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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

DANIELA CASTILLO, Plaintiff and Appellant, v. PRICE PFISTER, INC. et al., Defendants and Respondents.	B280698 (Los Angeles County Super. Ct. No. PC053682)

APPEAL from a judgment of the Superior Court of Los Angeles County. Stephen P. Pfahler, Judge. Affirmed.

Law Offices of Everardo Vargas Valencia and Everardo Vargas Valencia for Plaintiff and Appellant.

Lester & Cantrell, Kevin R. Crisp and Colin A. Northcutt for Defendants and Respondents Black & Decker (U.S.) Inc. and Stanley Black & Decker, Inc.

Mitchell Silberberg & Knupp, Jeffrey L. Richardson and Valentine A. Shalamitski for Defendant and Respondent Price Pfister, Inc.

Daniela Castillo (appellant) appeals the summary judgment entered in favor of Price Pfister, Inc. (PPI), Black & Decker (U.S.) Inc. (BDI), and Stanley Black & Decker, Inc. (Stanley) (collectively respondents) on her complaint for negligence and products liability. On appeal, she contends the trial court erred when it ruled her claims were time-barred by Code of Civil Procedure section 340.4.[1]

We find no error and affirm.

FACTS[2]

On September 10, 2012, appellant filed a complaint against respondents for negligence and products liability. The complaint averred that appellant's mother, Florentina Castillo (Florentina)[3] worked at respondents' foundry and was repeatedly exposed to toxic chemicals as well as heavy metals (collectively toxic substances). When Florentina became pregnant, these toxic substances passed through the placenta and into the fetus. As a result, appellant was born without a left hand or forearm. Also, the toxic poisoning affected her brain and, inter alia, her circulatory system. She alleged her injuries occurred on September 17, 1992. The complaint made no attempt to plead around the statute of limitations.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[2] Our statement of facts is short, in part, because appellant did not provide any citations to the record.

[3] Because appellant and Florentina share the same last name, we have opted to use Florentina's first name to avoid confusion.

Respondents jointly moved for summary judgment. They relied on section 340.4, the six-year limitation on actions by minors for personal injuries sustained before or during birth. They argued the complaint was barred because it had been filed more than six years after appellant's injuries, and further because she had not alleged any facts to implicate the delayed discovery rule.

The trial court granted the motion.

This appeal followed.

DISCUSSION

Upon consideration, we have determined the trial court properly interpreted the law with respect to the statute of limitations, and it properly granted summary judgment. In reaching this conclusion, we have engaged in independent review. (*Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 996 [statutory interpretation reviewed de novo]; *Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 84–85 [summary judgment reviewed de novo].)

I. Section 340.4 Bars This Action.

As established by the judicial admission in appellant's complaint, her injury occurred September 17, 1992. (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 746.) In 1992, former Civil Code section 29 provided a six-year limitation on a minor's action for personal injuries sustained prior to or in the course of his or her birth. The statute expressly made section 352 inapplicable.[4] (*Segura v. Brundage* (1979) 91 Cal.App.3d 19,

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[4] Section 352, subdivision (a) provides: "If a person entitled to bring an action, mentioned in Chapter 3 (commencing with Section 335) is, at the time the cause of action accrued either under the age of majority or lacking the legal capacity to make

22, fn. 1.) On January 1, 1994, Civil Code section 29 was repealed and replaced by section 340.4, which provides: "An action by or on behalf of a minor for personal injuries sustained before or in the course of his or her birth must be commenced within six years after the date of birth, and the time the minor is under any disability mentioned in Section 352 shall not be excluded in computing the time limited for the commencement of the action." Based on this statute, and absent allegations suggesting the statute was mitigated by tolling or the delayed discovery rule, the face of the complaint established that the statute ran in September 1998.

Appellant contends the trial court applied the wrong statute of limitations. She argues that the correct statute is section 340.8, which was enacted in 2003 and became effective January 1, 2004. It imposes a two-year limitation on actions for injury or illness based upon exposure to hazardous material or toxic substances. Pursuant to section 352, section 340.8 is tolled until a plaintiff reaches 18 years old, the age of majority. (§ 352; Fam. Code, § 6500.) Consequently, she would have us conclude the statute was tolled from September 17, 1992, to September 17, 2010, and her complaint was therefore timely filed within two years of that latter date.

Her argument attempts to make a bulwark out of the rule that a "later, more specific statute [is] . . . controlling over an earlier statute, even though the earlier statute would by its terms cover the present situation. [Citation.]" (*Young v. Haines* (1986) 41 Cal.3d 883, 894 (*Young*).)

This rule finds no purchase.

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decisions, the time of the disability is not part of the time limited for the commencement of the action."

In *Young*, plaintiff was injured during birth in 1972 and suffered disabilities as a result. Former Civil Code section 29 was in effect, and it was subject to the delayed discovery rule. Section 340.5 became operative in 1975, and it was intended to create a limitation period for "all personal injury claims arising from medical malpractice." (*Young*, *supra*, 41 Cal.3d at p. 894.) Subject to limited exceptions such as concealment of malpractice by a defendant, section 340.5 required an action to be filed within three years. For a minor, it required an action to be filed within three years or by his or her 18th birthday, whichever was later. Through a guardian ad litem, plaintiff filed a medical malpractice action in 1981 and alleged delayed discovery to toll former Civil Code section 29, i.e., her mother did not learn the cause of plaintiff's disabilities until a doctor explained it in July 1980. Plaintiff did not plead any of the tolling exceptions for section 340.5. A demurrer was sustained without leave to amend, and the case wended its way to our Supreme Court. *Young* noted that both statutes of limitations, by their terms, appeared to apply. It then determined that section 340.5 controlled because it was a later enacted statute, and the Legislature adopted it "as a response to a perceived 'major health care crisis in the State of California attributable to skyrocketing malpractice premium costs and resulting in a potential breakdown of the health delivery system. . . .'" (*Young*, *supra*, at p. 894.) According to the court, the "plain legislative intent, in California as in many other states [citation], was to treat all malpractice victims differently from other personal injury victims. [Citation.]" (*Ibid*.) The court concluded that plaintiff's claim was barred as pleaded but that she should have an opportunity to plead the statute was tolled due to defendant's concealment. (*Id*. at pp. 901–902.)

A pivotal demarcation between *Young* and the case at bar defeats the applicability of the urged rule. In *Young*, former Civil Code section 29 had not run at the time section 340.5 became operative. The effect of section 340.5 was simply to supplant former Civil Code section 29 midstream to require plaintiff to file a complaint by her 18th birthday in the absence of one of the grounds for tolling. Appellant here does not simply seek a holding that section 340.8 supplanted section 340.4 while the clock was winding down on the limitations period. What appellant seeks is a holding that section 340.8 breathes life back into a claim that was already time-barred. *Young* does not support such a holding because it did not decide whether section 340.5 revived an otherwise stale claim. (*Machado v. Superior Court* (2007) 148 Cal.App.4th 875, 881 [cases not authority for undecided issues].)

The rule that prevails and defeats appellant's position is the following: "Statutes generally operate only prospectively, and '[a] new statute that enlarges a statutory limitations period . . . applies to actions that are not already barred by the original limitations period at the time the new statute goes into effect.' [Citation.]" (*Nguyen v. Western Digital Corp.* (2014) 229 Cal.App.4th 1522, 1542 (*Nguyen*).) A statute revives a lapsed claim only if that revival is specifically provided for by a statute's language. (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 955 (*Quarry*) ["legislative enlargement of a limitations period does not revive *lapsed* claims in the absence of express language of revival"].) Here, because section 340.8 does not expressly revive lapsed claims, there is no basis for appellant to claim that statute applies.

In her reply, appellant contends that we should stay this appeal pending a decision by our Supreme Court in *Lopez v. Sony Electronics, Inc.* (2016 Cal.Lexis 6988) (*Lopez* S235357) regarding whether section 340.4 or section 340.8 governs actions based on birth and prebirth injuries. We decline. *Nguyen* and *Quarry* render the decision in *Lopez* immaterial to this appeal.

Also in her reply, appellant asks us to adopt the analysis of Justice Rubin in his dissenting opinion in the Court of Appeal decision that preceded *Lopez* S235357. (See *Lopez v. Sony Electronics, Inc.* (2016) 247 Cal.App.4th 444 (*Lopez* B256792).) Justice Rubin concluded that section 340.8 controls over section 340.4. (*Lopez* B256792, *supra*, 247 Cal.App.4th at p. 466 (dis. opn. of Rubin, J.).) There is no reason for us to weigh in on this matter. Whether we agree with Justice Rubin on the primacy of section 340.8, the matter is moot because it would not change the outcome of this appeal. *Nguyen* and *Quarry* establish that section 340.4 controls appellant's claim because it was stale before section 340.8 was operative.

II. Other Issues.

Shifting gears, appellant tries to capitalize on the delayed discovery rule. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, [statute of limitations does not begin to run until plaintiff has, or should have, inquiry notice of a cause of action].) She claims there is a triable issue of fact as to whether she can establish delayed discovery because she reasonably relied on respondents' denials of a connection between her injuries and her mother's exposure to toxic substances. (*Grisham v. Philip Morris U.S.A., Inc.* (2007) 40 Cal.4th 623, 637–638; *Pashley v. Pacific Elec. Ry. Co.* (1944) 25 Cal.2d 226, 229 ["when the defendant is guilty of fraudulent concealment of the cause of action[,] the

statute [of limitations] is deemed not to become operative until the aggrieved party discovers the existence of the cause of action"].) Moreover, she argues there is a triable issue of fact as to whether she was aware of wrongdoing prior to the foundry being closed. These issues are red herrings because appellant did not allege delayed discovery in her complaint and it therefore could not have dictated denial of summary judgment. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1253 [the pleadings delimit the issues to be considered on a motion for summary judgment].) Even if delayed discovery had been alleged, appellant's argument would be undermined by her failure to provide record citations to support the factual assertions in her briefs. (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050 ["'The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel'"].)

All other issues are moot.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT