

STATE OF MICHIGAN
COURT OF APPEALS

ERIC BRAVERMAN, Successor Personal
Representative of the ESTATE OF EUGENE C.
WILLIAMS, Deceased,

UNPUBLISHED
February 14, 2008

Plaintiff-Appellant/Cross-Appellee,

v

SHORES MEDICAL ASSOCIATES, PLLC, and,
CLARITA S. KETELS, D.O.,

No. 269774
Macomb Circuit Court
LC No. 05-004760-NH

Defendants-Appellees/Cross-
Appellants.

Before: Fitzgerald, P.J., and Murphy and Borrello, JJ.

MEMORANDUM.

In this wrongful death/medical malpractice case, plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm.

Plaintiff in this case is the successor personal representative of the estate of Eugene Williams. The basic facts of the estate's malpractice claim are summarized in this Court's decision in *Williams v Shores Med Assoc*, unpublished opinion per curiam of the Court of Appeals, issued December 19, 2006 (Docket No. 265817).¹ Plaintiff's complaint asserts the

¹ At oral argument in the present case, plaintiff's attorney indicated that no action as yet had been taken in the trial court with regard to the predecessor personal representative's cause of action in light of the Supreme Court's order in *Mullins v St. Joseph Mercy Hosp*, 480 Mich 948; 741 NW2d 300 (2007), which stated:

We conclude that this Court's decision in *Waltz v Wyse*, 469 Mich 642 (2004), does not apply to any causes of action filed after *Omelenchuk v City of Warren*, 461 Mich 567 (2000), was decided in which the savings period expired, i.e., two years had elapsed since the personal representative was appointed, sometime between the date that *Omelenchuk* was decided and within 182 days after *Waltz* was decided. All other causes of action are controlled by *Waltz*. In the instant case, because the plaintiff filed this action after *Omelenchuk* was decided and the

(continued...)

same medical malpractice claims that the predecessor personal representative had asserted in *Williams*. Defendants filed a motion for summary disposition against plaintiff, which the trial court granted pursuant to MCR 2.116(C)(6). Plaintiff appealed, presenting several arguments for this Court's review. Defendants cross-appealed, arguing, among other things, that plaintiff's claim is barred by the res judicata doctrine. We agree that res judicata bars plaintiff's claim, and therefore decline to address the parties' other arguments.

In *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412; 733 NW2d 766 (2007), our Supreme Court reviewed the res judicata doctrine as it applies to successor personal representatives, noting that the doctrine has three elements: "(1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first." *Id.* at 418. Here, as in *Washington*, all three elements of the res judicata doctrine are fulfilled. First, like the trial court in *Washington*, the trial court in this case examined the timeliness of the predecessor's claim and determined that the claim was time-barred. The resulting summary disposition against the predecessor personal representative was a final judgment and an adjudication on the merits. *Id.* at 414; see also MCR 2.504(B)(3). Second, plaintiff here is in privity with his predecessor, because both are representatives of the same estate. Third, as plaintiff acknowledges, his complaint arises out of the same operative facts as the predecessor's complaint. Based on our Supreme Court's holding in *Washington*, plaintiff's claim is thus barred by the res judicata doctrine.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ William B. Murphy
/s/ Stephen L. Borrello

(...continued)

savings period expired between the date that *Omelenchuk* was decided and within 182 days after *Waltz* was decided, *Waltz* is not applicable.