STATE OF MICHIGAN

COURT OF APPEALS

PAUL MARSACK,

       Plaintiff-Appellee,

V

TAMI SALENS, Personal Representative of the
Estate of LAURA GABRIEL,

       Defendant-Appellant,

and

HASTINGS MUTUAL INSURANCE
COMPANY,

       Defendant.

ON REMAND

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

This case is on remand from our Supreme Court for reconsideration.[1] Specifically, the Supreme Court concluded that this Court misunderstood the argument of defendant personal representative regarding the application of MCL 600.5852. On reconsideration, we must reconsider our decision in light of the argument made by the parties. Once again, we affirm the decision of the trial court.

Defendant's statement of the questions presented raised the following issue: "Did the lower court err in denying [defendant's] motion for summary disposition by finding that MCL 600.6852; MSA 27A.5852 applied to defeat the estate's statute of limitations defense where MCL 600.5852; MSA 27A.5852 by its clear and unambiguous terms applies only in favor of actions commenced by a personal representative and therefore cannot be applied against a

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[1] *Marsack v Salens*, 490 Mich 871 (2011).

personal representative against whom a claim is brought?" Irrespective of how defendant stated the issue on appeal, defendant asserted that a change in the law regarding claims commenced by or against a personal representative warranted summary disposition in her favor. Specifically, defendant asserted that, before the 1989 amendment, MCL 600.5852 provided:

> If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action which survives by law *may be commenced by or against the executor or administrator* . . . at any time within 2 years after letters testamentary or letters of administration are granted . . . . But no executor or administrator shall bring an action under this provision unless he commences it within 3 years after the period of limitations has run. [Emphasis added.]

However, MCL 600.5852 was amended by 1988 PA 221, effective January 1, 1989, to eliminate the language that an action may be commenced against the executor or administrator:

> If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action which survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run. But an action shall not be brought under this provision unless the personal representative commences it within 3 years after the period of limitations has run.

Defendant submitted that MCL 600.5852 no longer permitted actions against the executor or administrator of an estate, the language of the statute was plain, and the Legislature's omissions from the prior version of a statute were presumed to be intentional. Therefore, it was defendant's position that plaintiff could not maintain an action against a deceased person in light of the current language of MCL 600.5852. Although it may have appeared that this Court misunderstood the argument and that defendant did not allege that MCL 600.5852 applied, a review of defendant's brief on appeal reveals the following statements:

> [T]he lower court's reliance on MCL 600.5825 [sic]; MSA 27A.5825 [sic] in the case at bar is misplaced. The current version of the statute, *which is clearly applicable in the case at bar*, by its clear and unambiguous language only applies to actions "commenced by the personal representative of the deceased person". Although the Legislature's intent is clear from the statutory language itself, its intent as expressed in the language is reinforced and confirmed by the Legislature's deletion of the words "or against" from the statute when it was amended in 1989. [Defendant's Brief on Appeal, p 11; emphasis added.]

Thus, in light of the brief filed on appeal, defendant plainly argued that MCL 600.5852 applied to the case at bar and that the statute as amended precluded actions against a decedent's estate. We reiterate that it was defendant's position that MCL 600.5852 was amended to actually *prohibit* actions against an estate in light of the amendment to MCL 600.6852, effective January 1, 1989. Therefore, because plaintiff raised a claim against an estate, defendant alleged that summary disposition in her favor was appropriate.

To further illustrate this position, defendant argued that its interpretation of the application of MCL 600.5852 was proper because "in 1988 the statute of limitations savings provision of the Revised Judicature Act was amended to no longer address actions against estates," citing *Lindsey v Harper Hosp*, 455 Mich 56, 63; 564 NW2d 861 (1997). However, defendant failed to recognize that the *Lindsey* decision was superseded by the repeal of the Revised Probate Code and its replacement with the Estates and Protected Individuals Code (EPIC), MCL 700.2101 *et seq*. See *Braverman v Garden City Hosp*, 480 Mich 1159 n 1 (2008).

As noted in our original opinion, MCL 600.5852 was amended and no longer provides for actions against an estate. However, MCL 700.3803, effective April 1, 2000, allows for claims *against a decedent's* estate and governs the time limitations for presentation of those claims. Thus, although defendant asserted that the amendment of MCL 600.5852 eliminated causes of action against an estate, that allegation was erroneous. The provision governing causes of action against estates was replaced in EPIC. Therefore, we again hold that the trial court properly denied defendant's motion for summary disposition.[2]

Affirmed.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood

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[2] We note that defendant did not address whether the statute of limitations expired in light of MCL 700.3083, and whether there was any waiver in light of the public administrator's refusal to open an estate, see MCL 700.3802. Therefore, we again do not address these issues.