

STATE OF MICHIGAN  
COURT OF APPEALS

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THOMAS D. NASH,

Plaintiff-Appellant/Cross-Appellee,

v

USS GREAT LAKES FLEET, INC,

Defendant-Appellee/Cross-  
Appellant.

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UNPUBLISHED

May 14, 2002

No. 228948

Presque Isle Circuit Court

LC No. 98-002281-NO

Before: Saad, P.J., and Owens and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). Defendant cross-appeals, challenging the circuit court's earlier ruling denying a separate motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm.

Plaintiff sought to recover for injuries he sustained while employed as a seaman aboard defendant's ship. Plaintiff asserted two theories of recovery: 1) defendant's negligence under the Jones Act, 46 USC 688, which is the merchant seaman's version of the Federal Employers' Liability Act (FELA), 45 USC 51 *et seq*, and 2) defendant's failure to provide a safe workplace under the common-law maritime doctrine of "unseaworthiness."

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), contending plaintiff had not filed the action within the three-year statute of limitation. 46 USC 763a. Plaintiff did not dispute that it filed this action more than three years after his injury aboard defendant's ship. However, the circuit court denied defendant's motion, finding that plaintiff's previous filing of these claims in a Pennsylvania state court equitably tolled the limitations period.

Defendant challenges this decision on cross-appeal. Because our resolution of this issue could render plaintiff's appeal moot, we will consider it first. Generally, a trial court's denial of a motion for summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Equitable tolling of a federal statute of limitations is appropriate where the congressional purpose in enacting a statute and the corresponding limitations period is effectuated by tolling

that period in given circumstances. *Burnett v New York Central Railroad Co*, 380 US 424, 427; 85 S Ct 1050; 13 L Ed 2d 941 (1965). In a Jones Act action, the congressional purpose is served, and tolling appropriately applied, when (1) a plaintiff begins an action in a state court of competent jurisdiction, (2) the plaintiff makes service of process on the opposing party, and (3) the state court dismisses the action because of improper venue. *Id.* at 427-428.

In plaintiff's earlier action filed in Pennsylvania, that state's Court of Common Pleas and Superior Court deemed invalid plaintiff's personal service on a security guard at the headquarters of defendant's parent corporation. Another state's judgment is presumptively valid and subject to recognition in Michigan under the federal Constitution's full faith and credit clause. US Const, art IV, § 1; *Poindexter v Poindexter*, 234 Mich App 316, 325; 594 NW2d 76 (1999). Indeed, the purpose of the clause is to prevent the litigation of issues in one state that have already been decided in another. *Martino v Cottman Transmission Systems*, 218 Mich App 54, 58; 554 NW2d 17 (1996). Therefore, the Pennsylvania ruling that plaintiff's service of process was ineffective precludes relitigation of this issue in Michigan.

As such, because plaintiff did not properly serve defendant in Pennsylvania, plaintiff's filing in that state was insufficient to equitably toll the statute of limitations. *Burnett, supra* at 427. Accordingly, plaintiff's Michigan claim was time-barred, and the trial court erred in denying defendant's motion for summary disposition pursuant to MCR 2.116(C)(7).<sup>1</sup>

It is well established that we may affirm where the trial court reaches the right result, even if it is for the wrong reason. *People v Jory*, 443 Mich 403, 425; 505 NW2d 228 (1993). Having determined that the trial court should have granted defendant's motion for summary disposition based on MCR 2.116(C)(7), we need not consider plaintiff's claim that the trial court improperly granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Henry William Saad  
/s/ Donald S. Owens  
/s/ Jessica R. Cooper

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<sup>1</sup> Alternatively, we would note that equitable tolling is, by definition, an equitable remedy. See *Covey v Arkansas River Co*, 865 F2d 660, 662 (CA 6, 1989). In fact, the *Covey* court declined to apply the doctrine of equitable tolling where it found that the plaintiff failed to exercise due diligence in "asserting her claim." *Id.* Here, although the Ohio state court's ruling fell short of a mandatory order for plaintiff to re-file his lawsuit in Michigan, it was plaintiff's decision to disregard the "suggestion," and instead attempt to commence the lawsuit in Pennsylvania. While an argument could be made that the Pennsylvania courts' application of the jurisdictional rules to plaintiff's case could have been resolved in his favor, it was plaintiff's choice to bring his lawsuit in that jurisdiction, rather than the obvious forum: Michigan. Moreover, we agree with defendant's assertion that plaintiff could have diligently protected his right to bring his claim here, and have the matter stayed while he pursued the establishment of Pennsylvania as a venue. Simply put, equity does not favor plaintiff, as necessary to allow him to benefit from the doctrine of equitable tolling.