COURT OF APPEALS
DECISION
DATED AND RELEASED

MARCH 25, 1997

NOTICE

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.

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

No. 96-1248

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

JOHN H. DALE,

Plaintiff-Appellant,

v.

DUNN COUNTY HISTORICAL SOCIETY,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Dunn County: JAMES A. WENDLAND, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Madden, JJ.

PER CURIAM. John Dale appeals a summary judgment dismissing his personal injury action against the Dunn County Historical Society. The trial court concluded that the statute of limitations expired before the action was filed. Dale argues that summary judgment was inappropriate because outstanding issues of material fact exist regarding when he discovered his injury or with reasonable diligence should have

discovered his injury because he suffers from a personality disorder that prevents him from making decisions regarding his injuries. We reject this argument and affirm the judgment.

Dale fell from scaffolding while doing volunteer remodeling work at the Historical Society on April 6, 1992. He did not commence this lawsuit until July 17, 1995, more than three years after the accident. Therefore, the statute of limitations had expired. *See* § 893.54, STATS.

Dale argues that a factual dispute exists regarding when he discovered or should have discovered his injury. In some cases, the "discovery rule" allows for the tolling of an otherwise applicable statute of limitations. *See* ***Hansen v. A. H. Robins, Inc.***, 113 Wis.2d 550, 560, 335 N.W.2d 578, 583 (1983). Wisconsin has adopted the discovery rule for all tort actions other than those already governed by a legislatively created discovery rule. ***Id***. The discovery rule provides that a cause of action will not accrue "until the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, not only the fact of the injury but also that the injury was probably caused by the defendant's conduct or product." ***Borello v. United States Oil Co.***, 130 Wis.2d 397, 411, 388 N.W.2d 140, 146 (1986). Unless the source of the injury is unclear, accrual is based on a person's knowledge that he or she has been injured. *See* ***Clark v. Erdmann***, 161 Wis.2d 428, 447, 468 N.W.2d 18, 26 (1991). "Discovery" requires only that the plaintiff knew or should have known that the injury existed and that it may have been caused by the defendant's conduct. ***Id***. at 446, 468 N.W.2d at 25.

The record conclusively establishes that Dale knew of his injuries and the Historical Society's conduct in causing his injuries from the day he fell. In his deposition, Dale testified that he was aware of the three-year statute of limitations but simply miscalculated when it expired. He conceded that he knew all along the nature of

his injuries, those people who may be responsible for causing them, and that the lawsuit must be filed before three years from the date of the accident or his claim would be barred.

Dale's alleged "personality disorder" does not alter the statute of limitations. Section 893.16, STATS., extends the statute of limitations for people under a mental disability for two years from the cessation of the disability. This extension does not apply where the disability was caused by the accident in question. *See* ***Carlson v. Pepin County***, 167 Wis.2d 345, 352, 481 N.W.2d 498, 501 (Ct. App. 1992). Dale has not presented any evidence of a mental disability that was not caused by this accident. Dale's fall did not result in loss of consciousness or any severe head injury or brain damage. His situation is not comparable to that in ***Carlson*** where the plaintiff sustained brain damage and was in a coma for five months, creating an issue of fact regarding when he discovered or should have discovered his injury. ***Carlson***, 167 Wis.2d at 354, 481 N.W.2d at 502. Finally, a plaintiff is not privileged to wait until he is "psychologically ready" to take legal action when he already knows of the injury and who caused it. *See* ***Byrne v. Bercker***, 176 Wis.2d 1037, 1047, 501 N.W.2d 402, 406 (1993).

By the Court.—Judgment affirmed.

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