

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Tommie L. Fears, Jr.

Court of Appeals No. L-23-1150

Appellant

Trial Court No. CI0202003339

v.

Midwest Eye Consultants, et al.

DECISION AND JUDGMENT

Appellees

Decided: September 20, 2024

* * * * *

Bertrand R. Puligandla and Vijay K. Puligandla,
for appellant.

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Michael P. Murphy and Alexandria M .Balduff,
for appellees.

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SULEK, P.J.

{¶ 1} Appellant Tommie L. Fears appeals the judgment of the Lucas County Court of Common Pleas, granting a directed verdict in favor of appellees Midwest Eye Consultants – Maumee, Midwest Eye Consultants – Toledo, Midwest Eye Consultants – Oregon, Cataract and Laser Institute Maumee, William G. Martin, M.D., and Ohio

LASIK Centers. Because Fears’s medical negligence claim was filed outside of the statute of limitations, the trial court’s judgment is affirmed.

I. Factual Background and Procedural History

{¶ 2} On October 16, 2020, Fears initiated the present action when he filed a complaint alleging medical negligence against appellees as well as ten other individual doctors associated with Midwest Eye Consultants. In basic terms, Fears alleged that Dr. William Martin negligently performed eye surgery on his left eye, and Martin and the other doctors failed to diagnose and correct the negligence for several years thereafter. Prior to trial, Fears voluntarily dismissed the ten other doctors, leaving Martin as the remaining individual treatment provider.

{¶ 3} The following facts are taken from the jury trial that was held on May 15-18, 2023. Fears initially sought treatment from Midwest Eye Consultants in November 2014, complaining of “runny eyes” and “foreign body sensation” and was prescribed eyedrops. Fears returned in December 2014, reporting symptoms of runny eyes and itching. His provider recommended that he place warm compresses on his eyes and use over-the-counter eyedrops. In March 2015, Fears again sought treatment and was diagnosed with Meibomian Gland Dysfunction (“MGD”), which is a condition where the tear producing glands are not performing properly, leading to dry eyes. Fears was prescribed medication for the MGD. He continued to experience runny, itchy eyes and sought treatment for a second time in March 2015, once in May 2015, and once in June 2015.

{¶ 4} During this time the medical records noted the development of cataracts. At his June 2015 examination, Fears met with Dr. Martin and discussed cataract surgery and replacement lenses. Fears elected to have multifocal lenses placed in his eyes.

{¶ 5} On November 10, 2015, Martin performed cataract surgery on Fears's left eye and implanted a multifocal artificial lens. Seven days later, Martin performed the same procedure on Fears's right eye. Prior to the surgeries, Fears signed a consent form documenting the risks of the surgeries, including, among other things, a risk of "uncomfortable or painful eye," "droopy eyelid," "increased night glare or halos," and "blurry vision." The consent form noted that additional surgeries may be required and the artificial lens may need to be repositioned or replaced. Further, it noted that a separate "YAG Capsulotomy" procedure may be needed later to correct clouding of vision.

{¶ 6} After the surgeries, Fears had follow-up appointments on November 12, 19, and 27, 2015. At the November 19 appointment, Dr. Joe Gilbuena reported that the lens in Fears's left eye was "slightly inferior," and the lens in his right eye was "slightly temporal." Fears described it as Gilbuena telling him that his lenses were "off track." On cross-examination, Fears also testified that right after the surgery there was a "drastic change" in his vision, and it was not the improvement that he thought it would be. Fears agreed that as of November 19, 2015, he "knew [he] had problems and symptoms related to Dr. Martin's cataract surgeries."

{¶ 7} Fears continued to experience problems with his eyes. On December 11, 2015, he complained of blurry vision, watery eyes, and itching. On February 11, 2016, he complained of “halos” and “runny eyes.” That same day, the provider noted a “flat, peaked pupil, bowing iris” in Fears’s left eye. Because of this, Fears met again with Martin two days later on February 13, 2016. Fears reported that he was experiencing foreign body sensation, runny eyes, and seeing halos. Martin’s examination noted that both irises were normal, but he did recommend a YAG capsulotomy procedure.

{¶ 8} Martin performed the YAG capsulotomy procedure on May 13, 2016, and a follow-up appointment occurred on May 27, 2016. The notes from the follow-up examination revealed that both irises were normal and the lenses were clear. Fears, however, was still experiencing watery eyes and a glare effect.

{¶ 9} Fears then changed jobs and did not have another appointment with Midwest Eye Consultants until March 30, 2017. On that date, he again complained of runny eyes and halos, as well as headaches. In particular, the medical report notes that “60 year old male complains of headaches and pressure in head since cataract surgery . . .” Also included in the notes from that appointment was a comment that “Patient reports [Dr. Gilbuena] told him lenses that were put in are off track,” and that his symptoms have “been going on since November 2015 has gotten worse over time.” Fears reiterated on cross-examination that as of March 30, 2017, he believed that something went wrong during Martin’s cataract surgery because of the blurry vision and other problems and symptoms that he was having.

{¶ 10} Fears sought further treatment on April 13, 2017, again complaining of runny eyes, glare, and headaches. He also began seeing a “zero” or bullseye effect, which was starting to make him paranoid. In addition, he reported pressure around his forehead and a burning sensation around his eyelids. The provider recommended that he continue with the warm compresses and begin massaging the eyelids.

{¶ 11} On April 24, 2017, Fears sought a consultation with an outside provider. The notes from his visit with Dr. Hooman Harooni recorded that Fears’s lenses were “decentered.” Harooni did not discuss the decentration of the lenses with Fears. Instead, Harooni treated Fears by inserting punctal plugs to help with his dry eye symptoms.

{¶ 12} On June 29, 2017, Fears sought treatment with another outside provider, Dr. Richard Tam. Tam noted that Fears’s lenses were “off center,” but Fears was not made aware of this.

{¶ 13} Fears’s symptoms did not subside, and he sought treatment again with Midwest Eye Consultants on September 25, 2017. At this point, Fears was frequently putting heated rice packs on his eyes, and he had purchased some goggles that massaged his eyelids. The examination again noted that his irises were normal and his left lens was clear while his right lens was slightly cloudy. Fears was prescribed Restasis to address his symptoms.

{¶ 14} On October 6, 2017, Fears had an appointment with Dr. Daniel Lin, a neuro-ophthalmologist with Midwest Eye Consultants. Fears again complained of “irritation in both eyes for few years, since cataract sx,” with symptoms including “dry,

burning, pain, tearing esp. when eating, spots like circles in va.” Lin’s report noted that the lenses were “well centered.” Fears testified that Lin told him the zeros he was seeing may be from the lenses and that he would eventually adjust to them. Lin recommended continued use of Restasis and artificial tears.

{¶ 15} Fears next saw Dr. Martin on October 9, 2017. Martin’s examination also revealed that the lenses were well centered. He recommended that Fears have testing on his sinuses as a possible cause of the symptoms he was experiencing. Fears testified that he had scans done at Toledo Hospital, which came back negative for any issues with his sinuses. Fears also had a brain scan that did not show any issues.

{¶ 16} On December 6, 2017, Fears had a second appointment with Dr. Tam. Tam noted that Fears’s right lens was “off center temporally” and his left lens was “off center, nasall min PCO.” Again, Fears was not notified of these findings.

{¶ 17} On December 11, 2017, Fears met with outside provider Dr. Karl Luketic. He reported that “he had Cataract surgery 2015 w/ Dr. Martin, since then he has had pain OU, and has a pressure feeling forehead and back of eyes.” Luketic noted that the lens in Fears’s right eye was “decentered superiorly.” No note of decentration was made for Fears’s left eye.

{¶ 18} Fears did not seek treatment again until an appointment with Dr. Martin on March 19, 2018. At that time, he complained of pressure across his forehead for the past three years. The report stated “Patient described the following signs and symptoms: feels the lens in the eyes are causing all the trouble.” Martin’s examination again found

that the lenses were well centered. He referred Fears to Dr. Lin for a neurological consultation.

{¶ 19} The consultation with Lin was performed on June 14, 2018. Lin noted that Fears's irises were flat and intact, and the lenses were well centered.

{¶ 20} Fears's next appointment was on June 20, 2018. He continued to complain of seeing zeros, pressure in eyes and forehead, teary eyes, seeing floaters, dry eyes, and glare, with the added symptom of light sensitivity. That examination continued to note that Fears's irises were flat and intact, and the lenses were well centered. Similar appointments and findings occurred on July 6, July 13, August 29, and December 10, 2018. Throughout this time, further testing and treatment was prescribed for Fears's MGD.

{¶ 21} On December 28, 2018, Fears saw Dr. Martin for the final time.

{¶ 22} Fears continued to treat with Midwest Eye Consultants on June 12, June 24, July 2, July 9, August 28, August 29, and September 11, 2019. In each of those appointments, Fears complained of similar or worsening symptoms. Yet, the examinations all noted that his irises were normal and his lenses were well centered. The course of treatment continued to address his dry eye and MGD conditions.

{¶ 23} On October 16, 2019, Fears had another appointment with Dr. John Jones at Midwest Eye Consultants. At that appointment, Fears expressed his desire to have his lenses removed. Jones recommended against having the lenses removed and replaced, but referred Fears to Dr. Chris Hood for a second opinion. In the examination report,

Jones noted that Fears's lenses were "slightly decentered." Fears testified that this was the first time he ever learned about the lens decentration.

{¶ 24} Fears had a final appointment with Midwest Eye Consultants on November 13, 2019. The report from that appointment noted that Fears's lenses were "slightly decentered."

{¶ 25} On December 7, 2019, Fears had his appointment with Dr. Hood. Hood discovered that Fears's left lens was dislocated and was rubbing against his iris. Hood recommended removing the lens and replacing it with a monofocal lens, which was performed on January 30, 2020. Fears testified that since then, the two different lenses in his eyes have caused him headaches and have made it hard to function. He did testify, however, that the surgery alleviated his double vision and the sharp pains he was having in his left eye.

{¶ 26} Following Fears's presentation of evidence, appellees moved for a directed verdict, arguing that Fears's claim was filed outside of the statute of limitations. Specifically, appellees argued that Fears was aware of an issue with his eyes relating to the surgery as early as November 19, 2015, and certainly by 2017 when he sought second opinions from multiple providers. Thus, they believed that Fears's medical negligence claim that was filed on October 16, 2020, was well outside of the one-year statute of limitations. Fears responded that he did not become aware that his lenses were decentered, and thus a cognizable event did not occur, until October 16, 2019, when Dr.

Jones told him for the first time that his lenses were decentered. The trial court, construing all the evidence in favor of Fears, denied the motion.

{¶ 27} Appellees then presented the testimony of Martin, Dr. Harooni, and their expert witness, Dr. Darrell White, largely pertaining to the cause of Fears’s injury and whether Martin breached the standard of care.

{¶ 28} After presenting their case, appellees again moved for a directed verdict on the basis that Fears’s complaint was filed outside of the statute of limitations. This time, the trial court granted the directed verdict from the bench. It found that a cognizable event occurred more than one year prior to the filing of the case, specifically noting Fears’s suspicions—both shortly after the surgery and in seeking out second opinions—that there was a problem with the surgery. Immediately after granting the directed verdict, the court noted one other finding that “the patient-doctor relationship between plaintiff and Dr. Martin ended on December 28, 2018.”

{¶ 29} On May 23, 2023, the trial court memorialized its decision in a judgment entry. In granting the motion for directed verdict, it reasoned,

Defendants emphasize that Plaintiff terminated his physician/patient relationship with Dr. Martin in December 2018, more than one year prior to the filing of Plaintiff’s lawsuit. Further, based upon medical records admitted at trial, and Plaintiff’s trial testimony, the Court finds that a cognizable event triggering the statute of limitations occurred prior to Plaintiff terminating his relationship with Dr. Martin.

II. Assignments of Error

{¶ 30} Fears timely appeals from the trial court's May 23, 2023 judgment, asserting three assignments of error for review:

1. A trial court is required to identify when the cognizable event occurred. Here, the trial court did not identify either a date certain or a defined time frame for when the cognizable event occurred. Must the trial court's decision be reversed?

2. A trial court is required to identify when the termination of the doctor-patient relationship occurred. Here, the trial court did not identify either a date certain or a defined time frame for when the termination occurred. Must the trial court's decision be reversed?

3. A trial court must deny a motion for directed verdict when the evidence is such that reasonable minds could come to more than one conclusion. Here, all possible bases for a directed verdict based on the running of the statute of limitations are contradicted by substantial, competent evidence favoring Fears that must be assumed true and established. Did the trial court err in granting a directed verdict because reasonable minds could come to more than one conclusion?

III. Analysis

{¶ 31} This court reviews a trial court’s decision on a motion for directed verdict de novo. *Rieger v. Giant Eagle, Inc.*, 2019-Ohio-3745, ¶ 8; *Holman v. Columbia Gas of Ohio*, 2019-Ohio-3126, ¶ 14 (6th Dist.).

{¶ 32} Civ.R. 50(A)(4) provides that

[w]hen a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.

“Before granting a motion for a directed verdict in accordance with Civ.R. 50(A)(4), the reasonable-minds test requires the court to determine whether there is any evidence of substantive probative value that favors the nonmoving party.” *Rieger* at ¶ 9, citing *White v. Leimbach*, 2011-Ohio-6238, ¶ 22. “Thus, although a motion for a directed verdict does not present a question of fact, when deciding a motion for a directed verdict the court must ‘review and consider the evidence.’” *Id.*, quoting *Ruta v. Breckenridge-Remy Co.*, 69 Ohio St.2d 66, 68 (1982), quoting *O’Day v. Webb*, 29 Ohio St.2d 215 (1972), paragraph three of the syllabus.

{¶ 33} The issue in this case is whether Fears’s complaint was filed within the one-year statute of limitations for a medical negligence claim. R.C. 2305.113(A) provides that “[e]xcept as otherwise provided in this section, an action upon a medical, dental, optometric, or chiropractic claim shall be commenced within one year after the

cause of action accrued.” “A claim for medical malpractice accrues, and the one-year statute of limitations begins to run, ‘(a) when the patient discovers, or in the exercise of reasonable care and diligence should have discovered, the resulting injury, or (b) when the physician-patient relationship for that condition terminates, whichever occurs later.’” *Wilson v. Durrani*, 2020-Ohio-6827, ¶ 14, quoting *Frysinger v. Leech*, 32 Ohio St.3d 38 (1987), paragraph one of the syllabus.

{¶ 34} Prior to addressing the merits of the trial court’s directed verdict, Fears argues in his first and second assignments of error that the trial court failed to determine exactly when the cognizable event occurred or when the doctor-patient relationship ended. Appellees respond that the trial court did find in the judgment entry that the doctor-patient relationship ended in December 2018 and the cognizable event occurred prior to that. Further, the court specifically found at the trial that the doctor-patient relationship ended on December 28, 2018, and that Fears “sought a second opinion due to problems that he was having with the cataract surgery in 2015,” which, “while he may not have understood the full extent of what the problem was,” his actions and awareness met the legal standard of a cognizable event. Fears retorts, however, that the court’s statements at trial cannot be considered because the court speaks only through its journal entries.

{¶ 35} The question that Fears presents is one of form and asks whether the trial court’s finding was sufficient to support the directed verdict. It was. The parties agree that Fears commenced his medical negligence action on October 16, 2020. Thus, to be

within the statute of limitations under R.C. 2305.113(A), the cause of action must have accrued no earlier than October 16, 2019. In its judgment entry, the trial court found that the doctor-patient relationship ended in December 2018, and the cognizable event occurred prior to that. In both cases, the trial court provided a date or range of dates for the events that were before October 16, 2019. It did not need to find precisely when the events occurred. Therefore, the trial court's findings were sufficient to support its award of a directed verdict based on the claims being filed outside of the statute of limitations.

{¶ 36} Accordingly, Fears's first and second assignments of error are not well-taken.

{¶ 37} In his third assignment of error, Fears challenges the trial court's determination that a cognizable event occurred prior to October 16, 2019. Notably, Fears does not contest that the doctor-patient relationship ended on December 28, 2018.

{¶ 38} "A 'cognizable event' is the occurrence of facts and circumstances which lead, or should lead, the patient to believe that the physical condition or injury of which [he] complains is related to a medical diagnosis, treatment, or procedure that the patient previously received." *Flowers v. Walker*, 63 Ohio St.3d 546, 549 (1992), citing *Allenius v. Thomas*, 43 Ohio St.3d 131 (1989), syllabus. In determining when a cognizable event occurred,

the trial court must look to the facts of the particular case and make the following determinations: when the injured party became aware, or should have become aware, of the extent and seriousness of his condition; whether the injured party was aware, or should have been aware, that such condition was related to a specific professional medical service previously rendered

him; and whether such condition would put a reasonable person on notice of need for further inquiry as to the cause of such condition.

Hershberger v. Akron City Hosp., 34 Ohio St.3d 1 (1987), paragraph one of the syllabus.

“A plaintiff need not have discovered all the relevant facts necessary to file a claim in order to trigger the statute of limitations.” *Flowers* at 549, citing *Allenius* at 133-134.

“Rather, the ‘cognizable event’ itself puts the plaintiff on notice to investigate the facts and circumstances relevant to [his] claim in order to pursue [his] remedies.” *Id.*, citing *Allenius* at 133-134.

{¶ 39} Just as they did in the trial court, appellees argue that numerous cognizable events occurred. Without discounting the possibility that a cognizable event occurred earlier, the record demonstrates that by March 30, 2017, Fears believed that his symptoms were related to his 2015 eye surgeries. On that date, Fears presented to Midwest Eye Consultants complaining of headaches and pressure in his head since his cataract surgeries that have gotten worse over time. He also reported at the appointment that Dr. Gilbuena told him that his lenses were put in “off track.” These facts combined could lead a reasonable person to suspect that his symptoms were related to the 2015 surgeries, thus putting him on notice of the need to investigate. But it is not necessary to consider what a reasonable person would do because Fears’s own trial testimony confirmed that at that time his blurry vision and other problems and symptoms led him to believe that something went wrong during Martin’s cataract surgeries. Further, he acted on this belief by seeking treatment from three separate outside providers in the following

months. Thus, the evidence at trial shows that a cognizable event occurred by March 30, 2017.

{¶ 40} Fears, however, argues that there is other evidence contradicting this conclusion, which would prevent a directed verdict. Specifically, he points to the consent form that he signed before the cataract surgeries that listed potential symptoms that he could, and in some cases did, experience. He also notes that the doctors at Midwest Eye Consultants continued to report that his lenses were well centered and continued to treat him for MGD. Through this evidence, Fears implicitly suggests that a reasonable person would not have concluded that his symptoms were related to a problem with the cataract surgeries because the symptoms were expected, he was told or it was reported that the lenses were well centered, and the symptoms could be explained by his MGD. He contends that it was not until October 16, 2019, when Dr. Jones informed him that his lenses were decentered that he became aware of the extent of the problem and its relation to the 2015 cataract surgeries. Citing *Herr v. Robinson Memorial Hosp.*, 49 Ohio St.3d 6, 9 (1990), Fears asserts that finding a cognizable event before October 16, 2019, would be holding him to a higher degree of medical knowledge than his doctors.

{¶ 41} In *Herr*, the patient experienced back pain. He sought treatment from a provider who recommended an injection and later a disc removal surgery. *Id.* at 7. After receiving the injection and undergoing the surgery, the patient experienced some initial relief; however, his condition and pain ultimately worsened. *Id.* The patient consulted again with the doctor who assured him that “these things take time.” *Id.* In June 1985,

the patient went to a radiologist for the second time to seek a consultation. The radiologist recommended that the patient see a neurosurgeon or an orthopedic specialist. *Id.* Following this advice, the patient saw a third doctor on August 22, 1985, who informed him that his back problems did not stem from a bad disc, but rather from a broken vertebra, and any procedures related to a disc would have only further increased the instability of his back. *Id.*

{¶ 42} On August 21, 1986, the patient filed a medical malpractice cause of action against his original doctor and radiologist. *Id.* The trial court dismissed the claims, finding that they were barred by the one-year statute of limitations. *Id.* Ultimately, the Ohio Supreme Court reversed, holding that the cognizable event did not occur until August 22, 1985, when the patient was first informed of his broken vertebra. *Id.* at 9. It reasoned that under the facts of the case, pain alone could not be the cognizable event, and prior to August 22, 1985, the patient “followed the advice of the appellee doctors and permissibly relied on the assurances of one of those doctors.” *Id.* The court commented, “[I]t would be illogical to hold a patient to a higher degree of knowledge than his treating physicians. Indeed, to say that a patient may not *reasonably* rely on the assurances of a treating physician would cause irreparable harm to the doctor-patient relationship.” (Emphasis sic.) *Id.*

{¶ 43} Fears argues that the same is true in this case, and that he cites evidence that could cause a reasonable person to rely on his doctors’ assurances that nothing was wrong with his cataract surgery. But, unlike *Herr*, Fears did not rely on his doctor’s

assurances. Instead, he expressly testified that by March 30, 2017, he believed that something went wrong during the cataract surgery. And, importantly, nothing in the record contradicts his testimony as to this belief.

{¶ 44} For a cognizable event, the relevant inquiry is whether the facts and circumstances “*lead*, or should lead, the patient to believe that the physical condition or injury of which [he] complains is related to a medical diagnosis, treatment, or procedure that the patient previously received.” (Emphasis added.) *Flowers*, 63 Ohio St.3d at 549, citing *Allenius*, 43 Ohio St.3d 131 at syllabus. Here, the record conclusively demonstrates that by March 30, 2017, Fears subjectively believed that his condition was related to a medical procedure that he received on November 10, 2015. Thus, Fears’s reliance on the consent form, physician assurances, and continued course of treatment is misplaced and does not invalidate his own subjective belief.

{¶ 45} Therefore, Fears’s subjective belief as of March 30, 2017, that the symptoms he was experiencing were related to a problem with the cataract surgeries constitutes a cognizable event. Because he did not file his medical negligence claim within one year from the later of the cognizable event or termination of the doctor-patient relationship, the trial court did not err when it found that the claim was barred by the statute of limitations and granted appellees’ motion for a directed verdict.

{¶ 46} Accordingly, Fears’s third assignment of error is not well-taken.

IV. Conclusion

{¶ 47} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed. Fears is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Christine E. Mayle, J.

JUDGE

Gene A. Zmuda, J.

Charles E. Sulek, P.J.
CONCUR.

JUDGE

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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