IN THE SUPREME COURT, STATE OF WYOMING

2001 WY 6

OCTOBER TERM, A.D. 2000

January 23, 2001

BARBARA RAWLINSON, AARON RAWLINSON, and ADRIENNE RAWLINSON and KRISTEN RAWLINSON, minors, by and through their next best friend and mother, BARBARA RAWLINSON,	)	
Appellants (Plaintiffs),	)	
v.	)	**No. 00-36**
CHEYENNE BOARD OF PUBLIC UTILITIES,	)	
Appellee (Defendant).	)	

Appeal from the District Court of Laramie County
The Honorable Edward L. Grant, Judge

Representing Appellants:
Carol K. Watson and Bernard Q. Phelan of Phelan-Watson Law Office, Cheyenne, Wyoming

Representing Appellee:
Deborah Ford Mincer of Murane & Bostwick, LLC, Cheyenne, Wyoming

Before LEHMAN, C.J., and THOMAS, GOLDEN, HILL & KITE, JJ.

KITE, J., delivered the opinion of the Court; **LEHMAN, C.J.**, filed a dissenting opinion

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KITE, Justice.

[¶1] The sole issue before this Court is whether the district court properly granted summary judgment in favor of the Cheyenne Board of Public Utilities (the BOPU) concluding that the appellants' claim was time barred under the Wyoming Governmental Claims Act statute of limitations. The order granting the BOPU's motion for summary judgment is affirmed.

ISSUES

[¶2] The appellants present the following issue for our review:

> Whether the district court abused its discretion in finding that the appellants' cause of action accrued no later than June 23, 1995, rather than July 22, 1998, for purposes of applying the two-year statute of limitation, Wyo. Stat. §1-39-113, against the Board of Public Utilities.

The BOPU lists the issues as follows:

> 1. Whether the District Court properly granted summary judgment in favor of the Board of Public Utilities based on the Governmental Claims Act statute of limitations?
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> 2. In the alternative, whether the record establishes that summary judgment should be affirmed because the Plaintiffs produced no admissible evidence of negligence by the Board of Public Utilities?
>
> 3. Whether sanctions should be ordered in light of the Appellants' failure to designate a record and the pursuit of this frivolous appeal?

FACTS

[¶3] Before Barbara Rawlinson purchased a home in Cheyenne, a home inspector issued a written report dated December 16, l994, regarding a structural evaluation of the home. The report specified in pertinent part: "soil in the crawl space area was wet. A positive, 'no-leak' condition cannot be established because of the wet area." Following the purchase of the home, Ms. Rawlinson testified that she was aware of water damage as early as June 1995 and continued to investigate the water in the crawl space. She engaged two engineers to inspect the property, and each engineer issued a report. The first report was issued on June 23, 1995, and the second report was issued on July 9, 1997. The engineers reported that the

home had property damage due to water seepage. In addition, an employee with the BOPU visited Ms. Rawlinson's home in 1997 and noted wet dirt in the crawl space. The BOPU received a report that the home had water seepage problems on and off for at least two years, and, as a result, the BOPU performed tests to check for leaks.

[¶4] Three and a half years later, Ms. Rawlinson presented an itemized statement to the BOPU for its negligence in failing to properly maintain a fire hydrant and the resulting damage to her home. The following day, December 11, 1998, she filed a complaint against the BOPU and several other defendants, alleging various causes of action. The BOPU filed a motion for summary judgment claiming the two-year limitation under the Wyoming Governmental Claims Act had expired and it had not committed an act of negligence. The district court granted the BOPU'S motion for summary judgment on the basis of the statute of limitations. It determined that Ms. Rawlinson discovered her cause of action on June 23, 1995, the date she became aware of property damage. The district court concluded that Ms. Rawlinson's claim exceeded the two-year limitation and the BOPU was entitled to a judgment as a matter of law. It declined to rule on the merits of the underlying negligence claim. Ms. Rawlinson appeals to this Court.

STANDARD OF REVIEW

[¶5] We review a summary judgment in the same light as the district court, using the same materials and following the same standards. *Lieberman v. Wyoming.com LLC*, 11 P.3d 353, 2000 WL 1357716, at *2 (Wyo. Sept. 21, 2000). We examine the record from the vantage point most favorable to the party opposing the motion, and we give that party the benefit of all favorable inferences that may fairly be drawn from the record. *Id.* The review of a grant of summary judgment involving a question of law is *de novo*. *Id.*

DISCUSSION

[¶6] The determinative issue in this case is whether discovery of the claim occurred when the damage was discovered or when a particular alleged tortfeasor was discovered. Ms. Rawlinson argues that the date of discovery was the date she realized the water could be coming into her basement from the BOPU city water supply. According to Ms. Rawlinson, the summer of 1998 had been unusually dry, and she had ceased to water her lawn in an effort to determine the cause of her flooding problems. On July 22, 1998, the sump pump, which Ms. Rawlinson had installed to remove water from the basement, suddenly quit working. The structural engineer stated that it was unusual for a sump pump to abruptly stop pumping unless a constant source of water flooding the basement had simply dried up, such as a leak in the city water system. Ms. Rawlinson contends that July 22, 1998, is the date of discovery as this was the date she first suspected the BOPU was responsible for her standing water problem. As a result, she insists that she complied with the applicable statute of limitations.

[¶7] The BOPU argues that the date of discovery was June 1995 and Ms. Rawlinson's admission that she was aware of property damage in June 1995 should result in a bar to her claim under the statute of limitations. We agree.

[¶8] It is undisputed that the Wyoming Governmental Claims Act applies in this case. The statutory claims procedure under the Wyoming Governmental Claims Act provides as follows:

> (a) No action shall be brought under this act against a governmental entity unless the claim upon which the action is based is presented to the entity as an itemized statement in writing within two (2) years of the date of the alleged act, error or omission, except that a cause of action may be instituted not more than two (2) years after discovery of the alleged act, error or omission, if the claimant can establish that the alleged act, error or omission was:
>
> > (i) Not reasonably discoverable within a two (2) year period; or
> >
> > (ii) The claimant failed to discover the alleged act, error or omission within the two (2) year period despite the exercise of due diligence.

Wyo. Stat. Ann. § 1-39-113(a) (LEXIS 1999). Wyoming precedent is unequivocal in holding that failure to file a claim with the governmental entity within the two-year period provided in § 1-39-113(a) is an absolute bar to suit. *Davis v. City of Casper*, 710 P.2d 827, 829 (Wyo. 1985).

[¶9] Statutes of limitations are pragmatic devices to save courts from stale claim litigation. *Duke v. Housen*, 589 P.2d 334, 340 (Wyo.), *cert. denied*, 444 U.S. 863 (1979). Such statutes represent legislative and public policy controlling the right to litigate. *Id.* They are arbitrary by their very nature, and we must give full force to the applicable statutes without regard to the merits of the particular claim. *Id.* When a statute of limitations is being considered, the nature and extent of the injury and the amount of money damages involved are only significant in the effect they may have on when the cause of action arose and when the time expired for pursuing the applicable judicial remedy. 589 P.2d at 340.

[¶10] Settled Wyoming precedent confirms that Wyoming is a discovery state. *Amoco Production Company v. EM Nominee Partnership Company*, 2 P.3d 534, 542 (Wyo. 2000). The discovery rule delays the accrual of the cause of action in cases in which the injury or damage is not immediately apparent. *Nowotny v. L & B Contract Industries, Inc.*, 933 P.2d 452, 456 (Wyo. 1997). This rule protects an injured person who would otherwise be barred from bringing an action simply because he is unaware of an injury. 933 P.2d at 457.

chloride in the water could indicate its source as city water. She filed her written claim against BOPU on December 10, 1998. Based on the facts before me, I cannot determine as a matter of law that Mrs. Rawlinson did not exercise due diligence in an attempt to uncover the cause of her injury. Further, I do not believe that under the circumstances Mrs. Rawlinson was unreasonable in initially believing that the source of the water seepage in her basement was rainwater or groundwater.

[¶27] I believe the majority's reasoning is erroneous because it mistakenly equates discovery of damage with discovery of the cause of damage. It is undisputed that Mrs. Rawlinson knew she had water seepage in her basement on June 23, 1995; however, that does not mean that she simultaneously ***discovered the act, error or omission*** which gives rise to her cause of action (BOPU's alleged failure to maintain its hydrant).[2] The majority errs by improperly applying non-analogous cases to the facts before us. It is one thing for this court to hold, as we have, that discovery of water seepage in the basement is sufficient to concurrently alert a plaintiff to the fact that they have a potential cause of action against their builder, their seller, the city inspector, or the county planner;[3] it is quite another to determine that, as a matter of law, discovery of water seepage in the basement is sufficient to concurrently alert a plaintiff to the fact that they have a potential cause of action against BOPU for failure to maintain its hydrant.

[¶28] Moreover, the majority opinion flouts the standard for reviewing this issue. This court has held that only if uncontroverted facts exist which specify when a reasonable person should have been placed on inquiry notice can we resolve the question as a matter of law. *Hiltz v, Robert W. Horn, P.C.* 910 P.2d 566, 569 (Wyo. 1996)*; Bredthauer v. Christian, Spring, Seilbach and Associates*, 824 P.2d 560, 562 (Wyo. 1992); *Mills v. Garlow*, 768 P.2d 554, 556 (Wyo. 1989). Otherwise, "[o]rdinarily, entering a summary judgment on the issue of when a statute of limitations commences to run would be inappropriate." *Hiltz*, 910 P.2d at 569 (citing *Palmer v. Borg-Warner Corp.*, 818 P.2d 632, 634 (Alaska 1990)).

[¶29] In addition, although not a suit brought under the Wyoming Governmental Claims Act, the majority's reasoning also departs from the rule we announced in *Nowotny v. L. & B. Contract Industries, Inc.*, "once [a plaintiff] possesses the salient facts concerning the occurrence of his injury and ***who or what*** caused it, he has the ability to investigate and pursue his claim." 933 P.2d 452, 457 (Wyo. 1997) (quoting *Staiano v. Johns Manville Corp.*, 450 A.2d 681, 685 (Pa.Super. 1982) (emphasis in original)). In *Nowotny*, the appellant was injured when the allegedly defective restaurant bench seat he was sitting on collapsed. This court appropriately determined that the appellant knew of both his injury ***and its cause*** on that date and his failure to determine the identity of manufacturer of the bench seat within the four-year statute of limitations barred his claim. Mrs. Rawlinson's case could properly be analogized to that of the plaintiff in *Nowotny* if she had known the water seepage

[2] The statute is difficult to apply under the circumstances of this case because, while both the majority and I address the date of ***discovery*** of the act, error, or omission in question, the actual date of the act, error or omission has not been established. It appears indisputable that, ***if*** BOPU were negligent, its negligence must have occurred prior to the flooding of Mrs. Rawlinson's basement in June of 1995.

[3] *See Anderson v. Bauer*, 681 P.2d 1316 (Wyo. 1984); *Barlage v. Key Bank*, 892 P.2d 124 (Wyo. 1995); *Davis v. City of Casper*, 710 P.2d 827 (Wyo. 1985).

in her basement was caused by a negligently maintained fire hydrant yet failed to determine the identity of the party who exercised dominion over the hydrant until after the claims period had expired. However, when the majority in its opinion improperly labels Mrs. Rawlinson's lack of knowledge on June 23, 1995, as merely that of the ***identity*** of her potential tortfeasor rather than what it truly was—a lack of knowledge of the ***cause of her injury***—it misconstrues our holding in *Nowotny* and works a serious injustice on both precedent and the claimant in this case contrary to the stated purpose of the Wyoming Governmental Claims Act: "to balance the respective equities between persons injured by governmental actions and the taxpayers of the state of Wyoming."[4] Thus, therein I cannot concur.

[4] Wyo. Stat. Ann. § 1-39-102(a)(LEXIS 1999).