MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

William T. Dishman,

Appellant-Plaintiff,

v.

Michelle L. Symanski f/k/a Michelle L. Dishman, and Beacon Occupational Health, LLC, f/k/a and f/d/b/a Community Occupational Medicine,

Appellees-Defendants

March 8, 2021

Court of Appeals Case No. 20A-CT-1803

Appeal from the Elkhart Superior Court

The Honorable David C. Bonfiglio, Judge

The Honorable Dean O. Burton, Magistrate

Trial Court Cause No. 20D06-1906-CT-135

Vaidik, Judge.

Case Summary

[1] William T. Dishman appeals the trial court's grant of summary judgment for Michelle L. Symanski and Beacon Occupational Health, LLC ("Beacon"), in Dishman's personal-injury action. We affirm.

Facts and Procedural History

[2] Dishman and Symanski got married in 2014. At all relevant times, Symanski worked for Beacon as a radiology technician. In 2016 or early 2017, the marriage began to deteriorate, as did Dishman's health. Dishman moved out of the marital home in March or April of 2017, and his health improved.

[3] Dishman filed for divorce on April 18, 2017. Later that month, Dishman went to the marital home to get some belongings. While there, he saw "vials that were marked as injectable and topical Lidocaine" in the master-bedroom closet. Appellant's App. Vol. II p. 76. On June 14, 2017, Dishman saw Dr. Neelam Patel. Dr. Patel's notes from the visit state, in part:

> pt is here with concern about his wife has been poisoning him with lidocaine, epinephrine, iodoform etc for last several years. He has been living away from his wife since 3/2017 and started feeling better. "I feel great now but i want to have toxicology tests done on me to prove it".

Id. at 55. Two weeks later, on June 27, Dishman went to the marital home again to collect additional belongings. According to Dishman, he told Symanski, "I know you were trying to kill me," and she responded, "You'll never prove it, you f***er." *Id.* at 77.

[4] On June 25, 2019, Dishman sued Symanski and Beacon, claiming Symanski had poisoned him with medications obtained from Beacon and that Beacon had been negligent "in failing to proper[l]y secure and maintain its medications safely" and "in failing to proper[l]y supervise" Symanski. *Id.* at 22, 23. Symanski and Beacon moved for summary judgment, arguing Dishman's suit was untimely under the personal-injury statute of limitation, Indiana Code section 34-11-2-4(a)(1), which requires an action for "injury to person" to be "commenced within two (2) years after the cause of action accrues." Symanski and Beacon asserted Dishman had enough information before June 25, 2017, to start the running of the two-year period. The trial court agreed and granted summary judgment for Symanski and Beacon.

[5] Dishman now appeals.

Discussion and Decision

[6] Dishman contends the trial court erred by granting summary judgment for Symanski and Beacon. We review motions for summary judgment de novo, applying the same standard as the trial court. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). That is, "The judgment sought shall be rendered forthwith if

the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C).

[7] Again, Indiana Code section 34-11-2-4(a)(1) provides that a personal-injury action must be commenced "within two (2) years after the cause of action accrues." The cause of action of a tort claim accrues, and the two-year limitation period begins to run, "when the plaintiff knew or, in the exercise of ordinary diligence, could have discovered that an injury had been sustained as a result of the tortious act of another." *Groce v. Am. Fam. Mut. Ins. Co.*, 5 N.E.3d 1154, 1156 (Ind. 2014), *reh'g denied*. "[T]he application of the discovery rule does not mandate that plaintiffs know with precision the legal injury that has been suffered, but merely anticipates that a plaintiff be possessed of sufficient information to cause him to inquire further in order to determine whether a legal wrong has occurred." *Perryman v. Motorist Mut. Ins. Co.*, 846 N.E.2d 683, 689 (Ind. Ct. App. 2006). In other words, "the law does not require a smoking gun in order for the statute of limitations to commence." *Id.*

[8] Dishman argues his cause of action did not accrue until June 27, 2017, when, according to him, he told Symanski, "I know you were trying to kill me," and she responded, "You'll never prove it, you f***er." Dishman asserts, "It was then, and only then, that Dishman had the requisite knowledge and reason to know that would trigger the commencement of the statute of limitations." Appellant's Br. p. 20. Before that day, Dishman contends, he only "suspected" and "speculated" Symanski was poisoning him. *Id.* at 10, 19. As he notes,

"mere suspicion or speculation as to causation of an injury is insufficient to trigger accrual." *State v. Alvarez*, 150 N.E.3d 206, 216 (Ind. Ct. App. 2020).

[9] The trial court rejected this argument, concluding that no later than June 14, 2017—when Dishman saw Dr. Patel—Dishman "certainly had sufficient information to cause further inquiry" and had moved beyond mere suspicion or speculation. Appellant's App. Vol. II p. 17. We agree. In early 2017, Dishman's health was in decline. After he moved out of the marital home in March or April of 2017, his health improved. When he returned to the home in late April, he found vials of lidocaine. Then, on June 14, he told Dr. Patel he was concerned Symanski had been "poisoning him with lidocaine, epinephrine, iodoform etc for [the] last several years." By that date, Dishman knew or, in the exercise of ordinary diligence, could have discovered that an injury had been sustained as a result of the tortious act of Symanski and/or Beacon. *See Groce*, 5 N.E.3d at 1156. Dishman's conversation with Symanski on June 27, 2017, might have been a "smoking gun," at least in his mind, but a smoking gun is not required to start the running of the limitation period. *Perryman*, 846 N.E.2d at 689.

[10] As a matter of law, Dishman's cause of action accrued, and the two-year limitation period began to run, no later than June 14, 2017. Therefore, his June 25, 2019 complaint was untimely, and the trial court properly granted summary judgment to Symanski and Beacon.

[11] Affirmed.

Brown, J., and Pyle, J., concur.