COURT OF APPEALS
DECISION
DATED AND RELEASED

September 6, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-2292

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

WILLIAM SHEW and BARBARA SHEW,

Plaintiffs-Respondents,

v.

BRUCE ROBERTS, DIANA ROBERTS, SCOTT ROBERTS and ALLSTATE INSURANCE COMPANY, a foreign corporation,

Defendants-Appellants.

APPEAL from an order of the circuit court for Waukesha County: ROGER P. MURPHY, Judge. *Reversed.*

Before Brown, Nettesheim and Snyder, JJ.

SNYDER, J. This is an appeal from an order denying a motion for a summary judgment dismissal of William and Barbara Shew's cause of action based upon their failure to comply with the applicable statute of

limitations and from the trial court's holding that the Shews' action was timely filed as a matter of law. We conclude that a material issue of fact exists as to when the Shews discovered the alleged injury, and, therefore, summary judgment is inappropriate.

In 1974, at age 6, Barbara was removed from the home of her biological parents and placed in Bruce and Diana Roberts' licensed foster home. The Roberts legally adopted her three years later, and she resided with the Roberts until she was sixteen years old. Barbara alleges that from 1974 to 1982 she was subjected to various forms of sexual assault and abuse by her adoptive father, Bruce, and adoptive brother, Scott Roberts, and suffers psychological and emotional injuries as a result. She further alleges that Diana was aware of the abuse and failed to intercede.

During her senior year in high school, 1985-86, Barbara first obtained counseling to deal with problems related to her feelings toward men and fears of intimacy. In 1987, during her freshman year in college, Barbara received therapy and hospital care for anorexia nervosa and suicidal tendencies. During the therapy sessions, issues which surfaced included her anger toward her adoptive parents, fear of people in general and specifically fears of intimacy with men.

After a year of marriage, Barbara again sought counseling and therapy in 1992 in response to a sexual dysfunction problem affecting her relationship with her husband. Her therapists concluded that problems in this area were caused by the sexual abuse she had experienced as a child and that

Barbara had coped with her problems by blocking out certain events of her childhood, leaving her unaware of the nature and extent of the injuries suffered as a result of the childhood sexual abuse. Barbara then brought this action seeking compensation for her damages from the Roberts, whom she held responsible for her injuries, and their insurer, Allstate Insurance Company.

The Roberts moved for summary judgment dismissal contending that Barbara discovered her injuries no later than 1987-88, and therefore the Shews' cause of action was barred by the relevant statutes of limitation.[1] The trial court granted summary judgment to the Shews after finding that the injury was discovered in 1992 and that the cause of action was therefore timely as a matter of law.

We review decisions on summary judgment de novo, applying the same methodology as the trial court. ***Armstrong v. Milwaukee Mut. Ins. Co.***, 191 Wis.2d 563, 569, 530 N.W.2d 12, 15 (Ct. App. 1995). That methodology, set forth in § 802.08(2) STATS., has been recited often and we need not repeat it here. *See* ***Armstrong***, 191 Wis.2d at 569, 530 N.W.2d at 15. If the trial court has incorrectly decided a legal issue and there are material facts in dispute, reversal is appropriate. ***Germanotta v. National Indem. Co.***, 119 Wis.2d 293, 297, 349 N.W.2d 733, 735 (Ct. App. 1984).

[1] The statute of limitations for intentional torts is two years from the date the cause of action accrues. Section 893.57, STATS. The statute of limitations for negligence actions is three years from the date the cause of action accrues. Section 893.54(1), STATS. However, when the tort is committed against a minor child, the suit can be brought within two years of the plaintiff's eighteenth birthday. Section 893.16(1), STATS.

Wisconsin adopted the discovery rule for cases of incestuous abuse in ***Hammer v. Hammer***, 142 Wis.2d 257, 418 N.W.2d 23 (Ct. App. 1987). Laura Hammer sued her father, alleging incestuous abuse occurring when she was between five and fifteen years of age. Laura had informed her mother of the abuse when she was fifteen, but both parents had trivialized her complaint. It was not until she underwent therapy that Laura realized the connection between her psychological/emotional problems and the sexual abuse during her childhood. *See* ***id.*** at 261-62, 418 N.W.2d at 24-25.

At the time of the ***Hammer*** complaint, Laura was twenty-one, and the relevant statute of limitations for an action by a minor for such abuse was two years after attaining majority. *See* ***id***. at 260 & n.4, 418 N.W.2d at 24; § 893.16(1) STATS. The court of appeals addressed the timeliness of Laura's lawsuit and concluded that a cause of action for incestuous abuse arises when "the victim discovers, or in the exercise of reasonable diligence should have discovered, the fact and cause of the injury." ***Hammer***, 142 Wis.2d at 264, 418 N.W.2d at 26. Until the nature of the injury is known, a cause of action will not accrue. *See* ***Hansen v. A.H. Robins Co.,*** 113 Wis.2d 550, 559, 335 N.W.2d 578, 582 (1983). Therefore, if a plaintiff can allege that it was not possible to discern the connection between the abuse and the latent injuries, a motion to dismiss can be averted. ***Pritzlaff v. Archdiocese of Milwaukee,*** ___ Wis.2d ___, 533 N.W.2d 780, 787 (1995). Barbara contends that the latent injury she suffered was the marital sexual dysfunction that was discovered in 1992. It is on this basis that she seeks to assert her claim.

Summary judgment is inappropriate when reasonable people might disagree as to the significance of facts or when different interpretations of the evidence are possible. ***Park Bancorporation, Inc. v. Sletteland***, 182 Wis.2d 131, 141, 513 N.W.2d 609, 613 (Ct. App. 1994). The date of discovery is generally a question of fact for a jury. ***Stroh Die Casting Co. v. Monsanto Co.***, 177 Wis.2d 91, 104, 502 N.W.2d 132, 137 (Ct. App. 1993). Even Barbara's appellate counsel concedes that "at the very least, a question of fact exists as to when [she] discovered her injury and its cause."

We conclude that the denial of summary judgment to the Roberts was correct because a genuine issue of material fact exists as to the date of discovery of the injury arising from the alleged incestuous abuse. For this same reason, we reverse the summary judgment order holding that the cause of action was timely as a matter of law.

By the Court.—Order reversed.

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