

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BRIAN L. NORDWALL, a single man,

Appellant,

v.

ERIC J. HEIT, DPM and JANE DOE
HEIT, individually and as a marital
community; VIRGINIA MASON
MEDICAL CENTER, a nonprofit
organized under the laws of the state
of Washington,

Respondents.

No. 81317-0-I

DIVISION ONE

UNPUBLISHED OPINION

APPELWICK, J. — Nordwall appeals the trial court’s grant of summary judgment dismissing his medical malpractice claim. He argues that his claim is not barred by the applicable statute of limitations. We affirm.

FACTS

On February 24, 2016, Dr. Eric Heit performed a bunionectomy surgery on Brian Nordwall’s foot at Virginia Mason Medical Center.

On March 3, 2016, Dr. Heit conducted a postoperation follow-up appointment with Nordwall. At that time, he assessed that Nordwall was healing well without complications.

On March 22, 2016, the two had another appointment, where Heit again assessed that Nordwall was healing well without complication.

On April 5, 2016, they had another appointment. At that appointment, Dr. Heit ordered x-rays of Nordwall's foot, and again assessed that he was healing well without complications.

On July 7, 2016, Nordwall, feeling that something was not right with his recovery, decided to go to another doctor, Dr. Michael Brage. Dr. Brage ordered x-rays of Nordwall's foot.

On July 28, 2016, Dr. Brage showed Nordwall the x-rays of his foot. He communicated his opinion that the pins in Nordwall's second toe had been improperly affixed during Dr. Heit's surgery.

On July 26, 2019, Nordwall brought this suit for medical malpractice against Dr. Heit and Virginia Mason. The defendants sought summary judgment, arguing that the applicable statute of limitations had already run on the claim. The trial court granted the motion.

Nordwall appeals.

DISCUSSION

Nordwall argues that the trial court erred in granting the defendants' motion for summary judgment. Specifically, he argues that the three year statute of limitations on his suit did not begin to run until July 28, 2016. Summary judgment is appropriate where there are no genuine issues of fact and the moving party is entitled to judgment as a matter of law. CR 56(c). We review summary judgment

decisions de novo, engaging in the same inquiry as the trial court. Gunnier v. Yakima Hear Ctr., Inc., 134 Wn.2d 854, 858, 953 P.2d 1162 (1998).

A medical malpractice suit must be brought either within three years of the act or omission that caused the plaintiff's injury, or within one year of the time the plaintiff discovered or reasonably should have discovered their injury was caused by the act or omission, whichever is later. RCW 4.16.350(3). A plaintiff may also allege that their injury is the result of a continuing negligent course of treatment, in which case they must bring their suit within three years of the last negligent act committed by the defendant. Caughell v. Grp. Health Coop. of Puget Sound, 124 Wn.2d 217, 229, 876 P.2d 898 (1994); see also Bixler v. Bowman, 94 Wn.2d 146, 150, 614 P.2d 1290 (1980) (legislature modified the event which triggers the statute of limitations from termination of treatment to last act of the defendant).

Here, the dates are not in dispute. The surgery that allegedly caused Nordwall's injury occurred on February 24, 2016. The last date that Nordwall received treatment of any kind from Dr. Heit was April 5, 2016. That is the latest possible date that Dr. Heit could have committed a negligent act. And, Nordwall claims to have discovered that his injury was caused by Dr. Heit's treatment on July 28, 2016.

Nordwall needed to file on the later of February 24, 2019 (three years from the date of injury), April 5, 2019 (three years from the latest potentially negligent act by Dr. Heit), or July 28, 2017 (one year from discovery that his injury was allegedly caused by Dr. Heit's treatment). The latest of these dates is April 5, 2019.

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Nordwall did not file his suit until July 26, 2019. His suit is barred by the statute of limitations.

We affirm.

Lippelwick, J.

WE CONCUR:

Smith, J.

Andrus, A.C.J.