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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LISA DOUGLASS,

Plaintiff and Appellant,

v.

RAJ KANODIA,

Defendant and Respondent.

B280696

(Los Angeles County
Super. Ct. No. BC 575746)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Mitchell L. Beckloff, Judge. Affirmed.

Lisa Douglass, in pro. per., for Plaintiff and Appellant.
Cole Pedroza, Kenneth R. Pedroza, Zena Jacobsen;
La Follette, Johnson, DeHaas, Fesler & Ames, Louis H. DeHaas,
and Maria Hovsepien for Defendant and Respondent.

In 2015, plaintiff and appellant Lisa Douglass filed suit for injuries she alleges she suffered at the hands of defendant and respondent Raj Kanodia, M.D., during plastic surgery in December 2009. The trial court granted Kanodia's demurrer to Douglass's cause of action for fraud, and later granted summary judgment in favor of Kanodia on Douglass's remaining cause of action for medical malpractice. In both instances, the court found that Douglass had failed to initiate her actions within the applicable statute of limitations. Douglass challenges these rulings, and we affirm.

FACTS AND PROCEEDINGS BELOW

Because this is an appeal from a grant of summary judgment, we describe the facts according to the applicable standard of review, "liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in favor of that party." (*State of California v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1017-1018.)

In 2009, Douglass met with Kanodia to discuss performing plastic surgery on her nose. Douglass had suffered a broken nose when she was 17 years old, and she told Kanodia she wanted him to restore it to its prior appearance. Kanodia told her that he would need to perform a septoplasty in order to rebuild her nasal valves. Kanodia assured her that he would make her nose look natural. Douglass signed a consent form in which she agreed to allow Kanodia to perform a "major septoplasty with partial vomerectomy, submucous resection, bilateral reconstruction of the internal nasal valves, bilateral inferior turbinate excision septorhinoplasty." Kanodia ultimately performed the surgery on Douglass on December 30, 2009. Prior to the surgery, Douglass asked Kanodia not to make her nose too small.

When the bandages were removed after the surgery, Douglass gasped because her nose had a “pinched” appearance. Douglass met with Kanodia several times during the course of 2010, and complained to Kanodia that the nose appeared dented on one side. Kanodia assured her that the nose looked good, and that the dented appearance was due to swelling that would subside within a year. Douglass also suffered frequent and serious sinus issues beginning at some point after the surgery.

Douglass met with Kanodia again in August 2011, at which point Kanodia told her the swelling could take up to two years to subside, and that her nose appeared the way he intended. Douglass could see, however, that the problems with her nose had nothing to do with swelling. Douglass attempted to see Kanodia again after August 2011, but she was never able to schedule an appointment with him. After the August 2011 meeting with Kanodia, Douglass consulted with other plastic surgeons, who offered to fix the problems with her nose, but she did not have enough money for the surgeries and did not believe the problems were serious enough to justify another surgery.

In December 2014, after she lost an acting job as a result of the appearance of her nose, Douglass consulted with three additional plastic surgeons to repair her nose. During these consultations, she learned that her nose was “internally collapsed” and “skeletonized,” and that it would need to be rebuilt using cartilage from around her rib. Douglass underwent a second surgery in January 2015. Afterward, the surgeon told Douglass that Kanodia’s prior surgery had left only two millimeters of cartilage in her nose, and that Kanodia had never worked on her septum. Douglass filed a complaint regarding Kanodia with the Better Business Bureau, and Kanodia replied acknowledging that he had not worked on Douglass’s septum.

Douglass filed suit against Kanodia on March 17, 2015.¹ In her operative second amended complaint, she alleged causes of action for medical malpractice, lack of informed consent, fraud, and medical battery, and demanded punitive damages. The parties entered into a stipulation dismissing Douglass's claim for medical battery and striking her claims for punitive damages. Kanodia filed a demurrer to the fraud cause of action, arguing that it was barred by the statute of limitations. The trial court agreed and sustained the demurrer without leave to amend. Kanodia filed a motion for summary judgment on the medical malpractice claim, which the trial court granted on the basis of the statute of limitations.

DISCUSSION

Douglass contends that the trial court erred by granting the demurrer and summary judgment against her. She argues that the statutes of limitations for claims of medical malpractice (Code Civ. Proc., § 340.5) and fraud (Code Civ. Proc., § 338) were tolled because Kanodia acted to prevent her from discovering his wrongdoing. In addition, Douglass argues that California medical malpractice law violates her Fourteenth Amendment rights to due process and equal protection, and that her attorney failed to represent her adequately. We find no merit in any of these contentions.

I. Medical Malpractice Claim

Douglass contends that the trial court erred by granting summary judgment in favor of Kanodia on the ground that she failed to file her case within the limitations period for medical malpractice. She argues that the statute was tolled because

¹ Douglass named two additional defendants in the complaint, but they are no longer part of the case.

Kanodia prevented her from discovering the nature of her injuries. We disagree.

Summary judgment is proper when there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (*Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 370; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*); Code Civ. Proc., § 437c, subd. (c).) A defendant moving for summary judgment bears an initial burden of showing that one or more elements of the plaintiff's cause of action cannot be established or that there is a complete defense to that cause of action. (*Nealy v. City of Santa Monica, supra*, 234 Cal.App.4th at p. 370; *Aguilar, supra*, 25 Cal.4th at p. 849.) If the defendant meets this burden, the plaintiff has the burden to demonstrate one or more triable issues of material fact as to the cause of action or defense. (*Ibid.*) A triable issue of material fact exists "if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Id.* at p. 850.)

In reviewing summary judgment, "[w]e review the trial court's decision de novo, liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in favor of that party." (*State of California v. Allstate Ins. Co., supra*, 45 Cal.4th at pp. 1017-1018.)

The statute of limitations for claims of medical malpractice is "three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of legal action exceed three years unless tolled for any of the following: (1) upon proof of fraud, (2) intentional concealment, or (3) the presence of a foreign body,

which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.” (Code Civ. Proc., § 340.5.)

In this case, the trial court found that Douglass failed to file her suit within the three-year limitations period from the date of the injury. This period begins “at the point at which ‘appreciable harm’ was first manifested.” (*Brown v. Bleiberg* (1982) 32 Cal.3d 426, 437, fn. 8.) For these purposes, harm is manifested “when it has become evidenced in some significant fashion, whether or not the patient/plaintiff actually becomes aware of the injury.” (*Marriage & Family Center v. Superior Court* (1991) 228 Cal.App.3d 1647, 1654.) It is irrelevant whether or not it is apparent that negligence caused the injury. (*Hills v. Aronsohn* (1984) 152 Cal.App.3d 753, 762.)

Douglass stated that she was dissatisfied with the results of the surgery immediately after a nurse removed her bandages in January 2010, when she “gasped” and “was in shock” at the appearance of her nose. Yet Douglass filed her suit in March 2015, more than five years later. Douglass contends that her suit is not time-barred, however, because the statute of limitations was tolled as a result of “fraud” or “intentional concealment.” (Code Civ. Proc., § 340.5.) She claims that, although it was apparent to her by December 2010 that the results of the surgery were poor, Kanodia had concealed from her that he did not perform the septoplasty he had agreed to perform.

Even if Douglass’s claim is true, it would not be enough to draw her cause of action within the statute of limitations. “It has long been established that the defendant’s fraud in concealing a cause of action against him tolls the applicable statute of limitations, but only for that period during which the claim is undiscovered by plaintiff or until such time as plaintiff, by the exercise of reasonable diligence, should have discovered it. [Citations.] Notwithstanding a defendant’s continuing efforts

to conceal, if plaintiff discovers the claim independently, the limitations period commences.” (*Sanchez v. South Hoover Hospital* (1976) 18 Cal.3d 93, 99.) Even assuming that Kanodia intentionally concealed the true nature of Douglass’s injury from her, she was aware by no later than August 2011, when she began consulting other plastic surgeons, that something had gone wrong, and that Kanodia had not performed the surgery the way she wanted.² The purpose of the rule tolling the statute of limitations for fraudulent concealment “is that the culpable defendant should be estopped from profiting by his own wrong *to the extent* that it hindered an ‘otherwise diligent’ plaintiff in discovering his cause of action.” (*Ibid.*) If Kanodia did intentionally conceal his misconduct from Douglass, his actions only prevented her from discovering what he had done while she was in his care. As of no later than August 2011, an otherwise diligent plaintiff in Douglass’s position would have discovered her cause of action. Thus, the three-year statute of limitations began to run no later than August 2011, and it expired before Douglass filed her suit.

² Douglass cites *Unjian v. Berman* (1989) 208 Cal.App.3d 881 in her argument that the statute of limitations should have been tolled. That case is inapposite because it involves the one-year statute of limitations from the date of the patient’s discovery of the injury, not the three-year statute that bars relief here. (See *id.* at p. 884.) Furthermore, in that case, the court held that a patient is entitled to rely on her physician’s assurances regarding medical errors while the patient is still under the physician’s care. (*Id.* at pp. 884-887.) Even if that case did apply to the three-year statute of limitations, Douglass remained under Kanodia’s care only until August 2011, at which point she began consulting with other surgeons.

II. Demurrer to Fraud

The trial court granted Kanodia's demurrer to Douglass's cause of action for fraud, finding that the statute of limitations barred her from obtaining relief. The statute of limitations for fraud is three years, and the cause of action "is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." (Code Civ. Proc., § 338, subd. (d).) Douglass argues that she did not become aware of Kanodia's allegedly fraudulent actions until 2014, and therefore the statute of limitations did not begin to run until then.

"The standard of review on appeal from a judgment dismissing an action after the sustaining of a demurrer without leave to amend is well established. 'The function of a demurrer is to test the sufficiency of the [pleading] as a matter of law, and it raises only a question of law. [Citations.] On a question of law, we apply a de novo standard of review on appeal.' [Citation.] [¶] The reviewing court gives the pleading a reasonable interpretation and treats the demurrer as admitting all material facts properly pleaded. [Citation.] The reviewing court does not, however, assume the truth of contentions, deductions or conclusions of law." (*First Aid Services of San Diego, Inc. v. California Employment Development Dept.* (2005) 133 Cal.App.4th 1470, 1476.)

We reject Douglass's claim for largely the same reasons described above. (See Discussion part I, *ante*.) "The courts interpret discovery in this context to mean not when the plaintiff became aware of the specific wrong alleged, but when the plaintiff suspected or should have suspected that an injury was caused by wrongdoing. The statute of limitations begins to run when the plaintiff has information which would put a reasonable person on inquiry. A plaintiff need not be aware of the specific facts necessary to establish a claim since they can be developed in

pretrial discovery. Wrong and wrongdoing in this context are understood in their lay and not legal senses.” (*Kline v. Turner* (2001) 87 Cal.App.4th 1369, 1374.) As we have already seen, Douglass had reason to suspect that Kanodia wronged her almost as soon as the bandages from her nose were removed, and certainly no later than August 2011, when the swelling around her nose had had time to subside, and the results of the surgery were fully apparent.

III. Additional Allegations

Douglass raises several additional contentions in her brief on appeal. All of these claims are meritless, and we address them together here.

Douglass claims that the trial court erred by dismissing her claims for punitive damages and her cause of action for medical battery. In fact, Douglass’s attorney filed a stipulation dismissing those claims without prejudice.

Douglass contends that her Fourteenth Amendment rights to equal protection and due process, and her Fourth Amendment right to “[p]rivacy of the [b]ody” have been violated. Douglass’s argument appears to be that the Medical Injury Compensation Reform Act (MICRA), the law that governs her malpractice claim, violates her constitutional rights by preventing her from obtaining a recovery for her injuries. This argument is without merit. Our Supreme Court has upheld MICRA against challenges on the basis of due process and equal protection (see *Fein v. Permanente Medical Group* (1985) 38 Cal.3d 137, 157-162), and Douglass presents nothing to call the constitutionality of the law into question.

Finally, Douglass takes issue with Kanodia’s filing of a motion pursuant to Code of Civil Procedure section 998, in which Kanodia offered to settle the case for no money. Douglass claims

this was “a bad faith attempt to bully and intimidate.” True or not, it does not prevent the statute of limitations bar.

DISPOSITION

The judgment of the trial court is affirmed. Respondent is awarded his costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.