COURT OF APPEALS
DECISION
DATED AND RELEASED

August 22, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0533-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

LAURA J. SAVONEN and
STEVEN J. SAVONEN,

Plaintiffs-Appellants,

v.

RICHARD NOLOP d/b/a
NOLOP CONSTRUCTION,

Defendant-Respondent.

APPEAL from an order of the circuit court for La Crosse County: RAMONA A. GONZALEZ, Judge. *Reversed and cause remanded*.

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Laura and Steven Savonen appeal from an order dismissing their tort claims against Richard Nolop. The issue is whether the trial court properly held on summary judgment that the Savonens' claims were barred by the six-year statute of limitations on torts. Section 893.52, STATS. We conclude that a material fact dispute remains as to whether the Savonens

commenced this action within the statute of limitations. We therefore reverse and remand for further proceedings.[1]

The Savonens live in a house they purchased in 1984, which Nolop constructed in 1976. In October of 1986, the Savonens discovered severe structural problems with the house that were allegedly linked to Nolop's improper design and construction techniques. They commenced this action against Nolop in September 1992.

Nolop moved for summary judgment and introduced evidence that in 1982 the previous owners of the house, the Beckers, consulted a contractor, Gregory Gerke, who inspected the home. The inspector determined that there was leakage near a door, that windows did not function and that there was rotting around the deck, and he noted various other exterior problems. He advised the Beckers that he could provide further diagnosis only by removing the exterior of the house to determine the source of the leakage. The trial court concluded from this evidence that the Beckers knew or should have known of the serious structural damage to the house no later than sometime in 1982. After imputing the Beckers' knowledge to the Savonens, the trial court dismissed the action as untimely.[2]

We decide motions for summary judgment in the same manner as the trial court and without deference to its decision. ***Schaller v. Marine Nat'l Bank***, 131 Wis.2d 389, 394, 388 N.W.2d 645, 648 (Ct. App. 1986). Summary judgment is not appropriate if, as here, the material facts are disputed, or allow more than one reasonable inference. ***Wagner v. Dissing***, 141 Wis.2d 931, 940, 416 N.W.2d 655, 658 (Ct. App. 1987).

It remains unresolved whether the Beckers knew or should have known in 1982 that they had a cause of action against Nolop. In Wisconsin, a

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[1] This is an expedited appeal under RULE 809.17, STATS.

[2] The parties do not dispute that the Beckers' knowledge should be imputed to the Savonens. We therefore do not consider whether this is a correct statement of the law. *See* ***Waushara County v. Graf***, 166 Wis.2d 442, 451, 480 N.W.2d 16, 19 (1992), *cert. denied*, 506 U.S. 894 (1992).

cause of action does not "accrue until the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, not only the fact of injury but also that the injury was probably caused by the defendant's conduct." ***Borello v. U.S. Oil Co.***, 130 Wis.2d 397, 411, 388 N.W.2d 140, 146 (1986). At best, Gerke's affidavit shows that he advised the Beckers of certain problems with their home. The evidence does not show that he conveyed the extent of the damage or that he could attribute it to Nolop's design or construction. Additionally, the affidavit does not contain enough information to conclude that the Beckers failed to exercise reasonable diligence when they did not accept his recommendation to remove the exterior of the house for further examinations. One can also reasonably infer from the affidavit that the Beckers were not made aware that more serious structural damage underlay the exterior problems Gerke observed. Further proceedings are therefore necessary to determine whether Gerke's 1982 inspection bars the Savonens' action.

By the Court.—Order reversed and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.