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Washington State
Court of Appeals
Division Two

January 4, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

RALLAND LEROY WALLACE, Appellant, DARLENE WALLACE, Plaintiff, v. CHEHALIS SCHOOL DISTRICT, a local government entity Respondent.	No. 49838-3-II UNPUBLISHED OPINION

JOHANSON, J. — Ralland Leroy Wallace appeals from the superior court's order granting summary judgment and dismissal of Wallace's negligence claim filed against the Chehalis School District. The District asserts that the three-year statute of limitations has expired. Wallace argues that equitable estoppel precludes the District from asserting the statute of limitations defense. We affirm.

FACTS

On December 11 or 12, 2012, Wallace was injured when he fell watching a sporting event at a Chehalis high school. A short time later, the District's athletic director told Wallace that "'we have insurance to cover this type of thing.'" Clerk's Papers (CP) at 74. Wallace went to the school

district office several times "to get the paperwork, but no one could find it." CP at 75. Wallace believed that a claim for his injury was being processed. Eventually, Wallace obtained a copy of the "Chehalis School District Accident Report Form" that was completed November 10, 2015, nearly three years after the initial incident. The form states that it is "to be used for all accidents." CP at 76 (capitalization omitted).

On December 22, 2015, more than three years after the incident, Wallace served the District with a claim for damages for injuries sustained in his fall. On February 24, 2016, Wallace filed a lawsuit against the District. The District filed a motion for summary judgment and dismissal based on the three-year statute of limitations. Wallace argued that his claim survives summary judgment under the equitable estoppel doctrine. On December 2, 2016, the superior court granted the District's summary judgment motion. Wallace appeals the summary judgment and dismissal of his negligence claim against the District.

ANALYSIS

Wallace asserts that the District's statement that it had insurance to cover the fall, statements that it could not find paperwork regarding Wallace's accident, and completion of the accident report raise issues of material fact regarding whether Wallace was reasonably induced to delay filing his lawsuit. The District argues that the undisputed facts do not support equitable estoppel. We reject Wallace's argument and hold that the superior court properly granted summary judgment and dismissal of his negligence claim.

A. PRINCIPLES OF LAW

We review summary judgment orders de novo. *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). We consider all the facts submitted to the superior court and all reasonable

inferences from the facts in the light most favorable to the nonmoving party. *Keck*, 184 Wn.2d at 370. Under CR 56(c), the moving party is entitled to summary judgment if it submits affidavits establishing it is entitled to judgment as a matter of law. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). "The nonmoving party avoids summary judgment when it 'set[s] forth specific facts which sufficiently rebut the moving party's contentions and disclose the existence of a genuine issue as to a material fact.'" *Ranger Ins. Co.*, 164 Wn.2d at 552 (quoting *Meyer v. Univ. of Wash.*, 105 Wn.2d 847, 852, 719 P.2d 98 (1986)).

"Equitable estoppel is not favored, and the party asserting estoppel must prove each of its elements by clear, cogent, and convincing evidence." *Robinson v. City of Seattle*, 119 Wn.2d 34, 82, 830 P.2d 318 (1992). The elements to be proved are (1) "an admission, statement, or act inconsistent with a claim afterward asserted"; (2) "action by another in reasonable reliance on that act, statement, or admission"; and (3) "injury to the party who relied if the court allows the first party to contradict or repudiate the prior act, statement, or admission." *Robinson*, 119 Wn.2d at 82. "Estoppel is appropriate to prohibit a defendant from raising a statute of limitations defense when a defendant has 'fraudulently or inequitably invited a plaintiff to delay commencing suit until the applicable statute of limitation has expired.'" *Robinson*, 119 Wn.2d at 82 (emphasis omitted) (quoting *Del Guzzi Constr. Co. v. Global Nw. Ltd.*, 105 Wn.2d 878, 885, 719 P.2d 120 (1986)).

The statute of limitations for personal injury actions is three years. RCW 4.16.080(2).

B. NO EQUITABLE ESTOPPEL

The District has the initial burden to show that there is no genuine issue of material fact regarding its affirmative defense and that it is entitled to judgment as a matter of law. *Ranger Ins. Co.*, 164 Wn.2d at 552. On December 11 or 12, 2012, Wallace was injured when he fell during a sporting event at a Chehalis high school. On December 22, 2015, more than three years after the incident, Wallace served the District with a claim for damages for injuries sustained in his fall. On February 24, 2016, Wallace filed a lawsuit against the District. The District met its initial burden on summary judgment by asserting that the three-year statute of limitations had expired. *Ranger Ins. Co.*, 164 Wn.2d at 552.

To avoid summary judgment, the burden shifts to Wallace to show that there is a genuine issue of material fact sufficient to rebut the District's contention that the statute of limitations bars Wallace's claim. *Ranger Ins. Co.*, 164 Wn.2d at 552. Wallace attempts to meet his burden by arguing that the District should be equitably estopped from raising the statute of limitations defense. The District argues that Wallace does not explain how the undisputed facts satisfy the first equitable estoppel element that the District made a statement inconsistent with a later claim. We agree with the District.

Wallace relies on *Marsh v. General Adjustment Bureau, Inc.*, 22 Wn. App. 933, 592 P.2d 676 (1979), to support his equitable estoppel claim. But *Marsh* is distinguishable. Marsh fell on a stairway at a college and filed a claim with the school's insurance representative. *Marsh*, 22 Wn. App. at 934-35. The representative told Marsh that he did not think the school was liable but would submit her claim to the insurance company. *Marsh*, 22 Wn. App. at 935. According to Marsh, the representative also told her that processing claims often took between six months and

a year and that Marsh should not be concerned if she did not hear about the claim before then. *Marsh*, 22 Wn. App. at 935. The insurance company later disputed this statement. *Marsh*, 22 Wn. App. at 935-36. The statute of limitations on the claim ran seven months after the discussion between Marsh and the insurance adjuster. *Marsh*, 22 Wn. App. at 935.

The superior court in *Marsh* granted the insurance company's summary judgment motion based on the expiration of the statute of limitations. 22 Wn. App. at 934. Division Three of this court reversed, holding that genuine issues of material fact existed regarding whether the insurance adjuster made the alleged inconsistent statement and whether Marsh reasonably relied on the statement such that equitable estoppel precluded the statute of limitations from barring the claim. *Marsh*, 22 Wn. App. at 936. But here, there is no genuine issue of material fact.

1. NO GENUINE ISSUE OF MATERIAL FACT

Here, the District does not dispute that it told Wallace that it had insurance, that it couldn't find the "paperwork" related to his accident, and that it completed an accident report. Thus, there is no genuine issue of material fact here regarding whether the District made the statements upon which Wallace relies.

2. NO INCONSISTENT STATEMENT

In addition, Wallace does not show that the District's three statements are *inconsistent* with a claim it later asserted. First, the District's statement that it had "'insurance to cover this type of thing'" was informational, and the District does not disagree that it has insurance to cover accidents like that which Wallace experienced. CP at 70. Second, the District's statements that it could not find "paperwork" related to Wallace's accident are not inconsistent with any subsequent District claim because the District did not later say it *could* find paperwork regarding Wallace's accident.

Although the District created an accident report for Wallace's fall on November 10, 2015, this form does not contradict the District's claim that it could not find paperwork before the accident report existed. Third, the District never made a statement inconsistent with the contents of the accident report. The District agrees that this accident occurred and does not deny facts recited in the accident report.

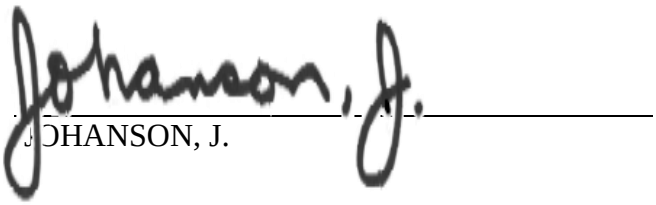
In short, the undisputed facts on which Wallace relies do not show that the District made an "admission, statement, or act inconsistent with a claim afterward asserted." *Robinson*, 119 Wn.2d at 82. As such, Wallace has not provided evidence to support the first element of equitable estoppel. Unlike *Marsh*, Wallace has failed to set forth facts which sufficiently rebut the District's contentions, and he has failed to show the existence of a genuine issue of material fact regarding equitable estoppel. *Ranger Ins. Co.*, 164 Wn.2d at 552.

C. CONCLUSION

Here, Wallace fails to show that there is a genuine issue of a material fact that the District inequitably invited Wallace to delay filing his claim and lawsuit until after the statute of limitations had expired. Accordingly, we hold that the superior court properly granted summary judgment and dismissal of Wallace's negligence claim because the statute of limitations has expired and Wallace has failed to show that the District is equitably estopped from asserting this defense.

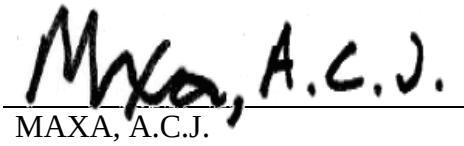
We affirm.[1]

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

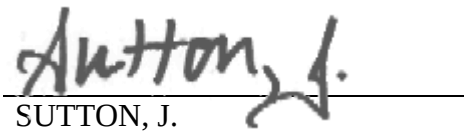


JOHANSON, J.

We concur:



MAXA, A.C.J.



SUTTON, J.

[1] Because Wallace's claim fails on the first element, we do not reach equitable estoppel's remaining elements.