

STATE OF MICHIGAN
COURT OF APPEALS

JEANNE OMELENCHUK and KRISTIN
OMELENCHUK, Co-Personal Representatives of
the Estate of George Omelenchuk,

UNPUBLISHED
April 6, 1999

Plaintiff-Appellants,

v

CITY OF WARREN and the WARREN FIRE
DEPARTMENT,

No. 204098
Macomb Circuit Court
LC No. 96-005448 NH

Defendant-Appellees.

Before: Neff, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiffs' suit was barred by governmental immunity and was filed outside of the applicable statute of limitations. Summary disposition was granted in favor of defendants on the basis of governmental immunity. The trial court failed to address defendants' argument that the statute of limitations had run prior to when plaintiffs filed suit. Plaintiffs appeal as of right the grant of summary disposition in defendants' favor, and we affirm.

We find it unnecessary to determine whether defendants were entitled to summary disposition on the grounds of governmental immunity because we find that plaintiffs' suit was filed in violation of the applicable statute of limitations. This Court does not render advisory opinions on issues unnecessary to the disposition of the case. See *People v Wilcox*, 183 Mich App 616, 620; 456 NW2d 421 (1990); *People v Hart*, 129 Mich App 669, 674; 341 NW2d 864 (1983); *People v Turner*, 123 Mich App 600, 603-604; 332 NW2d 626 (1983). Both parties indicate that the statute of limitations issue is not ripe for review. We address the statute of limitation issue however, because, although it was not considered by the court below, we may properly review questions of law where the facts necessary to resolve the issue have been presented. *D'Avanzo v Wise & Marsac*, 223 Mich 314, 326; 565 NW2d 915 (1997); *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98-99; 494 NW2d 791 (1993).

The statute of limitations in a medical malpractice action is two years. MCL 600.5805; MSA 27A.5805. In a case like the one before us, where there is a death, the decedent's personal representatives have two years to commence suit from the date the letters of authority were issued. MCL 600.5852; MSA 27A.5852. The two year period, however, can be tolled if notice is given in compliance with the requirements of MCL 600.2912b; MSA 27A.2912(2). MCL 600.5856(d); MSA 27A.5856(d); *Morrison v Dickson*, 217 Mich App 308, 311; 551 NW2d 449 (1996).

The parties agree that this is a medical malpractice action and that there is a two-year statute of limitations. They disagree, however, as to whether plaintiffs' suit was timely filed.

Initially, we note that, in a footnote, defendant questions whether the notice and tolling provisions of § 2912b apply at all to this case where defendants are not health care professionals or health care facilities. Resolution of this issue is unnecessary, however, because plaintiffs' suit was filed in violation of the applicable statute of limitations whether § 2912b is applicable or not.

If the tolling provisions of § 2912b did not apply, the statute of limitations expired on February 14, 1996, two years after the letters of authority were issued. Suit was not filed until July 19, 1996.

Similarly, if the tolling provisions of § 2912b applied, the statutes of limitations expired prior to July 19, 1996. Section 2912b provides:

(1) *Except as otherwise provided* in this section, a person shall not commence an action alleging medical malpractice against a health professional or health facility unless the person has given the health professional or health facility written notice under this section not less than 182 days before the action is commenced. (Emphasis added.)

The statute further provides:

(7) Within 154 days after receipt of notice under this section, the health professional or health facility against whom the claim is made shall furnish to the claimant or his or her authorized representative a written response that contains a statement of each of the following

(8) If the claimant does not receive the written response required under subsection (7) within the required 154-day time period, the claimant may commence an action alleging medical malpractice upon the expiration of the 154-day period.

MCL 600.5856; MSA 27A.5856 provides:

The statutes of limitations or repose are tolled:

(d) If, during the applicable notice period under section 2912b, a claim would be barred by the statute of limitations or repose, for not longer than a number of days equal to the number of days in the applicable notice period after the date notice is given in compliance with section 2912b.

Plaintiffs argue that the applicable notice period under §2912b was 182 days and that the statute of limitations was tolled for 182 days. We disagree. The 182 day period set out in § 2912b applies after notice is given "except as otherwise provided". Section 2912b(8) of the statute otherwise provides that suit can be filed after 154 days if defendants fail to respond to the notice pursuant to § 2912b(7). Here there is no dispute that defendants never furnished a written response to the notice in this case. Therefore, plaintiffs could have commenced their action on the 155th day following the date notice was provided. The applicable notice period in this case was 154 days and not 182 days as plaintiffs argue.

Plaintiffs' decedent died on February 13, 1994. The letters of authority were issued on February 14, 1994. The statute of limitations was set to expire on February 14, 1996. Notice of intent to file suit was served on December 11, 1995, sixty-five days prior to the expiration of the original statute of limitations. The statute was tolled on December 11, 1995. The last day of the 154 day period was May 13, 1996. Pursuant to § 2912b(8), plaintiffs could have filed their case as early as May 14, 1996. On that date, tolling having ended, the statute of limitations began to run again, and plaintiffs had 65 days from that date, or until July 17, 1996, to file suit. Suit was not filed until July 19, 1996.

Because plaintiffs filed their suit after the statute of limitations had run, summary disposition was appropriate pursuant to MCR 2.116(C)(7).

Affirmed.

/s/ Janet T. Neff
/s/ Michael J. Kelly
/s/ Harold Hood