

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

STEPHEN SARATOWSKI and	:	
MICHELLE L. SARATOWSKI,	:	
Plaintiffs	:	
	:	
v.	:	NO. 98-01,773
	:	
DEMETRI T. POULIS, M.D. and	:	
SURGICAL ASSOCIATES OF	:	
WILLIAMSPORT,	:	
Defendants	:	

OPINION and ORDER

The defendants have asked this court to dismiss this medical malpractice case against them because it was filed after the statute of limitations ran. The plaintiffs have taken cover under the discovery rule, claiming Mr. Saratowski delayed because he relied on Dr. Poulis' representations that the symptoms he now complains of were not related to the surgery he performed, or that they were normal temporary post-operative effects. However, the plaintiffs have pointed to little evidence upon which a jury could make that determination. Instead, it appears that Mr. Saratowski never went to see Dr. Poulis about these symptoms until after the statute of limitations had already run. He ignored his pain for years and postponed seeking medical help, as well as legal advice. Hopefully, it is not too late for Mr. Saratowski to seek medical relief, but unfortunately, it is too late to seek legal relief.

Factual Background

On 18 May 1994, Dr. Poulis performed surgery on Mr. Saratowski to repair an inguinal hernia in his right testicle. Some time afterwards, Mr. Saratowski began experiencing discomfort in his right testicle during and after sex and numbness in his right

leg.

Mr. Saratowski's last post-operative visit to Dr. Poulis was on 1 July 1994. On 15 December 1994 he called to complain about his discomfort and was given an appointment on 19 December 1994, which he canceled and never rescheduled. His next visit to Dr. Poulis was in June 1997, after being referred by Dr. William Mattiace.¹ After an examination on 2 June 1997, Dr. Poulis concluded that the symptoms were not related to the hernia surgery. Instead, he thought the problems were due to Mr. Saratowski's excessive weight lifting. Dr. Poulis ordered a CT scan, which showed no abnormalities regarding the hernia repair. After this result, Dr. Poulis recommended that Mr. Saratowski see a physiatrist to evaluate which muscle groups were causing the pain and whether the exercise is exasperating it. Mr. Saratowski apparently refused to do so, because he feared the physiatrist would recommend rest and attempt to dissuade him from training for an upcoming weight lifting tournament. N.T., Defendants' Exhibit 1, letters of 2 June 1997 and 11 June 1997.

In February 1998, Mr. Saratowski was talking to his wife about his problems in the office of Dr. David Roeltgen, where she worked. Dr. Roeltgen overheard the conversation and suggested that Mr. Saratowski set up an appointment for an examination, which he did. Dr. Roeltgen diagnosed him as having ileo-inguinal focal neuropathy, caused by Dr. Poulis's failure to protect the nerve during surgery. On 6 November 1998 Mr. Saratowski and his wife filed this action.

¹ The record does not reveal why Mr. Saratowski sought medical treatment from Dr. Mattiace.

DISCUSSION

A motion for summary judgment may be granted when there is no genuine issue of material fact regarding a necessary element of the cause of action or if, after completion of discovery, the plaintiff has failed to produce evidence of a fact essential to prove the cause of action. Pa.R.Civ.P. 1035.2. The purpose of the rule is to eliminate cases where a party cannot prevail on a claim or a defense. Eaddy v. Hamaty, 694 A.2d 639, 649 (Pa. Super. 1997). In considering a motion for summary judgment the court must examine the record in the light most favorable to the non-moving party. Kerns v. Methodist Hospital, 393 Pa. Super. 533, 574 A.2d 1068 (1990). Once a motion for summary judgment has been filed based on inability to prove a claim or defense, the non-moving party must file a response identifying evidence in the record establishing that claim or defense. Rule 1035.3(a)(2).

The defendants contend the plaintiffs cannot prevail because the suit was filed beyond the two-year statute of limitations. 42 P.S. § 5524(2). The plaintiffs argue that they are protected by the discovery rule, which tolls the statute until the plaintiff knows or in the exercise of reasonable diligence should have known of the injury and that the injury was caused by another's conduct. Bradley v. Ragheb, 429 Pa. Super. 616, 621, 633 A.2d 192, 194 (1993).

The discovery rule is a limited exception to the statute of limitations. It should be applied only in "the most limited of circumstances, where the plaintiff, despite the exercise of reasonable diligence, was unable to discover his or her injury or its cause." Dairymple v. Brown, 549 Pa. 217, 701 A.2d 164, 171 (1997). The party seeking to invoke

protection under the rule bears the burden of establishing that he or she was unable to learn about the injury despite the exercise of reasonable diligence. Id.

Ordinarily, it is up to the jury to decide whether the plaintiff should have discovered the injury. However, when the undisputed facts lead to only one conclusion, the court has the power to decide the issue as a matter of law. Haggart v. Cho, 703 A.2d 522 (Pa. Super. 1997). That is the case here, for Mr. and Mrs. Saratowski have failed to produce evidence to establish that their delay should be excused by the discovery rule.

The evidence for the court to consider in determining this motion for summary judgment consists of the depositions of Mr. and Mrs. Saratowski and the office notes of Dr. Poulis. That evidence discloses nothing to indicate that Dr. Poulis said anything to lead Mr. Saratowski to believe the symptoms at issue were unrelated to the surgery until June 1997, well after the statute of limitations had run. Neither does the evidence show that Dr. Poulis told Mr. Saratowski that these particular symptoms were part of the normal healing process. In fact, the evidence indicates that Mr. Saratowski never even went back to Dr. Poulis to complain about his symptoms until June 1997.

It is undisputed that the last time Mr. Saratowski saw Dr. Poulis as follow-up to his 18 May 1994 surgery was on 1 July 1994, and Mr. Saratowski's vague testimony could not establish that he discussed his symptoms with Dr. Poulis on or before that date. In fact, Mr. Saratowski was not even sure he experienced the numbness and pain he is now complaining of before 1 July 1994. He initially stated that immediately after the surgery he felt pain and discomfort in the lower right abdominal region in the nature of "general soreness all around the area." N.T. p. 16. That significant pain later dropped off

to a lighter pain. N.T. p. 19. Although he indicated he might have had a little numbness “right from the start,” N.T. p. 22, his testimony was extremely vague and unspecific on this point:

I don't recall specifically whether there was [numbness] from the beginning or not, I don't. I just—with all injuries and surgeries there's some soreness and there's probably some numbness and I'm saying that . . . I'm saying I don't know for sure if there was, but I imagine there'd probably be something if you had surgery, but nothing the effect that I was having later on. N.T. p. 24.

Mr. Saratowski then testified, “At first it was just a little bit of a strain and pull in that area. After that, it became a real numb type feeling, got a lot of numbness on the inside of my thigh and leg and numbness into my testicle.” N.T., pp. 21-22. Unfortunately, he cannot seem to pinpoint when the numbness began.

Moreover, even if Mr. Saratowski did have the symptoms by 1 July 1994, there is no evidence he told Dr. Poulis about them. Mr. Saratowski testified that he didn't remember whether he mentioned the symptoms to him in May or July of 1994. N.T. p. 23. Yet at another point he made these vague and unspecific statements about the numbness:

That was the initial feeling. I kept saying, well, maybe that's a part of the healing process. And I talked with him, I don't know how far ahead of this we are, I don't know where you are with your dates or records, only a couple times on the phone. And I was just assured that that would be—the numbness would be part of possibly the muscles or whatever, I don't know, healing and it wouldn't get any sensation for a while and it would be like that under normal circumstances.

N.T., p. 22.

Although Mr. Saratowski made this vague allegation of being assured the numbness was normal, he does not say explicitly who told him so, or when. Moreover, it

contradicts his own testimony that he never talked to Dr. Poulis on the phone, N.T. p. 38, and that he did not remember discussing the symptoms with Dr. Poulis. N.T. p. 23.

Mr. Saratowski also testified,

I seem to think that we discussed it a little bit. But I seem to think that that was the case where he said to me that because of the surgery I'd have some numbness for a while. . . . I don't recall specifically whether there was [numbness] from the beginning or not, I don't. I just—with all injuries and surgeries there's some soreness and there's probably some numbness and I'm saying that I'm saying I don't know for sure if there was, but I imagine there'd probably be something if you had surgery, but nothing the effect that I was having later on.

N.T. p. 24.

Mr. Saratowski later contradicted himself again on this point. When asked whether he called Dr. Poulis immediately after the pain started, he answered,

I don't recall. I'm sure that I was concerned about it and—but it's very hard for me to remember exactly what I discussed or did immediately after. I think I just basically thought it was part of the situation for a while. And something leads me to believe that I called the office sometime after that, but I didn't talk with the physician directly, but I can't recall. If there's nothing in the record, then obviously it would not say that I did so -

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N.T. p. 38

Moreover, even if Mr. Saratowski had experienced the pain and numbness, even if he told Dr. Poulis about it, and even if Dr. Poulis told him it was part of the normal healing process and would continue for a while, Mr. Saratowski still was not justified in waiting over three years to inquire about it. Although the statute of limitations would have been tolled for a period of time during which a reasonable person would believe the normal healing process might be at work, three years is far too long to wait for post-operative recovery.

In contrast to Mr. Saratowski's vague and contradictory statements, Mrs. Saratowski's testimony was very clear. She stated that the first indication of any problem occurred a couple of months after the surgery, the first time they had sex, which was after 1 July 1994. N.T., pp. 78-79.² At that time, Mr. Saratowski complained of a numbness in his leg and pain after orgasm. These problems occurred each time the couple had intercourse, which was once or twice a week. N.T. 81. The pain remained through the rest of 1994, and became so severe that "he couldn't stand it anymore," N.T. p. 83. Obviously, this put quite a kink in the couple's sex life, and finally Mrs. Saratowski couldn't stand it anymore, either. She convinced her husband to call Dr. Poulis to find out if the problem was normal. N.T. p. 83.

Mr. Saratowski called Dr. Poulis' office on 15 December 1994 to complain about pain in his right testicle, particularly after orgasm. He was given an appointment on 19 December 1994, which he canceled due to bunion surgery the next day. Dr. Poulis' office notes state that Mr. Saratowski was to call after the first of the year to reschedule his appointment. However, he never did, despite the fact that his problems continued for the next several years, and even grew worse. In fact, Mr. Saratowski might never have done anything about the problem if it had not been for the fact that three years later Dr. Roeltgen happened to overhear Mr. Saratowski talking about his problems and invited him to make an appointment.

The office notes of Dr. Poulis confirm Mrs. Saratowski's testimony that the

² The court notes that this testimony is consistent with paragraph 8 of the Complaint, which states, "Several months after the said surgery, Plaintiff, Stephen Saratowski began experiencing discomfort in his right testicle."

problems did not begin until after Mr. Saratowski's last appointment, in 1 July 1994, and that Mr. Saratowski did not notify his office about the symptoms until 15 December 1994.

A note entered on 1 July 1994 states:

Stephen Saratowski -- He comes in today and he is doing well. He has no complaints. His wounds are healing nicely and he is back at work. Examination today reveals that the eczema has settled down in his groin and the testicle is normal. There are no signs of recurrences and the wound has healed nicely. He will see us back as needed.

The next contact with Mr. Saratowski is the 15 December 1994 phone call, when he complained of pain in his right testicle after orgasm and set up the appointment he did not keep. The next contact was on 2 June 1997, when he was referred by Dr. Matthiace, as discussed above.

In short, the evidence shows that although Mr. Saratowski had some general pain immediately after his surgery, the specific symptoms he now complains of developed after his 1 July 1994 visit with Dr. Poulis. And since Mr. Saratowski had no further contact with Dr. Poulis until June 1997, Dr. Poulis could not have advised him either that the symptoms were a temporary part of the normal healing process or that the condition was muscular.³

At the very latest, then, the statute of limitations would have begun to run on 15 December 1994, when Mr. Saratowski called Dr. Poulis' office to complain. Obviously, at that point he knew about the symptoms and seven months had passed since the surgery—plenty of time to alert him to the fact that these were not the normal, temporary

³ Indeed, the only evidence regarding Dr. Poulis' opinion as to the cause being muscular occurred in June 1997, long after the statute of limitations had run.

postoperative symptoms one might expect.

The discovery rule should be applied only to those individuals who could not have discovered the negligence within the statute of limitations. Mr. Saratowski is no such individual. He certainly knew about his symptoms and could not reasonably have concluded they were unrelated to the surgery. Even if he had been told they were normal symptoms of recovery, no reasonable person could expect them to last that long.

Why would any healthy male ignore numbness in his leg and pain during sex for several years? Mrs. Saratowski gave us her explanation: he's "not a complainer." N.T. p. 82. When she nagged him to take action and call a doctor, he just said "yeah, yeah, yeah, okay, I will." N.T. p. 82. She further explained, "And, you know, and then with his busy work schedule, my son in football and stuff, you know, it just slips your mind. You know, you start dealing with it every day and it's there and it just, you know, goes in the back of your mind." N.T. p. 83.

Mr. Saratowski's testimony reveals that although he was experiencing much pain and discomfort he refused to take action, instead repeatedly telling himself that he could handle the pain and that everything would be all right. The record also shows that Mr. Saratowski was afraid of being told he must reduce or stop his body building activity, which was an important part of his life. See N.T. Defendant's Exhibit 1, 11 June 1997 letter from Dr. Poulis to Dr. Wallace.⁴ Mr. Saratowski is obviously a very physically

⁴ Dr. Poulis writes, "It is my impression that certainly easing off on his exercise routine would be of benefit and at least giving him partial relief of his symptoms. He feels that he can go on and will continue training for his upcoming September tournament. I have recommended a physiatrist so that he can evaluate more fully which muscle groups are involved in causing pain and whether the exercise is exacerbating it which is my belief, but at this point, he wishes to not do that because he feels that the physiatrist would

active person, with a passion for weight training, and he was very resistant to changing his lifestyle. He stated, "I wanted to continue to stay in shape for bunches of reasons as I said, my job, things that I do, my life style, my way of life. Everything was all centered around that sort of thing." N.T. p. 46. He did not take action until he was roped into doing so, by his wife or by fortuitous circumstances such as complaining of his symptoms in the presence of a doctor.

While the precise reason for Mr. Saratowski's procrastination is unclear, one thing is certain: it was not due to reliance on statements by Dr. Poulis. The record simply does not support that allegation, and therefore Mr. and Mrs. Saratowski have not met their burden of showing that the discovery rule should apply.

Conclusion

In America, no one is forced to seek medical treatment to learn the cause of their physical ills. However, those who choose not to must suffer the physical consequences, as well as the legal ones. Mr. Saratowski made his choice, which leaves this court with no choice other than granting the motion for summary judgment.

recommend rest which will not allow him to train as fully as he would like for his tournament."

ORDER

AND NOW, this _____ day of December, 1999, for the reasons that have been stated in the above opinion, the defendants' motion for summary judgment is granted and the complaint in the above-captioned matter is dismissed.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Gary Weber, Esq.
Matthew Patch, Esq.