

STATE OF MICHIGAN  
COURT OF APPEALS

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WESAM NAJOR,

Plaintiff-Appellant,

v

HANI NAJOR,

Defendant-Appellee.

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UNPUBLISHED  
February 26, 2004

No. 243344  
Oakland Circuit Court  
LC No. 02-037773-CK

Before: Fort Hood, P.J., and Bandstra and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and denying plaintiff's motion for summary disposition. The trial court found that plaintiff's action was time-barred. We affirm.

Plaintiff first claims that his attorney enclosed the appropriate filing fee when he mailed a complaint to renew a 1992 money judgment to the county clerk. However, the complaint was returned with a note indicating that it was being returned for failure to enclose the filing fee. By the time plaintiff's counsel filed the complaint with the filing fee, the statute of limitations had expired. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that the complaint was time-barred. Plaintiff argues that the trial court erred in concluding that his attorney failed to initially enclose the appropriate filing fee and that the running of the statute of limitations should have been tolled. We disagree.

MCL 600.1901 and MCR 2.101(B) provide that "[a] civil action is commenced by filing a complaint with the court." MCR 2.107(G) provides in pertinent part that "[t]he filing of pleadings and other papers with the court as required by these rules must be with the court clerk." Moreover, at the time plaintiff attempted to file his complaint, MCL 600.2529(1)(a), concerning fees to be paid to the circuit court clerk, provides that "before a civil action . . . is commenced . . . the party bringing the action or filing the application shall pay the sum of . . . \$100." See also *Hadley v Ramah*, 134 Mich App 380, 384-385; 351 NW2d 305 (1984) ("[t]he mere tendering of the complaint to the clerk of the court without the appropriate fees does not constitute a completed 'filing'"). Plaintiff argues that *Hadley* is not applicable in the instant case because he "tendered the complaint with the appropriate fees on a timely basis . . . but the Court itself made a mistake and failed to recognize that the check was attached to the Complaint and returned the Complaint to the Plaintiff unfiled."

This Court has held that a trial court's finding of fact that a specific date was the date of the filing of the complaint will not be set aside by this Court unless clearly erroneous. *Hollis v Zabowski*, 101 Mich App 456, 458; 300 NW2d 597 (1980). "A finding is clearly erroneous when this Court, after reviewing the entire record, is left with a definite and firm conviction that a mistake has been committed although there is evidence to support the finding." *Id.* We are not so convinced that the trial court's determination that "plaintiff's complaint to renew a January 15, 1992 Judgment was not filed until January 23, 2002, beyond the 10 year statute of limitations set forth in MCL 600.5809(3)" was mistaken.

Plaintiff next argues that statute of limitations should be tolled pursuant to MCL 600.5854 because plaintiff was detained in Iraq for extended periods of time between January 15, 1992 and January 15, 2002, and Iraq was at war with the United States during such time. We disagree.

MCL 600.5854 provides:

If any person is unable to prosecute an action in the courts of this state because he is a citizen or a subject of any country at war with the United States or because he is detained in any country at war with the United States or because he is detained by any neutral power or because for any other reason arising out of the war he is unable to use the courts of this state, the time of the continuance of the war shall not be counted as a part of the period limited for the commencement of any action.

Our Supreme Court has held that "when reviewing matters of statutory construction, [the] Court's primary purpose is to discern and give effect to the Legislature's intent." *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). "Unless defined in the statute, every word or phrase of a statute will be ascribed its plain and ordinary meaning." *Id.*; see also MCL 8.3a. Random House Webster's College Dictionary (1992), defines "detain" as: "1) to keep from proceeding; delay; 2) to keep under restraint; 3) to withhold." It is evident that plaintiff was not "detained" within this plain and ordinary meaning, as the documentary evidence proffered by plaintiff demonstrates that he traveled freely during the period between January 15, 1992 and January 15, 2002, and that he was not precluded from renewing the 1992 judgment against defendant as a result of any detainment.

Plaintiff next argues that the trial court erred in determining that equitable estoppel did not apply in the instant case to toll the running of the statute of limitations. We disagree. This Court has explained:

Equitable estoppel is not an independent cause of action, but rather a doctrine that may assist a party by preventing the opposing party from asserting or denying the existence of a particular fact. Equitable estoppel may arise where (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts. [*West American Ins Co v Meridian Mutual Ins Co*, 230 Mich App 305, 309-310; 583 NW2d 548 (1998) (Citations omitted).]

Plaintiff claims that defense counsel contacted him and represented that defendant (garnishee defendant in the original case) was going to settle a lawsuit wherein he owed money to the principal defendant in the original case. Plaintiff claims that defense counsel told him that defendant would pay him, instead of paying the original defendant, and that this would settle the claim. Plaintiff claims that he relied on defense counsel's representations and that "several months went by during which [he] was waiting for the payment until he finally discovered that [defendant] had paid the money to [the principal defendant]." Plaintiff argues that equitable estoppel is appropriate in the instant case because "it would simply be unfair for [defendant] to escape his responsibilities to him."

The trial court held that "equitable estoppel will not allow this Court to extend the statute of limitations because there is no evidence that Defendant induced Plaintiff to refrain from bringing the action within the limitations period. In fact, the evidence shows that Plaintiff attempted to file a Complaint before the limitations period expired." We agree. The fact that plaintiff attempted to file the complaint to renew the 1992 judgment belies any claim of equitable estoppel. The trial court properly determined that equitable estoppel was not appropriate in the instant case and denied plaintiff's motion for summary disposition on that basis.

Plaintiff next argues that the trial court erred in denying his motion for summary disposition pursuant to MCR 2.116(C)(10), because except as to the amount of damages, there is no genuine issue as to any material fact, and he is entitled to judgment as a matter of law. We disagree. While summary disposition pursuant to MCR 2.116(C)(10) may have been appropriate for plaintiff because the money judgment was for a sum certain, and there was no genuine issue as to any material fact, the fact remains that plaintiff failed to file his motion to renew the judgment before the statute of limitations expired, and was unable to provide a proper basis for tolling the statute of limitations. Therefore, the trial court properly denied summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(10) and granted summary disposition in favor of defendant pursuant to MCR 2.116(C)(7).

We affirm.

/s/ Karen M. Fort Hood  
/s/ Richard A. Bandstra  
/s/ Patrick M. Meter