COURT OF APPEAL FOR ONTARIO

CITATION: Cassidy v. Belleville (Police Service), 2015 ONCA 794
DATE: 20151123
DOCKET: C60466

Cronk, Epstein and Huscroft JJ.A.

BETWEEN

Paula Cassidy

Plaintiff/Appellant

and

Belleville Police Service and Wayne Groen

Defendants/Respondents

R. Steven Baldwin and Jordan Sewell, for the appellant

Kristin Muszynski and Kevin Cooke, for the respondents

Heard: November 12, 2015

On appeal from the summary judgment of Justice Stanley J. Kershman J. of the Superior Court of Justice, dated April 17, 2015.

ENDORSEMENT

[1] Paula Cassidy, the appellant, appeals from the order of the motion judge granting summary judgment and dismissing her action in negligence against the respondents on the basis that it is barred by operation of the two-year limitation

period established by s. 4 of the *Limitations Act*, 2002, S.O. 2002, c. 24, Sched. B (the "Act").

[2] The action arose out of the actions of Officer Wayne Groen of the Belleville Police Service, who stopped the appellant while she was driving her car on August 18, 2009. Officer Groen informed the appellant that the car was stolen and confiscated it, leaving the appellant and her children to make their way home. The appellant was pregnant at that time and alleges that she suffered medical complications relating to her pregnancy as a result of Officer Groen's conduct.

[3] The appellant wrote to a lawyer on August 24, 2009 asking whether she should pursue a civil action, but did not commence her claim at this time.

[4] On September 11, 2009, the appellant wrote a letter of complaint to the Belleville Police Service. She received a reply to her complaint on June 23, 2011 and, on July 8, 2011, she requested a review of her complaint by the Ontario Civilian Police Service. The appellant's complaint was upheld, in part, and she was informed of the decision on November 29, 2012 in correspondence from the Belleville Chief of Police.

[5] On October 10, 2013 – more than four years following the incident involving Officer Groen – the appellant commenced her action.

[6] The motion judge found that the limitation period commenced on August 18, 2009 at the earliest (the date of the incident) and August 24, 2009 at the latest (the date the appellant wrote to a lawyer).

[7] The appellant argues that the limitation period did not begin to run from the date of the incident involving Officer Groen because she was not familiar with the standard of care required of police officers at that time. She characterizes her correspondence with a lawyer several days following the incident as an inquiry and submits that it was reasonable for her to pursue available administrative remedies in order to determine the material facts before commencing her action.

[8] The appellant maintains that the limitation period did not begin to run until November 29, 2012, the date she learned of the decision of the Ontario Civilian Police Service regarding its review of her complaint. This is the date, according to the appellant, that she was informed of the standard of care required of police officers.

[9] The appellant's arguments must be rejected. We see no error in the motion judge's discoverability analysis.

[10] A claim is discovered on the date the claimant knew, or ought to have known, of the material facts giving rise to the claim. As this court explained in *Lawless v. Anderson*, 2011 ONCA 102, at para. 23:

> Determining whether a person has discovered a claim is a fact-based analysis. The question to be posed is

> whether the prospective plaintiff knows enough facts on which to base an allegation of negligence against the defendant. If the plaintiff does, then the claim has been "discovered", and the limitation begins to run.

[11] It was presumed under s. 5(2) of the Act that the appellant knew of the matters giving rise to her potential claim on the day the incident took place – August 18, 2009 – unless the contrary was proved. The appellant raised no evidence to rebut this statutory presumption. Accordingly, by the time the appellant commenced her action in October 2013, the limitation period had expired and her action was statute-barred.

[12] This is not a case in which expert evidence was required in order for the appellant to discover her claim. The facts of the case were relatively straightforward and known to the appellant from the time of the incident. She was aware of the offending conduct, the identity of the offender, and the nature of her injuries.

[13] The administrative processes the appellant invoked concerned the oversight of police conduct and maintenance of police standards. Although these processes provided additional information in support of the appellant's claim, discovery of her claim did not depend on them. Discovery of sufficient material facts to trigger commencement of the limitation period did not depend on precise knowledge of the applicable standard of care and whether Officer Groen's conduct fell below it.

[14] The appellant relied on *Coutanche v. Napolean Delicatessen*, [2004] O.J. No. 2746, 72 O.R. (3d) 122, in support of the proposition that a potential plaintiff may engage a commission to perform an investigation into a matter and await its decision prior to commencing an action. *Coutanche* does not assist the appellant. Unlike this case, *Coutanche* involved the possible extension of a limitation period under family law legislation, something that is not available in these circumstances.

[15] For these reasons, the appeal is dismissed. The respondents are entitled to their costs of the appeal, fixed in the agreed amount of $10,000, inclusive of disbursements and all applicable taxes.

"E.A. Cronk J.A."

"Gloria Epstein J.A."

"Grant Huscroft J.A."