Francisco E. Luttecke*, for appellees.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Plaintiff-appellant, Willye M. Mason, appeals from a judgment of the Franklin County Court of Common Pleas dismissing her complaint against defendants-appellees, Tom Bowman, Bowman-Sergakis Agency, and Nationwide Mutual Insurance Company (collectively referred to as "appellees"). Because the trial court properly concluded that the four-year statute of limitations set forth in R.C. 2305.09(D) barred appellant's negligence claim, we affirm that judgment.

{¶2} On May 19, 2009, appellant filed a complaint against appellees alleging claims of negligence and bad faith. Specifically, appellant alleged that she purchased a home in West Virginia in 1992. She contacted Bowman, her Nationwide insurance agent, to purchase insurance for the home. Bowman referred her to another agent who could sell insurance in West Virginia. That agent wrote appellant an insurance policy for the West Virginia home. However, on November 12, 1992, Nationwide terminated that policy because of the home's roof.[1] Appellant alleged that despite Nationwide's termination of that policy, Bowman subsequently added additional coverage for the West Virginia home as a rider to her then current Ohio homeowner's policy and charged her premiums for that additional coverage. She claimed that she did not discover the addition of coverage for the West Virginia home to her Ohio homeowner's policy until June 2008.

{¶3} Appellees filed a motion to dismiss the complaint pursuant to Civ.R. 12(B)(6). Appellees argued that appellant's negligence claim was barred by the four-year statute of limitations set forth in R.C. 2305.09(D), because the alleged negligence occurred in 1992 or 1993, more than four years before appellant filed her complaint.[2] In her memorandum in opposition, appellant argued that the statute of limitations did not begin to run until June 2008, when she discovered that coverage for the West Virginia home had been added to her Ohio homeowner's policy. Appellant also argued that because she renewed her Ohio homeowner's policy every year, she suffered the same economic injury each year. Appellant alleged that this yearly economic injury "renewed" the statute of limitations each year.

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[1] Appellant sold the home shortly thereafter.

[2] Appellees also sought the dismissal of appellant's bad faith claim. Appellant did not oppose that request and does not argue the trial court erred by dismissing that claim.

{¶4} The trial court dismissed appellant's negligence claim. Specifically, the trial court rejected appellant's argument that the statute of limitations did not begin to run until she discovered the alleged act of negligence. Instead, the trial court determined that the statute of limitations began to run in 1992 or 1993 when the alleged negligent act occurred. Because that act occurred more than four years before appellant filed her complaint, the statute of limitations barred her negligence claim. The trial court also rejected appellant's argument that the statute of limitations was "renewed" each year when she renewed her Ohio homeowner's policy. The trial court noted that appellant alleged only one act of negligence: the addition of the West Virginia home to her Ohio homeowner's policy in 1992 or 1993. Her complaint did not allege repeated or continuing negligent acts for renewing the coverage each year.

{¶5} Appellant appeals and assigns the following error:

> THE TRIAL COURT ERRED WHEN IT GRANTED DEFENDANTS' MOTION TO DISMISS BY RULING THAT REASONABLE MINDS COULD COME TO BUT ONE CONCLUSION AND THAT IS THAT PLAINTIFF WILLYE MASON'S CLAIM IS BARRED BY THE FOUR-YEAR STATUTE OF LIMITATION FOR NEGLIGENCE IN OHIO.

{¶6} Appellant contends that the trial court erred when it dismissed her negligence claim on the ground that said claim was barred by the four-year statute of limitations. We disagree.

{¶7} When reviewing a judgment on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted, an appellate court's standard of review is de novo. *Perrysburg Twp. v. Rossford,* 103 Ohio St.3d 79, 2004-Ohio-4362, ¶5. A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. v. Hanson v.*

Guernsey Cty. Bd. of Commrs. (1992), 65 Ohio St.3d 545, 548 (citing *Assn. for the Defense of Washington Loc. School Dist. v. Kiger* (1989), 42 Ohio St.3d 116, 117). A trial court must presume all factual allegations contained in the complaint to be true and must make all reasonable inferences in favor of the nonmoving party. *Garofalo v. Chicago Title Ins. Co.* (1995), 104 Ohio App.3d 95, 104 (citing *Perez v. Cleveland* (1993), 66 Ohio St.3d 397, *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, and *Phung v. Waste Mgt., Inc.* (1986), 23 Ohio St.3d 100). "[A]s long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss." *York v. Ohio State Hwy. Patrol* (1991), 60 Ohio St.3d 143, 145.

{¶8} In their motion to dismiss, appellees claimed that the statute of limitations barred appellant's negligence claim. A party may assert a statute of limitations defense through a Civ.R. 12(B)(6) motion to dismiss if the defense is apparent in the complaint. *Charles v. Conrad,* 10th Dist. No. 05AP-410, 2005-Ohio-6106, ¶24; *Stuller v. Price,* 10th Dist. No. 02AP-29, 2003-Ohio-583, ¶27. Here, the statute of limitations defense is apparent on the face of appellant's complaint.

{¶9} Appellant alleged in her complaint a single negligent act that occurred in 1992 or 1993: the addition of coverage for the West Virginia home to her Ohio homeowner's policy. Appellant does not dispute that the statute of limitations for a negligence claim is four years. R.C. 2305.09(D). Generally, a cause of action accrues at the time the wrongful act is committed. *Harris v. Liston* (1999), 86 Ohio St.3d 203, 205. Thus, appellant normally would have had to assert her negligence claim, at the latest, by some time in 1997. She did not file her complaint until 2009.

{¶10} Nevertheless, appellant claims that the four-year statute of limitations does not bar her negligence claim for three reasons. We find appellant's arguments unavailing.

{¶11} First, appellant argues that her negligence claim is not barred because of the "termination rule" and the "delayed damage theory." Appellant did not argue these theories to the trial court and has, therefore, forfeited them on appeal. *GMS Mgt. Co. v. Nguyen*, 9th Dist. No. 08CA0014, 2008-Ohio-6574, ¶14, 19; *Brass Pole v. Ohio Dept. of Health*, 10th Dist. No. 08AP-1110, 2009-Ohio-5021, ¶10.

{¶12} Second, appellant argues that her negligence claim is not barred based upon the continuing tort theory. We disagree. The continuing tort theory provides that a cause of action does not accrue until the tortuous conduct ceases. *Spriestersbach v. Ohio Edison Co.* (Nov. 1, 1995), 9th Dist. No. 95CA006026. This theory does not apply to appellant's claim. Appellant did not allege a continuing act of negligence or multiple acts of negligence. She alleged a single act of negligence: the addition of coverage for the West Virginia home to her Ohio homeowner's policy in 1992 or 1993. Complaint, ¶5; *Pine Creek Farms v. Hershey Equip. Co., Inc.* (July 7, 1997), 4th Dist. No. 96CA2458 (rejecting application of continuing tort theory where plaintiff's complaint only alleged single act of negligence). Thus, the continuing tort theory does not save appellant's negligence claim.

{¶13} Finally, appellant argues that it is against public policy to bar her claim. She appears to argue that it is against public policy to dismiss a claim that is not barred by the statute of limitations. This argument does not support appellant's contention that public policy precludes the application of the four-year statute of limitations to her negligence claim. Moreover, statutes of limitation foster important public policies themselves:

ensuring fairness to the defendant, encouraging prompt prosecution of causes of action, suppressing stale and fraudulent claims, and avoiding the inconvenience engendered by delay and by the difficulty of proving older cases. *Cundall v. U.S. Bank*, 122 Ohio St.3d 188, 192, 2009-Ohio-2523, ¶22 (citing *O'Stricker v. Jim Walter Corp*. (1983), 4 Ohio St.3d 84, 88). Public policy does not preclude the application of the four-year statute of limitations to appellant's negligence claim.

{¶14} For all these reasons, the trial court properly concluded that the four-year statute of limitations contained in R.C. 2305.09(D) barred appellant's negligence claim. Accordingly, we overrule appellant's lone assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and BROWN, JJ., concur.