

FILED

OCT 22 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BELLINGHAM

No. 323633

COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON

Michael J York

Plaintiff/Appellant

v.

CSL Plasma Inc f/k/a ZLB Plasma a foreign corporation

Defendants/Respondents

ON SUMMARY JUDGMENT FROM SUPERIOR
COURT OF WASHINGTON FOR SPOKANE COUNTY

(Hon. Annette S. Plese) Case No. 132042651

REPLY BRIEF OF APPELLANT

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I INTRODUCTION

An appeal for review of Summary Judgment order entered 02/07/14.

Plaintiff asking for relief (vacate) from the order based on:

“a trial court’s decision was manifested unreasonable and was based on unobtainable grounds of unobtainable reason. The courts discretion was outside the range of acceptable choices. Given the facts and the applicable legal standard; the factual findings are unsupported by the record and reasonable minds could and would draw different conclusions. Summary Judgment was improperly granted.” In re marriage of the little field, 133un 2d 34 46-47, 940 p2d 1362 (1997). 01/10/14

Motion not filed with assigned judge, cancelled but not prior to the date it was to occur, continuances were not granted and filing requirements were not met for future filing of the same motion. (CP 107) certificate of service missing. Complaint in Sept. 2013, RCW 4.16.350 (CP 1 thru7).

II COUNTERSTATEMENT OF THE ISSUES

1 CSL Plasmas Motion for Summary Judgment was not properly

set on December 5, 2013 through assigned judge as required (CP 125) (113-116) before the court. LCR 40 (b) (10). Defendant's attorney sent papers to wrong court (CP 119) prior to the 01/10/14 hearing. (CP 121).

Then failed to appear for this date. Hearing was cancelled: Def/resp as Plaintiff was standing in courtroom and Judge called Def. Attorney. request JDG0016; and not prior to the date it was set to occur.

(Superior court statistical manual). Defendants rescheduled for 2/01/14 (Designation of clerk papers) and then moved to 02/07/14 (CP 116) but did not properly serve Plaintiff. (CP 107) has no certificate of service. (CP 143) Plaintiff never received but has a certificate of service for 01/31/14 but was signed on 02/03/14 and filed from Seattle on 02/03/14. (In the footnote 1 page CP144) states "re-notes are upon order of the court".

2 RCW 4.16.080(2) does not apply with this claim because it refers to real property not to medical mal practice claims. Even if RCW 4.16.080(2) did apply, within the this RCW is RCW 4.16.040 implementing that an “action commenced upon a contract in writing, (CP 21, 23) or liability express or implied arising out of a written agreement, shall be commenced within 6 years.” Plaintiff is within these limitations.

3 (RCW4.16.350) claim is timely after discovering knowledge of the link between the defendant and the cause which were not known until 07/08/13, after discovery of foreign bodies. This knowledge and other concealment factors stimulated the discovery of the cause.

III COUNTERSTATEMENT OF THE CASE FACTS

A Plaintiff filed within one year of discovery of intentional

concealment factors. On 06/01/2009 plaintiff signed a contract titled "Informed Consent for Immunization with Immunogen Red Blood Cells (IRBC) Hazards of receiving red blood cells" that Defendants' doctor signed also. The contract was altered by Defendant, implying fraud. (CP21, see tear line after #7). Plaintiff's claims defendant falsified documents and donor card. (CP 19 and 21 and exhibit (1)).

Plaintiff did visit Dr Wang as he did other doctors but the significance of this letter (CP) Exhibit A was that the defendant presented evidence showing the plaintiff was not at their facility after April 26, 2009 (CP) 19 but this letter from the defendant to Dr, Wang shows clearly that Plaintiff was treated at Defendant's facility in May thru June 2009.

No wonder they are trying to deny that Plaintiff was treated at their facility at this time. The evidence connecting the Defendant to the

claim as the cause of action was not the discovery of Parasitosis;
because Parasitosis was not the diagnosis from the visit to Dr. Wang
from a document dated September 11, 2009 She diagnosed Delusional
Parasitosis, a mental condition when he (Respondent's brief 14)
imagines he is infested with parasites and the patient is told there is
nothing physically wrong with him. That is all that the plaintiff's
Doctors could tell him because Defendant would not divulge the
real truth of what they injected into the plaintiff. They were
intentionally hiding dangerous, deadly ingredients from Plaintiff
and his Doctors which kept plaintiff from discovery what was
actually happening, which is still presently not fully understood.
Because of the defendants reckless fraud and intentional contact
which has resulted in years of physical and mental torture having

your body eaten from the inside out from organisms never seen before because they were created by the defendants doctors and scientists for new drug discovery, profit and production. Even if Delusional Parasitosis did constitute a date from which to file medical mal practice personal injury claim this is not a valid basis for statutes of limitations, Cause of action not found until 2013 (CP 41). The patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages. Plaintiff claims he is timely in filing his claim, Plaintiff is well within the 8 year statutes of imitations requirement in 4.16.350.

III B PROCEDURAL BACKGROUND

B Plaintiff signed his complaint for personal injuries on 09/12/13 (CP 41, 56, 58) (Respondent brief 6 and RP report 5)

YORK “(CSL Plasma) The attorney knew you were the Assigned judge. (CP 136, 137) turned in the paperwork confirming counsel was sent notice. (CP 138) And the Fed Ex tracking shows that counsel) received it. “ I could proceed, but I’m not really fully prepared because I wasn’t –when we were in court two weeks ago, (When defendant’s attorney failed to appear and again) you said we weren’t going to have a motion hearing because you didn’t have any room on your docket and, also, the motion—she missed the last three motion settings, and they’re stricken from the record.” (RP 4) “Yeah There were also 2 court dates prior to that for this motion.”

Plaintiff does not believe he would be given the same courtesy

if he had made the same errors and the Motion for Summary

Judgment should be stricken and not heard in the future

and since it was heard by plaintiff should be granted relief

from the order or judgment.

B 1 (CR-LCR 56),(LCR 40(b)(10)). “In the event a motion for

summary judgment, partial summary judgment or dismissal is to be argued, counsel or the moving party is required to comply with the requirements of notice in LCR 40 (b) (10).” (CP 125 and 132)

B 2 Besides 01/10/14 hearing not called in ready this motion

was not properly set before the court with the assigned judge;

plaintiff was’nt properly notified for the final hearing on 02/07/14.

(CP 107) has no certificate of service. (CP 143) Plaintiff never

received but has a certificate of service for 01/31/14 but was signed

on 02/03/14. Defendant’s attorney sent judges copies to wrong

court for 01/10/14; letter confirming the error(CP 119)(CP 117)

B3 “Longstanding case law recognizes that the trial

court has the inherent power to manage proceedings in the

courtroom and has discretionary authority to manage its own

affairs so as to achieve the orderly and expeditious disposition of

cases..”(Respondent’s brief 9).

Defendants attorney did error when they sent papers to wrong court

and did not appear and continue on January 24, 20014

and then improperly rescheduled for February 1, 2014

then rescheduled to 02/07/14.

B 4 (CP 114, 115, 116, 117, 119, 121, 123, 127 & 132)

Defendant and or attorney did not appear for the January 24

hearing. Rescheduled 2/1/14 Defendant and or attorney changed

02/01/14 Motion for summary judgment to 02/07/14. (RP4)

B 5 At this first appearance of defendant's attorney on 02/07/14

She states: "I am here for the defendant CSL Plasma. As you mentioned, and I do apologize for improperly noting the motion, we filed it back in December, and I did not catch that you would be the judge assigned to this case, (CP 83, 84, 85 and 86) and that was my mistake, and I apologize (CP123) (Respondent's brief page 4) the Mandatory Case Status Conference was reset twice. (CP) 82 the presiding judge (CP) 136, 123. The defendants Motion for summary judgment should be stricken (CP) 117 [LCR 40 b (10)] from the court.

B 6 Disregard to a fair and speedy trial. (CP) 144

“Forest Grove Brick Works, Inc v. Strickland, 277 Or 81, 87-88 (1977)” It is usually not feasible to resolve on motion for summary judgment cases involving questions such as when knowledge is discoverable by reasonable diligence of plaintiff and concealment by defendant.” Plaintiff has been searching for a cure. (CP) 5.

STANDARD OF REVIEW

(CP) 1 thru 7. I do not agree (Respondents brief page 12 B-1)

Reading (CP) 60 you can see why the defendants attorney did

not want this document to appear as defense for this case.

Defendant’s lawyer left out page 6 of plaintiffs’ “reply to

defendant’s answers and affirmative defenses and denial of

defendants claim for attorney’s fees” in their version of

plaintiffs reply. (CP 25 thru 31). (CP59-60 #4) The alleged...then

the defendant is liable for the entire damages..In #5 the specific

risk causing the injury must have been disclosed to, known and appreciated by the plaintiff in order for primary assumption of risk to apply. Also, assumption of risk does not absolve a defendant of liability for reckless conduct. (CP #6) The type of injury the Plaintiff has contracted through Defendants facilities, equipment or any other venue of CSL Plasma is very resistant to medication. (CP) 60, 61) Plaintiff retains the right for a fair speedy trial. Plaintiff has cause to continue and can demonstrate equitable title to the relief requested. (CP) 61 Plaintiff denies he is liable for defendant's attorney's fees or costs. Plaintiff reintroduced this document as a complete copy 01/02/14 (CP) 55 thru 61.Respondents brief page 7) (RP 14).

Footnote 8 does not include the one year after discovery of concealed factors up to a eight year period..Footnote 9

mentions the CR 60 rule to vacate summary judgment which can be made in a reasonable time but within one year after the judgment; order or proceeding was entered or taken. CR 59 (Respondents brief page 7, 8) There is genuine issue of material fact as to when the statutory period commences. The fact that defendant was concealing the truth, and (CP) 21 fraudulently altered evidence leaves a question in reasonable minds to be able come to one conclusion other than one of granting Plaintiff relief from the summary judgment order.

A reasonable person has suspicion (RP 15) “ it doesn’t have to be proof beyond a reasonable doubt all doubt” (RP 17) “Where is their proof” My Rights. De novo requires a trial after review.

Michak v. Transnation title ins. (o 148 Wn. 2d 788 794-95 64 P.3d 22 (2003); green v. Apc 136 Wn. 2d 87 94.960.p2a 912 1998; Welch v Southand Corp 134 Wn 2d 629, 632, 952 p2d 162; Kaplan v North Western Murual Life ins.(o115 Wn App 791,799,65p.3d16

A trial courts factual findings of Summary Judgment are entitled to no weight and the appellate court reviews the record de novo. All facts and reasonable inferences there from, must be viewed most favorable to the party resisting the motion..In re marriage of the littlefield, 133un 2d 34 46-47, 9 40 p2d 1362 (1997); “A trial courts abuses its discretion if its decision is manifested unreasonable or based on intangible grounds of unobtainable reasons. A courts decision is manifested unreasonable if it ‘s outside the range of acceptable choices. Given the facts and the applicable legal standard; it is based on grounds if the factual findings are unsupported by the record it is based on unobtainable reasoning. If it is based upon an incorrect standard of the facts do not need the requirement of the correct standard.”.

“If reasonable minds could draw different conclusions summary Judgment is improper” Chelan County DeputySherriffs Association v Chelan County 109 Wn.2d 282,745P.2d 1 (1987) (CP39) (CP 21) states that Plaintiff has not given up his legal rights.

ARGUMENT

A CSL Plasma's Motion was not properly placed before the court. Defendant did not try to place it before the assigned judge but did not do so timely. The (CP 107) was dated January 22, 2014 but the note for motion docket date filed on the Superior Court Case Summary is 01/27/14. Was the date for the Motion set for 02/01/14 as the designation of clerk papers say? Or was the Motion for Summary Judgment set for 02/07/14 as the Superior Court Case Summary says? Plaintiff did not receive the (CP107) Note (which contained no certificate of service) within the requirements of LCR 56.

A1 LCR 56 states that "the motion must be served and filed at least 28 days prior to the hearing" (01/27/14) (Superior Court Case Summary line 23) which was to take place either

02/01/14 (Designation of clerk papers Line 23) or 02/07/14 (CP 107 with no certificate of service). If we go from the filing date of 02/27/14 that calculates to only 4 days prior to a hearing on 02/01/14 and only 10 days prior to a hearing on 02/07/14.

A2 LCR 40 also states: "In the event a motion for summary judgment, partial summary judgment or dismissal is to be argued, counsel or the moving party is required to comply with the requirements of notice in LCR 40 (b) (10)

A3 LCR 40 states that "continuances will be considered only upon written motion, (none were written), for unforeseeable emergencies, for good cause shown, and upon terms the court deems just. No motion for continuances will be considered unless signed by the attorneys of record and clients. Motions to change the trial date on a case where a case schedule order has been entered pursuant to LAR 0.4.1 shall be heard by the assigned judge on or before the date (of 1/10/14) designated in the case schedule order." (CP 125 and 132)

Because the defendant/attorney did not appear and did not request a continuance prior to the date of the hearing it should not have been continued for any of the six hearings.

A4 Plaintiff did not error when he question the defendant's court procedures (Respondents brief page 5-6), he spoke and wrote that the defendant was not following the CR 56 and LCR 40 (CP) 113 thru 138. (Respondents brief page 11 # 4) (CP 123) document shows attorney knew of the hearing and also that she declined to negotiate. **Plaintiff made two requests (CP 104 and 111) they refused both times. (Respondents brief page 11 # 5) (CP 71-72). Plaintiff did not error in requesting the court to notify Defendant that they were to appear for the (CP 83) JSC "You are required to attend a case status conference before your ASSIGNED JUDGE on the date also noted above. The joint

status report MUST be completed and brought to the status conference...”

A5 There should have been no need to make a formal request for discovery. As you have just read in the statement above The joint status report MUST be completed and brought to the status conference. Most of the discovery is done at this meeting before the conference and trial.

B RCW 4.16.080(2) v RCW 4.16.350 (RP 6)

B1 RCW 4.16.080(2) does not apply with this claim because it refers to real property not to medical mal practice claims. (4.16.080 also states in subsection (4)) “ An action for relief upon the grounds of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud, and (6) The cause of action...shall not be deemed to accrue or to have accrued until

discovery by the aggrieved party of the act or acts from which such liability has arisen or shall arise, and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statute of limitation, or the bar thereof, even though complete, shall exist and be enforceable for three years after discovery by aggrieved party of the act or acts from which such liability has arisen or shall arise.”

Even if RCW 4.16.080(2) did apply, within this RCW is the RCW 4.16.040 implementing that “an action commenced upon a contract in writing, or liability express or implied arising out of a written agreement... shall be commenced within 6 years.”

B2 Defendant was served a medical malpractice/personal injury complaint and summons in September 2013, RCW 4.16.350 Plaintiff did not know the cause of action until 07/08/13 before sending the medical mal practice/personal injury claim in September to Defendant. Plaintiff had no relevant facts until the 07/08/13 before filing the claim. Plaintiff filed a medical mal

practice/personal injury claim. (Brief of Appellant Page 34)

WHICH EVER PERIOD EXPIRES LATER (CP) 35 RCW

4.1.350(3) code states: an entity....including but not limited to

(This includes the defendant because they employ one or more

persons described in this section) DeYoung v Providence Medical

Center, 136 Wn 2d 136 (1998). Therefore Plaintiff should have up

to 8 years to file for damages. Plaintiff filed within one year of

discovery. Plaintiff realized in Washington the statutory

limitation period begins to run at such time as the Plaintiff has

the right to apply to court for relief. (Brief of Appellant PG 28)

Haslund v. Seattle, 86 Wn2d 607,547 P2d 1221 (1976) each

element of the cause of action must be susceptible of proof.

C (CP21, 23) Physicians signature, RCW 4.16.350.

“Any civil action for damages for injury occurring as a result of

health care which is provided after June 25, 1976, against (1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physicians' assistant, nurse practitioner, or physician's trained intensive care paramedic including, in the event such person is deceased, his or her estate or personal representative; (2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his or her employment, including, in the event such (CP 23) employee or agent is deceased, his or her estate or personal representative, or (3) An entity, whether or not incorporated, Facility (Respondent's brief page 14 they state they are a "plasma collection Facility) or institution employing one or more persons described in subsection (1) of this section including but not limited to, (CP 21) (Center Physicians signature), a hospital, clinic, health maintenance organization, or nursing home, or an officer director, employee, or agent thereof acting in the course and scope of his or her employment, including, in the event such officer, director, employee, or agent is deceased, his or her estate or personal

representative; based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, OR one year of the time the patient or his or her representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, WHICHEVER PERIOD EXPIRES LATER, CP)35 except in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose of effect, until the date the patient or patient's representative has actual knowledge of the act of fraud or concealment, or of the presence of the foreign body, the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages.”

FDA Title 21 code of Federal regulations part 640. States

“A qualified licensed physician (Respondent's brief page24) (CP 21 and 23)(physicians signature)shall be on the premises when donor suitability is being determined, immunizations are

being made, whole blood is being collected, and red blood cells are being returned to the donor.”

D1 Plaintiff did visit Dr Wang as he did other

doctors but the significance of this letter (CP) Exhibit A – was that the defendant presented evidence showing the plaintiff was not at their facility after April 22,2009 (CP) 19 but this letter from the defendant to Dr, Wang shows clearly that the Plaintiff was treated at Defendants facility in May and June 2009. Plaintiff asked but told it was all a normal reaction. Later he was told it was just delusional parasitosis.

D 2 (Respondents brief page 18) talks about foreign body.(CP 49,51) RCW 4.16.350 (3)” Provided that the time for commencement of an action is tolled upon proof of fraud, intentional concealment or the presence of foreign body, the patient has one year from the date of the actual knowledge in which to commence a civil action for damages.”

CONCLUSION

I am asking for after my appeal to seek review and an order to vacate/dismiss by the court of appeal Division III of the state of WA be granted. After review of the circumstances surrounding this case, the case laws and in Washington the statutory limitation period begins to run at such time as the Plaintiff has the right to apply to court for relief. (Brief of Appellant PG 28) Haslund v. Seattle, 86 Wn2d 607,547 P2d 1221 (1976), and realizing that this is an uncharted field in the medical field of US doctors and only known to a handful of scientist in the defendants employment, it is plain to see that Plaintiff was timely in presenting his medical mal-practice/personal injury claim. The added fraud/concealment factor has made it almost impossible to find information to present to plaintiffs doctor so they could treat Plaintiff properly. The manipulation of court dates by Defendant's attorney causes havoc

*****	Last Name YORK	+ First Name MICHAEL	+ J+
Address 2714 N. STONE		Sal.	+
		*Phone (509) 251-4610	
City SPOKANE		Work Phone	
State WA WASHINGTON	+	*DoB 03/12/1979	
Zip 99207		Language E ENGLISH	
App Status Q QUALIFIED		Addr. Confirmed Y YES	
Visits 17		Conf. Date 12/22/2008	
Ref. Don.#		+ Applicant Date 12/22/2008	
*SSN 535-88-5674	*INS	*Old Donor #	
YTD Start	YTD Visits	Recruit	
Don. Prgm. 00024 NORMAL TALECRIS+		Status A ACTIVE	
Blood Type	+ First Donation Date 12/22/2008	Last Donation Date 04/26/2009	
Rh		Adv. Appt?	
Item # 02021020 PLASMA, S HA+		Plan. Don. Freq.	Act. Don. Freq. 6
Gender M MALE		Total Donations	17
Eligible			

The individual's surname
Count: *1

<OSC><DBG>

<Replace>

Donor Program card.(CP 19) states normal Talecris- not IRBC program (CP 21.. Signed documents Defendant supplied says signed April 22 2009 for IRBC program (CP 21, 23). Dr. Wangs report with the dates of actual injections according to a letter the doctor received from the defendant. (CP 43) Plaintiff signed documents on 5/1/09 not 4/22/09 as the evidence the defense submitted states. Defendant states plaintiff (CP16) Plaintiff participated in the (IRBC) program 4/22-26/2009. If that were true it would be on the donor card. The evidence clearly shows the documents are fraudulent.

*Issue	* Defendant's records	*Plaintiff's records
*Last donation date	* 04/26/09 (CP19)	* 06/05/09
*Donor Program	* NORMAL TALECRIS+	* (IRBC)
*Blood Type	* Rh (CP19)	* B Rh-negative (CP43)
*Date on top of card	* 04/27/09 (CP19)	* (CP43) states
	Where are records	Plaintiff received Red
	for May and June?	Cells 5/1 and 6/1/09
		and made regular
		Plasma Donation.

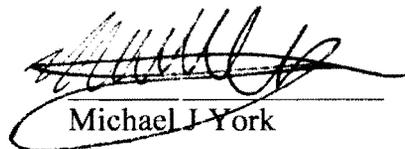
BCMF6230 LALEXAND622 Item # 02021020 PLASMA, S HA+

EXHIBIT A-1

on both the Court and the plaintiff. (RP 12) JUDGE "Is the issue of when does the statues of limitations start" The party moving for summary judgment bears the burden of demonstrating the absence of any genuine issues of material fact. We cannot deny that the plaintiff became ill. The question is when did plaintiff have cause to a claim? Was it when the doctors told plaintiff he had an imaginary illness, Dilusional Parasitosis? That is not a valid claim Plaintiff has the right to file for relief in the state of WA when he discovered and identified foreign bodies that had come out of plaintiffs' body. pray that the order granting defendants summary judgment be vacated.

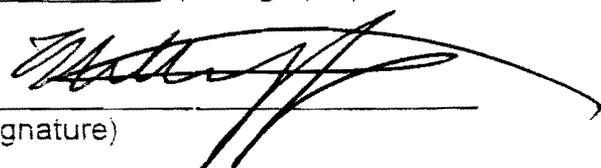
Date: October 22, 2014

Respectfully submitted,


Michael J York

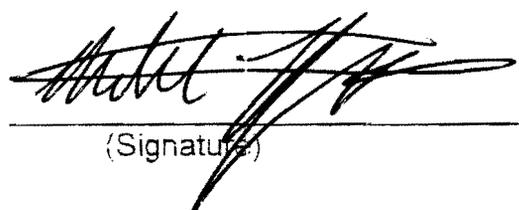
CERTIFICATE OF SERVICE

I certify that I mailed a copy of the foregoing Reply Brief of Appellant
to Bennet Bigelow Reddon, Attorney for CSL Plasma Aka ZLB Plasma
at 601 Union St Suite 1500 Spokane WA 98101, postage prepaid, on
[date] Oct 22, 2014.


(Signature)

I certify (or declare) under penalty of perjury under the laws of the State of Washington
that the foregoing is true and correct:

Oct 22, 2014 Spokane WA
(Date and Place)


(Signature)

25 Page Reply Brief of Appellant + 5 intro pages plus cert of service