

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

TED A. NORRIS

Plaintiff-Appellant

-vs-

YAMAHA MOTOR CORPORATION  
U.S.A., et al.

Defendants-Appellees

JUDGES:

Hon. W. Scott Gwin, P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 2008 CA 00296

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common  
Pleas, Case No. 2008 CV 03895

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 17, 2009

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee Yamaha

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*Wise, J.*

{¶1} Plaintiff-Appellant Ted A. Norris appeals from the December 2, 2008, Judgment Entry of the Stark County Court of Common Pleas, granting summary judgment in favor of defendant Yamaha Motor Corporation, U.S.A.

### **STATEMENT OF THE FACTS AND CASE**

{¶2} For purposes of this appeal, the relevant facts are as follows:

{¶3} Appellant Ted A. Norris alleges that on or about September 4, 2006, he was injured in a roll-over accident while riding as a passenger in a “Rhino” off-road vehicle. Appellant asserts that the Rhino vehicle was being operated in a “safe and careful manner and at a reasonable rate of speed” when it rolled over and landed on his right leg and ankle. (Plaintiff-Appellant’s Complaint, ¶6).

{¶4} The “Rhino” is an all-terrain vehicle manufactured by Yamaha Motor Corporation, U.S.A. (“Yamaha”).

{¶5} Appellant states that “[a] short while after September 11, 2006, [he] became aware of a letter from Appellee Yamaha warning of a known dangerous defect in the Yamaha Rhino.” (Plaintiff-Appellant’s Brief at 6).

{¶6} On August 28, 2008, Appellant, through counsel, attempted to file a Complaint against Yamaha Motor Corporation, U.S.A., Aultcare Corporation and John Doe Legal Entities, alleging both statutory and common law product liability, negligence, breach of implied warranty and punitive conduct. Said Complaint was delivered to the Stark County Clerk of Courts via regular U.S. Mail. Upon receipt of said Complaint, the Clerk of Courts refused same for filing because the required case

designation sheet was incomplete. The Clerk returned the Complaint to Appellant's counsel by regular U.S. Mail.

{¶7} On September 10, 2008, Appellant filed his Complaint with the completed designation sheet.

{¶8} On November 10, 2008, after filing an Answer raising the affirmative defense of failure to commence suit within the applicable statute of limitations, Appellee Yamaha filed a Motion for Summary Judgment based on such failure.

{¶9} On December 2, 2008, the trial court granted Appellee's Motion for Summary Judgment finding that Appellant's claims were barred by the applicable two-year statute of limitations and dismissed Appellant's claims against all parties.

{¶10} It is from this decision that Appellant brings the instant appeal to this Court for further review, raising the following assignments of error for review:

#### **ASSIGNMENTS OF ERROR**

{¶11} "I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO DEFENDANT YAMAHA MOTOR CORPORATION, USA, WHERE PLAINTIFF-APPELLANT'S FAILURE TO FILE WITHIN THE PURPORTED STATUTE OF LIMITATIONS WAS EXCUSABLE AND THE DISMISSAL CONFLICTS WITH DEHART V. AETNA LIFE INSURANCE CO. (1982), 69 OHIO ST.2D 189 AND WEBSTER V. THE TIMKEN CO. (5 DIST.), 2005-OHIO-1759.

{¶12} "II. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO DEFENDANT YAMAHA MOTOR CORPORATION, USA, WHERE PLAINTIFF-APPELLANT TIMELY FILED HIS COMPLAINT WITHIN THE STATUTE OF

LIMITATIONS BECAUSE HE DISCOVERED THAT HE HAD A VIABLE CAUSE OF ACTION LESS THAN TWO YEARS BEFORE THE COMPLAINT WAS FILED.”

“Summary Judgment Standard”

{¶13} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 36. Civ.R. 56(C) provides, in pertinent part:

{¶14} “Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. \* \* \* A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in his favor.”

{¶15} Pursuant to the above rule, a trial court may not enter a summary judgment if it appears a material fact is genuinely disputed. The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. The moving party may not make a conclusory assertion that the non-moving party has no evidence to prove its case. The moving party must specifically point to some evidence which demonstrates the non-moving party cannot

support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 1997-Ohio-259, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 1996-Ohio-107.

{¶16} It is based upon this standard that we review Appellant's assignments of error.

I.

{¶17} In his first assignment of error, Appellant argues that the trial court erred in not finding that Appellant's failure to file his complaint within the statute of limitations period was excusable. We disagree.

{¶18} Stark County Local Rule 9.02, which provides:

{¶19} "Every Complaint shall be accompanied by a "Designation Form", available from the Clerk of Court or Administrative Office (FAX copies are available upon request, see appendices), stating the caption and the general nature of the action in accordance with following types:

{¶20} " \*\*\*

{¶21} **"This form must be filled out in its entirety and every question must be answered.**

{¶22} "The Clerk is instructed to refuse to accept for filing any case that does not conform to these rules. The purpose of this rule is to assist the Court in managing its caseload, records, and reporting requirements to the Supreme Court of Ohio pursuant to C.P. Sup. R. 5."

{¶23} Based on the information provided at oral argument and a review of what appears to be the original designation sheet which was later completed and filed with the Complaint on September 10, 2008, it appears that Appellant failed to complete the last four parts of the designation sheet which request the following information:

{¶24} “Brief Factual Summary:

{¶25} “Description of damages including special damages to date:

{¶26} “Do you think this case should be referred to the Court Mediation Program at this time? \_\_\_Yes \_\_\_No

{¶27} “Is this case based on a violation of the Ohio Mortgage Broker Act (ORC 1322)? \_\_\_Yes \_\_\_No.”

{¶28} Appellant argues that the late filing of the Complaint in this matter was excusable because he attempted to file within the statute of limitations and the reason for the Clerk of Court’s rejection and return was based on a hyper-technical application of said local rule.

{¶29} In support of his argument, Appellant cites this Court to the cases of *DeHart v. Aetna Life Insurance Co.* (1982), 69 Ohio St.2d 189 and *Webster v. The Timken Company*, Stark App. No. 2004CA00260, 2005-Ohio-1759.

{¶30} The Court in *DeHart* listed factors evidencing an abuse of discretion when an appellate court dismisses an appeal based on a party's violation of local appellate court rules. Upon review, we find that *DeHart* is not applicable to the instant case in that this case involves the failure to commence an action within the statute of limitations period, not the dismissal of an appeal.

{¶31} *Webster* involved the re-filing of a properly filed complaint in a case which had been previously voluntarily dismissed. In the *Webster* case, this Court held that the clerk should not have rejected the re-filing of a Complaint, even though the plaintiff therein failed to place a checkmark in the appropriate place on a cover sheet.

{¶32} We find our decision in *Webster* to be distinguishable in that *Webster* was a case where the plaintiff only failed to place a checkmark designating the case a personal injury action. Furthermore, as the case was marked as a re-filing, the Clerk had all the previously filed information available to assist with the filing of the Complaint. Additionally, the *Webster* case involved a case where the plaintiff failed to re-file within the saving statute period, not a case where the original statute of limitations period had run. In the instant case, Appellant failed to fill out four parts of the designation sheet, which included two narrative sections.

{¶33} While this Court is cognizant of the axiom that the fundamental tenet of judicial review in Ohio is that courts should decide cases on their merits, we are also mindful that local court rules are promulgated so that actions appearing before the court will be presented in a clear and logical manner, and any litigant availing himself of the jurisdiction of the court is subjected thereto." *Vorisek v. N. Randall* (1980), 64 Ohio St.2d 62, 65, quoting *Drake v. Bucher* (1966), 5 Ohio St.2d 37, 39-40.

{¶34} In the instant case, counsel for Appellant, knowing that the statute of limitations was fast approaching, could have ensured that the Complaint was accepted for filing by having the Complaint hand-delivered to the Clerk for filing. Likewise, he could have followed-up to make sure the mailing of his Complaint was accepted by placing a telephone call to the Clerk or by checking the on-line docket.

{¶35} Local Rule 9.02 does not provide for the exercise of any discretion by the Clerk of Courts or by the trial court. Rather, it specifically states that the Clerk is to refuse to accept for filing any case that does not conform to the rule requiring that the designation form must be fully completed.

{¶36} To summarize, Appellant's untimely filing of his Complaint was a jurisdictional defect and consequently fatal.

{¶37} Based on the foregoing, we find Appellant's first assignment of error not well-taken and hereby overrule same.

## II.

{¶38} In his second assignment of error, Appellant argues that the trial court erred in finding that Appellant's complaint was filed outside the statute of limitations. We disagree.

{¶39} Appellant argues that pursuant to the discovery rule, the statute of limitations in this case did not begin to run until he became aware of the warning letter issued by Yamaha.

{¶40} Generally a cause of action accrues at the time that a wrongful act is committed and the statute of limitations begins to run at that time. *Collins v. Sotka* (1998), 81 Ohio St.3d 505, 507. However, "the discovery rule is an exception to this general rule and provides that a cause of action does not arise until the plaintiff discovers, or should have discovered, that he or she was injured by the wrongful conduct of the defendant." *Norgard v. Brush Wellman, Inc.* (2002), 95 Ohio St.3d 165, 766 N.E.2d 977, 2002-Ohio-2007, at ¶ 8 citing *Collins*, supra, citing *O'Stricker v. Jim Walter Corp.* (1983), 4 Ohio St.3d 84.



{¶41} However, a plaintiff need not have discovered all the relevant facts necessary to file a claim in order to trigger the statute of limitations. *Flowers v. Walker* (1992), 63 Ohio St.3d 546, 549. “Constructive knowledge of facts, rather than actual knowledge of their legal significance, is enough to start the statute of limitations running under the discovery rule.” *Id.*

{¶42} Upon review, we find the case sub judice to be similar to *Baxley v. Harley-Davidson Motor Co., Inc.*, 172 Ohio App.3d 517, 2007-Ohio-3678, wherein the Twelfth District Court of Appeals held:

{¶43} “Baxley argues that under that discovery rule, his claim did not accrue until June 2004, when he received the recall notice. But the discovery rule generally applies in cases of latent injury and not in cases of possible latent defects, as Baxley argues. *Braxton v. Peerless Premier Appliance Co.*, 8th Dist. No. 81855, 2003-Ohio-2872. Determining actual liability is a matter for the discovery process-actual damage or injury is enough to put a reasonable person on notice of the need for further inquiry even where a defect is latent. *Id.* The period begins to run as soon as the plaintiff has constructive knowledge of the facts, rather than actual knowledge of their legal significance. Baxley's case is more analogous to a situation the court noted in *Flowers v. Walker* (1992), 63 Ohio St.3d 546, 549-550, where, in an automobile accident resulting from a blowout, the limitations period ran from the date of the injury - not from when the plaintiff discovered that the tire was defective.

{¶44} “Here, Baxley did not suffer from a latent injury. He immediately knew that he had been hurt. He also knew that his injury stemmed from a potential problem with his motorcycle on July 2, 2002. He received immediate medical care and had the

vehicle evaluated within a week of the incident. Even under the *O'Stricker* approach, the cause of action accrued on the date of injury. Because there was no latent injury and the causal link was obvious, the discovery rule did not apply."

{¶45} Upon review, we find that the cognizable event triggering the statute of limitations in this case was the roll-over accident which resulted in Appellant's injuries, not the knowledge of the September 11, 2006, letter. Appellant knew he was injured on September 4, 2006. This is not a case of a latent injury or a latent defect.

{¶46} Based on the foregoing, we overrule Appellant's second assignment of error. We find no genuine issues of material fact as to whether Appellant's claim was barred by the statute of limitations and whether the statute of limitations should have been tolled. Viewing the evidence in a light most favorable to Appellant, reasonable minds can only reach this conclusion. Appellee is entitled to judgment as a matter of law.

{¶47} Appellant's second assignment of error is overruled.

{¶48} For the foregoing reasons, the judgment of the Court of Common Pleas, Stark County, Ohio, is affirmed.

By: Wise, J.  
Gwin, J. and  
Delaney, J. concur

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JUDGES

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

TED A. NORRIS

Plaintiff-Appellant

-vs-

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JUDGMENT ENTRY

Case No. 2008 CA 00296

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed.

Costs assessed to Appellant.

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JUDGES