

Order

Michigan Supreme Court
Lansing, Michigan

April 19, 2024

Elizabeth T. Clement,
Chief Justice

166439

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

GERALD G. KESTI,
Plaintiff-Appellant,

v

SC: 166439
COA: 362408
Houghton CC: 21-017637-CH

DUANE T. WILLIAMS, DEBORAH S.
WILLIAMS, PATRICK H. SCHAEFER, and
CAROL J. SCHAEFER,
Defendants-Appellees.

On order of the Court, the application for leave to appeal the October 26, 2023 judgment of the Court of Appeals is considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals to the extent it held that all of the plaintiff's claims were barred by the applicable statute of limitations and VACATE the July 19, 2022 order of the Houghton Circuit Court. We REMAND this case to the circuit court with instructions to reconsider, consistently with this order, the defendants' requests for summary disposition under MCR 2.116(C)(7) while individually determining the accrual date for each of the plaintiff's five pleaded claims for purposes of its statutory period of limitations.

Under MCL 600.5827, the period of limitations runs from the time a claim accrues, and "the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results." A claim accrues "when all of the elements of the cause of action have occurred and can be alleged in a proper complaint." *Sunrise Resort Ass'n, Inc v Cheboygan Co Rd Comm*, 511 Mich 325, 336 (2023), quoting *Connelly v Paul Ruddy's Equip Repair & Serv Co*, 388 Mich 146, 150 (1972). See also *Frank v Linkner*, 500 Mich 133, 152 (2017), quoting *Connelly*, 388 Mich at 150. "We . . . look to plaintiff's complaint to determine when the wrong upon which the claim is based was done." *Fraser Twp v Haney*, 509 Mich 18, 24 (2022).

The lower courts erred by analyzing the "gravamen" of the plaintiff's complaint rather than each individual claim when determining when the claims accrued. While it is appropriate to determine the gravamen of a legal claim when that cause of action has been filed with a different label to avoid an applicable period of limitations, this analysis should

not be used to prevent a plaintiff from bringing multiple different legal claims that are each supported by a viable legal theory and are legally plausible given the facts that have been alleged. See *Joliet v Pitoniak*, 475 Mich 30, 37, 42-45 (2006) (analyzing individually the plaintiff’s claims of alleged violations of Michigan’s Civil Rights Act, breach of contract, and misrepresentation to determine whether each was time-barred); *Adkins v Annapolis Hosp*, 116 Mich App 558, 563 (1982) (“The applicable period of limitations depends upon the theory actually pled when the same set of facts can support either of two distinct causes of action. The gravamen of an action is determined by reading the claim as a whole.”) (citation omitted), *aff’d* 420 Mich 87 (1984); *Campos v Gen Motors Corp*, 71 Mich App 23, 25-26 (1976) (“The same conduct, falsely accusing another of crime, may give rise to two causes of action [one being slander and the other intentional infliction of mental distress] depending on the interest which was injured.”); see also, *PCA Minerals, LLC v Merit Energy Co, LLC*, 725 F Appx 342, 348 (CA 6, 2018) (“Michigan courts do, indeed, conduct a gravamen analysis when a plaintiff attempts to avoid the applicable statute of limitations by ignoring the true nature of the wrong alleged and recasting it as a claim subject to a longer statute.”).

With the possible exception of the plaintiff’s claim for declaratory relief, it appears undisputed that the plaintiff’s claims are subject to a statutory three-year period of limitations under MCL 600.5805(2). The plaintiff’s claims, however, each have distinct legal elements and, if analyzed independently, could result in different accrual dates if the elements of each claim were alleged to have been satisfied at different times.

Therefore, the Court of Appeals and circuit court erred by analyzing the gravamen of the plaintiff’s claims collectively. This case is remanded to the circuit court for reconsideration of the defendants’ motions for summary disposition under MCR 2.116(C)(7). For purposes of determining the appropriate accrual dates, the circuit court is directed to individually analyze each pleaded legal claim in relation to the operative facts and determine the earliest date on which all the required legal elements occurred and could have been pleaded in a complaint. See *Haney*, 509 Mich at 24; *Sunrise*, 511 Mich at 336. As to the period of limitations and accrual date for Count I specifically, the circuit court should also determine whether the claim can fairly be read as seeking a declaration of the parties’ rights and obligations under the easement regarding the repair and maintenance of the bridge or whether the claim is actually an independent tort action in disguise.

We do not retain jurisdiction.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 19, 2024

Clerk

STATE OF MICHIGAN
COURT OF APPEALS

GERALD G. KESTI,

Plaintiff-Appellant,

v

DUANE T. WILLIAMS, DEBORAH S.
WILLIAMS, PATRICK H. SCHAEFER, and
CAROL J. SCHAEFER,

Defendants-Appellees.

UNPUBLISHED
October 26, 2023

No. 362408
Houghton Circuit Court
LC No. 21-017637-CH

Before: SHAPIRO, P.J., and M. J. KELLY and CAMERON, JJ.

PER CURIAM.

In this action alleging damage to real property as a result of flooding caused by modifications to a bridge, plaintiff, Gerald Kesti, appeals as of right the trial court’s order granting summary disposition under MCR 2.116(C)(7) in favor of defendants Duane Williams, Deborah Williams, Patrick Schaefer, and Carol Schaefer. For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

Kesti’s property is located downstream from a bridge that is subject to an easement owned by defendants. Kesti’s property is the servient estate for the easement. In a separate action that was resolved in 2013, it was determined that defendants had the duty to repair and maintain the easement—which consists of the roadbed and the bridge—in a safe, proper, and reasonable condition.

Defendants altered the bridge on two occasions. The first alteration occurred between 2006 and 2008 when defendants placed two vertical poles in the center of the bridge that were anchored in the bed of the river. The second alteration occurred in 2015 when defendants (1) expanded the bridge abutments by placing approximately 60 cubic yards of rock riprap behind three concrete retaining blocks along the banks of the river and (2) created a pier by building a metal cage around the two center poles and filling it with stone. On June 17, 2018, the area received a significant amount of rain that caused flooding to occur. Kesti’s property sustained significant damage as a

result of the flooding, including the loss of his cabin, which was picked up and “scattered over the river and banks approximately 300 feet downstream.”

On June 16, 2021, Kesti filed a claim against defendants, alleging that the bridge abutments and pier collected trees and debris during the rain storm, which resulted in the creation of “a massive dam.” He asserted that when the dam broke it created a wall of water that “washed out” his camp and personal property. Kesti testified during his deposition that the addition of the two vertical poles under the bridge between 2006 and 2008 changed the flow of the river and started to erode the east side of the abutment, which was owned by Kesti. Further, he stated that defendants made changes to the bridge in 2015 because a structural engineer assessed the bridge and “said that there was erosion that was starting to happen or was happening under the east side abutment.” Kesti explained that, to address the erosion, defendants were required to “pin” the poles down into the center and add riprap.

Defendants moved for summary disposition under MCR 2.116(C)(7), arguing that the claims asserted by Kesti arose from work performed on the bridge in 2007 or 2008 and were barred by the applicable three-year statutory period of limitations. Following a hearing on the motion, the trial court granted summary disposition under MCR 2.116(C)(7) in favor of defendants. The court found that the first harm to Kesti occurred either in 2008 with the addition of the vertical poles or 2015 with the addition of the abutment and riprap. Accordingly, the trial found that plaintiff’s claims were not timely. This appeal followed.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

Kesti argues that the trial court erred by granting summary disposition to defendants. We review de novo a trial court’s decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). Summary disposition pursuant to MCR 2.116(C)(7) is warranted when a claim is barred by the applicable statute of limitations. *Encompass Healthcare, PLLC v Citizens Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 357225); slip op at 3. Regarding a motion under MCR 2.116(C)(7), this Court will review affidavits, pleadings, and other documentary evidence presented by the parties and will accept as true the plaintiff’s well-pleaded allegations, except those contradicted by documentary evidence. *Oliver v Smith*, 290 Mich App 678, 683; 810 NW2d 57 (2010). This Court also reviews de novo whether a cause of action is barred by the applicable statute of limitations. *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 386; 738 NW2d 664 (2007).

B. ANALYSIS

1. GRAVAMEN OF COMPLAINT

Kesti argues that the trial court erred by considering the gravamen of his complaint instead of considering each claim individually, and that the trial court erred by finding that his claims are time-barred. We disagree.

“The true nature of a plaintiff’s claim must be examined to determine the applicable statute of limitations.” *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 457; 761 NW2d 846 (2008). “It is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim.” *Adams v Adams*, 276 Mich App 704, 710-711; 742 NW2d 399 (2007). In the context of claims for declaratory relief, our Supreme Court has held:

Limitations statutes do not apply to declaratory judgments as such. Declaratory relief is a mere procedural device by which various types of substantive claims may be vindicated. There are no statutes which provide that declaratory relief will be barred after a certain period of time. Limitations periods are applicable not to the form of the relief but to the claim on which the relief is based. [*Taxpayers Allied for Constitutional Taxation v Wayne Co*, 450 Mich 119, 128; 537 NW2d 596 (1995) (quotation marks and citation omitted).]

“Claims for declaratory relief necessarily derive from claims for substantive relief because declaratory relief lies only in cases of ‘actual controversy,’ and not merely for abstract declarations of rights divorced from a factual context.” *Id.* (citation omitted). Therefore, “[d]eclaratory relief may not be used to avoid the statute of limitations for substantive relief.” *Id.* at 129.

Kesti alleged the following claims in his complaint: (1) declaratory judgment, (2) trespass, (3) nuisance, (4) negligence, and (5) interference with riparian rights. Because Kesti alleged a claim for declaratory relief, we must look to the claim on which the relief is based. See *id.* at 128. The trial court found that the gravamen of all of Kesti’s claims “is the pursuit of retribution or recompense for property damage caused as the result of the June 2018 Father’s Day Flood in the area.” The allegations in Kesti’s complaint support the trial court’s finding. Kesti alleged that this action arises out of defendants’ use and modification of the bridge and that defendants’ actions “caused a damming of water behind the abutments.” He also alleged that “[t]he breach of the dammed water behind the abutments and pier caused a wave of water to surge downstream, moving downstream and destroying [his] cabin, damaging the bridge itself and causing other destruction or damage to [his] property.” Therefore, the gravamen of the declaratory-judgment claim is the alleged wrongful act that caused damage to Kesti’s property. Kesti further requests money damages under theories of trespass, nuisance, negligence, and interference with riparian rights, all of which pertain to the damage caused by the June 17, 2018 flood. Indeed, all of Kesti’s claims pertain to a claim for injury to property within the plain text of MCL 600.5805(2). Accordingly, the trial court did not err by considering the gravamen of Kesti’s complaint and concluding that the gravamen pertained to the recovery of damages caused by the 2018 flood.

2. STATUTE OF LIMITATIONS

MCL 600.5805 states in relevant part:

(1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, *after the claim first accrued* to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section.

(2) Except as otherwise provided in this section, *the period of limitations is 3 years after the time of the death or injury* for all actions to recover damages for the death of a person or for injury to a person or property. [Emphasis added.]

MCL 600.5827 defines when a claim accrues:

Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues. The claim accrues at the time provided in sections 5829 to 5838, and in cases not covered by these sections *the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results*. [Emphasis added.]

It is “clearly established that the wrong is done when the plaintiff is harmed rather than when the defendant acted.” *Trentadue*, 479 Mich at 388 (quotation marks, alteration, and citation omitted). Whether a claimant is aware of a basis for an action is of no relevance to determining when a claim accrues. See *id.* at 388-389. Rather, “[o]nce all of the elements of an action for . . . injury, including the element of damage, are present, the claim accrues and the statute of limitations begins to run.” *Connelly v Paul Ruddy’s Equip Repair & Serv Co*, 388 Mich 146, 151; 200 NW2d 70 (1972). “Later damages may result, but they give rise to no new cause of action, nor does [the] statute of limitations begin to run anew as each item of damage is incurred.” *Id.*

Kesti alleged that “[b]etween 2006 and 2008, Defendants altered the bridge by putting two vertical poles in the center of the bridge that were anchored in the bed of the river.” Kesti testified that the poles caused erosion on his property on the “east side” and that they “were already starting to divert the flow of the river to the east.” He added that defendants performed work on the bridge in 2015 because a structural engineer “said that there was erosion that was starting to happen or was happening under the east side abutment.” Kesti explained that the structural engineer told defendants to “pin” the poles to the bottom, and Kesti stated that “they put the riprap in . . . because of the erosion.” Accordingly, there is clear testimony that the change in velocity and course of the river before 2015 caused erosion to Kesti’s property, there is no evidence indicating that the velocity and course of the river stopped causing erosion or harm to Kesti’s property before the flood on June 17, 2018. Thus, although later damages resulted from defendants alterations to the bridge, the later damages, i.e., the 2018 flood, the statute of limitations did not begin to run anew. See *id.* And, because the claim accrued, in either 2007 or 2015, Kesti’s claim, which was filed in 2021, was outside the statute of limitations.

Affirmed. Defendants may tax costs as the prevailing parties. MCR 7.219(A).

/s/ Michael J. Kelly

/s/ Thomas C. Cameron

STATE OF MICHIGAN
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Plaintiff-Appellant,

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Defendants-Appellees.

UNPUBLISHED
October 26, 2023

No. 362408
Houghton Circuit Court
LC No. 21-017637-CH

Before: SHAPIRO, P.J., and M. J. KELLY and CAMERON, JJ.

SHAPIRO, P.J. (*dissenting*).

I respectfully dissent.

Generally, a claim accrues “at the time the wrong . . . was done regardless of the time when damage results.” MCL 600.5872. The Supreme Court has held that “[t]he wrong is done when the plaintiff is harmed rather than when the defendant acted.” *Trentadue v Gorton*, 479 Mich 378, 387; 738 NW2d 664 (2007) (quotation marks and citation omitted). “Otherwise, a plaintiff’s cause of action could be barred before the injury took place.” *Stephens v Dixon*, 449 Mich 531, 535; 536 NW2d 755 (1995).

In this case, plaintiff alleges that he was harmed on June 17, 2018, when his riverside property was flooded by a surge of water from the river. Plaintiff attributes the surge of water to the breaking of a massive dam that formed upriver at a bridge that is on his property but maintained by defendants. Around 2007, defendants added a center support to the bridge that they anchored in the riverbed. In 2015, they created a pier around this support by building a metal cage around it and filling the cage with stones; they also added bridge abutments along each riverbank. Plaintiff claims that the pier and abutments collected trees and debris, which created the dam. When the dam broke, it created a surge of water that washed out plaintiff’s camp and personal property.

The majority concludes that the limitations period began to run in either 2007 or 2015, the respective years in which the bridge alterations occurred. In reaching this conclusion, the majority notes plaintiff’s testimony that the center support diverted the river flow to the east and caused

erosion on the east side of the riverbank. The majority indicates that plaintiff first suffered harm when the riverbank began eroding, and that the statute of limitations began to run at that time.

I disagree with the majority's conclusion because the question before us is not when plaintiff suffered *any* "harm," in some general sense of the word. Rather, in determining when a cause of action accrues, "[t]he relevant 'harms' . . . are the actionable harms alleged in a plaintiff's cause of action." *Twp of Fraser v Haney*, 509 Mich 18, 24; 983 NW2d 309 (2022) (emphasis added; quotation marks and citation omitted). Accordingly, courts must "look to [the] plaintiff's complaint to determine when the wrong upon which the claim is based was done." *Id.* I find instructive the Supreme Court's recent decision in *Sunrise Resort Ass'n, Inc v Cheboygan Co Rd Comm*, 511 Mich 325; ___ NW2d ___ (2023). In that case, a road commission's modification of a storm drainage system caused "minor damage" to the plaintiff's property in 2015, and then "significant damage" to the property in 2018. *Id.* at 330. The Supreme Court held that the plaintiff's 2021 complaint, asserting a claim under the sewage-disposal-system-event exception to governmental immunity, MCL 691.1417, was timely filed because "the overflow and backup . . . referred to in the complaint was clearly the 2018 flooding, *not* the 2015 flooding." *Id.* at 338.

Similarly, in this case, plaintiff's complaint concerns the harm he suffered from the June 17, 2018 flooding of his property caused by the breaking of the dam; it does not seek recovery for harm related to the erosion of the riverbank that began years earlier. Indeed, the complaint does not make any allegations regarding erosion. Thus, the erosion is not the relevant harm on which plaintiff based his complaint. Further, based on the record before us, the erosion did not contribute to the artificial damming of the river. The dam and the erosion of the east riverbank are related in that they both appear to have been caused by defendants placing the center support under the bridge—that is, the center support collected debris that formed the dam, and it diverted the flow of the river east, leading to erosion. But the erosion itself did not cause or contribute to the accumulation of debris forming the dam. Thus, the mere fact that erosion occurred has no bearing on when plaintiff's claim regarding the later collapse of the dam and the resulting flooding accrued.

For these reasons, I would conclude that the relevant alleged harm occurred on June 17, 2018, and that plaintiff's June 16, 2021 complaint was timely filed within the three-year limitations period.

/s/ Douglas B. Shapiro