

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

NORMA NICELY,)	No. ED100313
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable Richard C. Bresnahan
WYETH, INC., et al.)	
)	
Respondents.)	FILED: August 26, 2014

This appeal was submitted on records, briefs, and oral argument nearly identical to those presented to this Court in Franzman v. Wyeth, ED 100312, __ S.W.3d __ (Mo. App. E.D. 2014). Nicely appeals from a nearly identical judgment, presents the same points on appeal, and relies on the same arguments as those raised by the parties in Franzman. The minor factual differences between Nicely’s case and Franzman’s case do not affect our analysis of the identical points on appeal raised in both cases. Our analysis, discussion, and decision in Franzman controls our resolution of Nicely’s appeal in this matter.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

Division III holds: We reverse the trial court’s judgment as to Nicely’s failure-to-warn claim against the Generic Defendants to the extent her claim is based upon the Generic Defendants’ failure to update their warning labels to the 2004 Reglan label revision. We affirm the trial court’s dismissal of Nicely’s claims against the Generic Defendants in all other respects. Because Nicely’s claims against the Brand Defendants must be brought as product liability actions under the KPLA, we affirm the trial court’s dismissal of Nicely’s claims against them. Lastly, because Nicely’s discovery of her injury as it relates to the statute of limitations is a question of fact, we reverse the trial court’s dismissal of Nicely’s claims against WKH. We remand Nicely’s failure-to-warn claim against the Generic Defendants and her claim against WKH for proceedings consistent with this opinion and as more fully explained in Franzman.

Opinion by: Kurt S. Odenwald, J., Mary K. Hoff, P.J., and Angela T. Quigless, J., Concur.

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