IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

LONA LEANN GROSSHART,

Appellant,

v.

KANSAS CITY POWER & LIGHT COMPANY,

Respondent.

DOCKET NUMBER WD83672

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: April 13, 2021

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Patricia S. Joyce, Judge

JUDGES

Division Three: Mitchell, P.J., and Newton and Gabbert, JJ. CONCURRING.

ATTORNEYS

John M. Edgar and Matthew J. Limoli, Kansas City, MO, Attorneys for Appellant.

Mark D. Anstoetter, Kathryn A. Larkins, and Brent Dwerlkotte, Kansas City, MO, Attorneys for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

LONA LEANN GROSSHART, Appellant,
v.
KANSAS CITY POWER & LIGHT COMPANY, Respondent.

WD83672 **Cole County**

Before Division Three Judges: Karen King Mitchell, Presiding Judge, and Thomas H. Newton and Anthony Rex Gabbert, Judges

Lona Grosshart appeals from the judgment dismissing, with prejudice, her claims arising from alleged exposure to heavy metals released by Kansas City Power & Light Company's power plant near La Cygne, Kansas. Grosshart raises three points on appeal. She argues that the motion court erred in dismissing her claims because (1) the Kansas statute of repose is not substantive and, thus, does not bar her claims; (2) she stated claims for negligence and strict liability in that she adequately alleged facts demonstrating a causal connection between her Missouri exposure to the power plant's environmental releases and her injuries; and (3) she stated a claim for fraudulent concealment in that she adequately alleged that KCP&L owed a duty to inform her that the power plant was releasing heavy metals into the environment. Finding that dismissal of Grosshart's strict liability and negligence claims arising from her alleged exposure in Missouri in 2016 was inappropriate, we reverse that portion of the court's judgment. Finding that the dismissal of the remainder of Grosshart's claims was appropriate, we affirm the trial court's judgment as to those claims. We remand Grosshart's strict liability and negligence claims arising from her alleged exposure in Missouri in 2016 for further proceedings consistent with this opinion.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Division Three holds:

1. We review a judgment granting a motion to dismiss *de novo*, and we will affirm on any meritorious ground stated in the motion.

2. A motion to dismiss for failure to state a claim on which relief can be granted is a test of the sufficiency of the petition. We review the petition to determine if the facts alleged, which we take as true, meet the elements of a recognized cause of action; we do not weigh the allegations to determine whether they are credible or persuasive.

3. To withstand a motion to dismiss, the petition must invoke substantive principles of law entitling the plaintiff to relief and state ultimate facts informing the defendant of that which plaintiff will attempt to prove at trial.

4. Missouri courts follow the Restatement (Second) of Conflicts of Laws § 146, which here means that Kansas substantive law governs Grosshart's claims because Kansas is both the place of the alleged injury and the state with the most significant relationship with the case.

5. Missouri courts generally apply Missouri law to procedural questions even if another state's substantive law governs the underlying claims. Thus, Missouri procedural law governs Grosshart's claims.

6. The basic difference between statutes of limitation, which are generally considered procedural, and statutes of repose, which are generally considered substantive, is that the former allows the cause of action to accrue and then cuts off the claim if suit is not filed within a certain period of time while the latter eliminates the cause of action altogether after a certain period of time, without regard to whether the injury has occurred or the cause of action has accrued.

7. Missouri characterizes statutes of repose as substantive. But no Missouri court has addressed the precise issue presented here—whether Missouri would treat the Kansas statute of repose, found in § 60-513(b) of the Kansas Statutes (2018), as substantive or procedural for choice-of-law purposes.

8. Most courts that have addressed the issue accept the characterization of statutes of repose as substantive for choice-of-law purposes. Jurisdictions that adopt the majority view find a foreign statute of repose to retain its substantive character but limit the circumstances under which a foreign statute of limitation remains procedural in the choice-of-law context, finding statutes of limitation to be substantive if included in the statute creating the underlying cause of action.

9. Courts applying the minority view treat a statute of repose as indistinguishable from a statute of limitation and find that a statute of repose loses its substantive character if it is not integral to the statute creating the underlying right.

10. Missouri adopts the majority view, treating statutes of repose as substantive because the time limitation runs from the defendant's last act giving rise to the claim, not, as in the case of a statute of limitation, from the time of the injury or discovery of the injury. Thus, statutes of repose make the commencement of an action within a specific period a condition precedent to relief, connecting the limitation period with the underlying substantive right.

11. Section 60-513(b), which bars any action for personal injury "commenced more than 10 years beyond the time of the act giving rise to the cause of action," is substantive for choice-of-law purposes because it is a substantive definition of rights that is part of the underlying cause of action. Thus, § 60-513(b) is part of Kansas substantive law that governs Grosshart's claims.

12. When analyzing whether the law of another state is substantive or procedural, Missouri courts also consider the other state's interpretation of its own statute. The Kansas Supreme

Court considers § 60-513(b) to be substantive. Thus, our conclusion that § 60-513(b) is substantive for choice-of-law purposes is consistent with Kansas law.

13. A fair reading of Grosshart's petition suggests that the alleged releases from the power plant began in 1973 and were continuing in October 2018, when she filed her amended petition. This would include releases during the ten-year period before she filed her petition.

14. Grosshart claims that heavy metals released from the power plant contaminated the water supply at the farm. She left the farm in 1986 and does not identify any specific dates she was at the farm after 1986. Thus, all of Grosshart's claims based on exposure at the farm are barred by § 60-513(b) because KCP&L's last act giving rise to those claims occurred no later than 1986 when Grosshart left Kansas and was no longer exposed to the alleged releases there. She did not file her petition until 2018, well outside the ten-year period set in § 60-513(b).

15. Grosshart also claims that some of the heavy metals released by the power plant contaminated the public water supply system in Butler, Missouri, but she does not identify specific dates she was in Butler other than a nine-week period in 2016.

16. Only her claim of injurious exposure in 2016 raises the possibility of an act by KCP&L within ten years before she filed her petition. Her allegations regarding the 2016 Missouri exposure allow for a reasonable inference that KCP&L took some action within the ten-year window preceding the filing of her petition in 2018 to cause the 2016 Missouri exposure. Thus, Grosshart's claims based on the 2016 Missouri exposure are not barred by § 60-513(b).

17. Missouri is a fact-pleading state. The plaintiff has to plead ultimate facts, not conclusions, which, if true, support each and every proof element of her claim.

18. Because Grosshart alleged that she developed Sjögren's Syndrome in response to exposure to heavy metals, that she was exposed to heavy metals from Butler's public water supply in 2016, and that heavy metals from the power plant are present in Butler's water supply, Grosshart pleaded facts sufficient to satisfy the causation element of her strict liability and negligence claims arising from the 2016 Missouri exposure, and the motion court erred in dismissing those claims.

19. Under Kansas law, a party has a duty to disclose material facts if that party knows that the other is about to enter into a transaction under mistaken facts and that the other, because of a relationship between the parties, the customs in trade, or other objective circumstances, would reasonably expect disclosure of such facts.

20. The motion court did not err in dismissing Grosshart's fraudulent concealment claim pertaining to the 2016 Missouri exposure because she failed to adequately allege a claim in that she did not allege that, in 2016 when she was living in Butler, KCP&L knew she was about to enter into a transaction under mistaken facts or that because of a relationship

between KCP&L and Grosshart, the customs in trade, or other objective circumstances, Grosshart would reasonably expect disclosure by KCP&L.

Opinion by: Karen King Mitchell, Presiding Judge April 13, 2021

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.