COURT OF APPEALS
DECISION
DATED AND RELEASED

August 1, 1995

No. 95-0046

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

HENRY D. WITKOWSKI,

Plaintiff-Appellant,

v.

COUNTY OF MILWAUKEE,
CORPORATION COUNSEL,
MILWAUKEE COUNTY BOARD,
and MILWAUKEE COUNTY MENTAL
HEALTH CENTER & PERSONNEL,

Defendants-Respondents.

APPEAL from an order of the circuit court for Milwaukee County: LOUISE M. TESMER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Henry D. Witkowski, *pro se*, appeals from the trial court's order dismissing his *pro se* complaint against the County of Milwaukee,

Corporation Counsel, Milwaukee County Board and Milwaukee County Mental Health Center and Personnel.[1]

It is not always easy to decipher *pro se* petitions. Therefore, courts have a responsibility to identify the nature of the issues raised and relief sought in *pro se* petitions. *See* ***bin-Rilla v. Israel***, 113 Wis.2d 514, 519–520, 335 N.W.2d 384, 387–388 (1983). Although the allegations contained in Witkowski's complaint are somewhat unclear, the complaint appears to allege that Witkowski was forcibly detained in the Milwaukee County Mental Health Complex thirteen times from February, 1954 through March, 1965. During this detention, Witkowski received psychiatric care and treatment from various County psychiatrists. Witkowski alleges that he suffered permanent injuries, including past and future pain, heartache, anguish, disability, loss of enjoyment of life, past and future medical expenses and other compensable injuries due to being forcibly detained and treated by the County psychiatrists. Therefore, the trial court treated Witkowski's complaint as one sounding in medical malpractice as well as a violation of Witkowski's civil rights for the unlawful detention. The trial court granted the County's motion for dismissal for failure of Witkowski to bring his action within the applicable statutory period of limitations. We affirm.

Given the undisputed facts before us, the applicability of a statute of limitations is a question of law for our *de novo* review. ***Shanak v. City of Waupaca***, 185 Wis.2d 568, 585, 518 N.W.2d 310, 316 (Ct. App. 1994). The two statutes involved are §§ 893.53 and 893.55, STATS. Section 893.53, which applies to civil-rights actions against such entities as the County, *see* ***Gray v. Lacke***, 885 F.2d 399 (7th Cir. 1989), provides as follows:

> An action to recover damages for an injury to the character or rights of another, not arising on contract, shall be commenced within 6 years after the cause of action accrues, except where a different period is expressly prescribed, or be barred.

[1] For ease of reference, the defendants will be collectively referred to as "the County."

Further, § 893.55, STATS., applying to medical malpractice actions, states in relevant part:

> (1) Except as provided by subs. (2) and (3), an action to recover damages for injury arising from any treatment or operation performed by, or from any omission by, a person who is a health care provider, regardless of the theory on which the action is based, shall be commenced within the later of:
>
> (a) Three years from the date of the injury, or
>
> (b) One year from the date the injury was discovered or, in the exercise of reasonable diligence should have been discovered, except that an action may not be commenced under this paragraph more than 5 years from the date of the act or omission.

Whether Witkowski's claim is barred or preserved depends upon when it accrued and thereby commenced the running of the statute of limitations. ***Hansen v. A. H. Robins, Inc.***, 113 Wis.2d 550, 554, 335 N.W.2d 578, 580 (1983). According to ***Hansen***, the discovery rule applies to all tort actions. Such actions shall accrue on the date the injury is discovered or with reasonable diligence should have been discovered, whichever occurs first. ***Id.***, 113 Wis.2d at 560, 335 N.W.2d at 583.

Witkowski's complaint alleges that he was confined by the County from February, 1954 through March, 1965. He claims to still be suffering from the consequences of his detention as well as the care and treatment he received from the County. Specifically, Witkowski states in his complaint that he was laid off from a job in 1982 as a result of his previous confinement. Analyzing Witkowski's complaint as sounding in medical malpractice, his complaint is time-barred. Section 893.55, STATS., provides a three year statute of limitations for filing medical malpractice actions from the date of injury or one year from the date the injury was discovered, or in the exercise of reasonable diligence, should have been discovered. Further, § 893.55 provides for a five year statute of repose on all medical malpractice actions. As alleged in the complaint, this cause of action accrued at the latest in 1982, the time when Witkowski

discovered he was still suffering from problems due to the acts of the County.[2] The pertinent provision setting forth the medical malpractice statute of repose contained in § 893.55 bars an action if the suit is not filed within five years after the date on which the allegedly negligent act or omission occurred. In this case, the allegedly negligent act or omission would be the care and treatment Witkowski received at the Milwaukee County Mental Health Complex, which occurred no later than March, 1965 when he was discharged from the hospital. Thus, Witkowski's claim should have been filed at the latest by March, 1970. Here, the statute of repose ended Witkowski's period for bringing his suit against the County prior to the discovery of his alleged injuries. Therefore, his claim is barred based on the passage of the five year statute of repose.

We reach the same result analyzing Witkowski's claim under a violation-of-his-civil-rights theory. Section 893.53, STATS., mandates that an action to recover damages based upon an injury to character or rights must be commenced within six years after the cause of action accrues. Under the same analysis employed above, Witkowski's civil-rights claim accrued in 1982, when he discovered that he was still suffering from problems due to his detention at the Milwaukee County Mental Health Complex. Under § 893.53, Witkowski had until 1988 to file his complaint alleging a violation of his civil rights against the County. Witkowski did not file his complaint until September 28, 1994. Accordingly, his action is time-barred. We affirm.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

[2] This cause of action could also be construed to have accrued in March, 1965 when Witkowski was released from the Milwaukee County Mental Health Complex. This accrual date would also render Witkowski's complaint time-barred by the statute of repose based upon the same analysis explained above as well as the statute of limitations contained in § 893.55, STATS.