

STATE OF MICHIGAN
COURT OF APPEALS

LISA MCGILL-KOHLER, Personal Representative
of the Estate of HENRY LEE WILLIAMS

UNPUBLISHED
March 31, 2009

Plaintiff-Appellant,

v

ABDUL R. HASAN, M.D., and NORTH
OAKLAND MEDICAL CENTER, INC.,

No. 278563
Oakland Circuit Court
LC No. 06-079725-NH

Defendants-Appellees.

Before: Markey, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiff, Lisa McGill-Kohler (“plaintiff”), as personal representative of the estate of Henry Lee Williams, appeals of right from the circuit court’s orders granting defendants’¹ motions for summary disposition based on the statute of limitations. We reverse.

I

Plaintiff alleges that in July and August 2003, defendants failed to diagnose and treat an intracranial hemorrhage in the decedent Henry Lee Williams (“Henry”). Henry died in August 2003. In October 2003, the initial personal representative, Sandra Williams (“Sandra”), received letters of authority. On July 28, 2005, Sandra filed a notice of intent on defendant. Sandra filed her medical malpractice action against defendant on January 26, 2006. Defendant moved for summary disposition, arguing that the action was barred by the statute of limitations, and not saved by the wrongful death savings provision (death grace period). The trial court agreed, and granted the motions, but did so without prejudice, relying on *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 30; 658 NW2d 139 (2003) (the two-year grace period under MCL 600.5852 is measured from the issuance of letters of authority, even though they be letters to a successor personal representative).

¹ Hereafter, we refer only to defendant Dr. Hasan, as, pursuant to a bankruptcy stay, the case has been closed as to defendant North Oakland Medical Center. Order dated November 4, 2008.

Plaintiff, as successor personal representative, received her letters of authority in October 2006. In December 2006, plaintiff filed the instant action, asserting the same claims as her predecessor. Defendants moved for summary disposition, arguing that the action was untimely. The trial court again agreed, and granted the motions.

II

Summary dispositions are reviewed de novo. *Willett v Waterford Charter Twp*, 271 Mich App 38, 45; 718 NW2d 386 (2006). Issues of statutory interpretation are questions of law that this Court reviews de novo. *Apsey v Mem Hosp*, 477 Mich 120, 127; 730 NW2d 695 (2007).

This Court reviews de novo a trial court's decision on a motion for summary disposition under subrule (C)(7) to determine whether the moving party was entitled to judgment as a matter of law. *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001). Similarly, this Court reviews de novo the legal question concerning whether the applicable statute of limitations bars a claim. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

A motion for summary disposition under subrule (C)(8) tests the legal sufficiency of the pleadings alone. *Johnson-McIntosh v City of Detroit*, 266 Mich App 318, 322; 701 NW2d 179 (2005). This Court also reviews de novo a trial court's grant or denial of summary disposition under subrule (C)(10), which tests the factual support for a claim. *McManamon v Redford Charter Twp*, 256 Mich App 603, 610; 671 NW2d 56 (2003). Finally, the application of a legal doctrine, such as res judicata, presents a question of law that this Court reviews de novo. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007).

III

A

Plaintiff first argues that the trial court erred in granting defendants' motions for summary disposition under MCR 2.116(C)(7), based on the statute of limitations. We agree.

In *Braverman v Garden City Hosp*, 480 Mich 1159; 746 NW2d 612 (2008)(*Braverman III*), our Supreme Court reaffirmed its conclusion in *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29; 658 NW2d 139 (2003), that a medical malpractice plaintiff's complaint, filed by the successor personal representative within two years of his appointment, is timely under MCL 600.5852. In the instant case, plaintiff filed her complaint within two years of the issuance of her letters of authority. Accordingly, her complaint was timely filed and summary disposition was erroneously granted.

B

Defendant argues alternatively on appeal that summary disposition was nevertheless appropriate because plaintiff did not file a notice of intent to sue, but rather, relied upon the notice of intent filed by Sandra in July 2005. However, the Supreme Court also held in *Braverman III* that a "successor personal representative, may rely on the notice of intent filed by the previous personal representative because the office of personal representative is a 'person'

under MCL 600.2912b.” Thus, defendant’s alternate argument in support of summary disposition must also be rejected.

For the foregoing reasons, we reverse the circuit court’s order granting summary disposition in favor of defendant, and remand for further proceedings. We do not retain jurisdiction. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder

White, J., not participating, having resigned from the Court of Appeals effective August 11, 2008.