

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

ELBERT BUTLER III, as Next Friend of  
ELBERT BUTLER IV, a Minor,

Plaintiff-Appellee,

v

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF MICHIGAN,

Defendant-Appellant.

---

UNPUBLISHED  
April 15, 2008

No. 275679  
Genesee Circuit Court  
LC No. 06-083721-NF

Before: Jansen, P.J., and Donofrio and Davis, JJ.

PER CURIAM.

In this breach of contract action, defendant appeals by leave granted from the trial court's order denying its motion for summary disposition. Because the action was filed before the child's 19th birthday, the contractual limitations period at issue does not bar plaintiff's claim, and we affirm.

The minor child was injured on April 12, 2004, when he was struck by an uninsured motorist while riding his bicycle. On March 24, 2006, more than one year after the accident, plaintiff made a specific notice and claim for uninsured motorist (UM) benefits under the policy. Thereafter, on April 24, 2006, plaintiff filed this action seeking a declaratory judgment that he was entitled to UM benefits and alleging breach of contract for defendant's failure to pay UM benefits.

Defendant moved for summary disposition asserting that plaintiff's cause of action was barred because it was not filed within the one-year contractual limitations period. Part IV of the insurance policy states:

E. Additional Conditions

3. Time Limitations for Action Against Us

Any person seeking Uninsured Motorist Coverage must:

a. present the claim for compensatory damages in compliance with the terms and conditions of this coverage and policy; and

b. present to us a written notice of the claim for Uninsured Motorist Coverage within one year after the accident occurs.

A suit against us for Uninsured Motorist Coverage may not be commenced later than one year after the accident that caused the injuries being claimed, unless there has been full compliance with all the conditions of this coverage and the policy.

Plaintiff responded that MCL 600.5851(1), “the minority tolling provision” of the Revised Judicature Act (RJA), MCL 600.101 *et seq.*, extended the time during which the child could file a UM claim up to his 19th birthday. Finding that MCL 600.5851(1) applied, and plaintiff timely filed his complaint, the trial court denied defendant’s motion for summary disposition.

The issue presented is whether MCL 600.5851(1) applies to extend the time during which an action may be filed on behalf of a minor where the minor’s claim arises under a contract that provides a shorter limitations period. This Court recently decided this exact issue in *Klida v Farm Bureau Gen Ins Co of Michigan*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No. 273334, issued February 19, 2008). The *Klida* Court answered the question in the affirmative holding specifically that:

considering the RJA’s remedial character, the protective purpose of the minority tolling provision, as well as the harm it was designed to remedy--the deprivation of legal rights--we conclude that whether the cause of action arises by statute, common-law or contract, the minority tolling provision is applicable. [*Id.*, slip op at 8.]

Pursuant to *Klida*, MCL 600.5851(1) supersedes a shorter contractual limitations period. *Id.* Because this action was filed before the child’s 19th birthday, the contractual limitations period at issue does not bar plaintiff’s action. *Id.*

Defendant also argues that the trial court improperly allowed the minor child to retain benefits under the UM policy, but avoid operation of the contractual limitations period. It asserts that the child could either ratify or disaffirm the contract, but only in its entirety, not selectively. We find no merit to this argument. The child is not disaffirming any portion of the contract. Rather, MCL 600.5851(1) simply provides for a different limitations provision based on the injured party’s status as a minor. The remainder of the contract is unaffected by the statute and plaintiff must carry his burden with respect to the contract’s other provisions in order to succeed on his breach of contract claim.

Accordingly, the trial court did not err in denying defendant’s motion for summary disposition. In light of our decision, it is unnecessary to consider plaintiff’s alternative arguments for affirmance.

Affirmed.

/s/ Kathleen Jansen  
/s/ Pat M. Donofrio  
/s/ Alton T. Davis