

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000689-MR

CALLIE WEHNER

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 03-CI-00647

WILLIAM GORE;
GORE TRUCKING, LLC, AND
NORTHLAND INSURANCE COMPANY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: HENRY AND SCHRODER, JUDGES; EMBERTON,¹ SENIOR JUDGE.

SCHRODER, JUDGE: Callie Wehner (Wehner) appeals a summary judgment granted by the Laurel Circuit Court which dismissed her claim based on the applicable statute of limitations. We agree with the circuit court that Wehner's complaint was filed outside the limitations of KRS 304.39-230, hence, we affirm.

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

The facts are uncontroverted. Wehner was involved in an automobile accident on September 7, 2000. She sustained personal injuries and received medical treatment. Her no-fault carrier was State Farm Insurance Company (State Farm) which paid its last personal injury protection (PIP) payment to the Nicholasville Road MRI (MRI) on December 13, 2000. This last payment exhausted Wehner's PIP benefits. State Farm sent Wehner a notice on December 13, 2000, that she exhausted her PIP benefits. State Farm closed its file but sent a second notification to Wehner on December 18, 2000. On June 21, 2001, Wehner requested a copy of the State Farm PIP ledger, which was sent.

Although State Farm issued Wehner's final PIP payment on December 13, 2000, and closed the file, the check was either not received or lost. MRI requested State Farm reissue the check. State Farm reopened the file, stopped payment on the original check, issued a new check on August 13, 2001, and again closed the file.

Wehner filed her complaint against the other driver, William Gore; the vehicle owner, Gore Trucking, LLC; and their insurance company, Northland Insurance Company (collectively, the appellees), on July 14, 2003. The appellees moved for summary judgment contending the action was filed outside the two-year statute of limitations in KRS 304.39-230(6), which

requires an action be commenced within two years from the date of injury, or from the last PIP payment. The appellees calculated the period from December 13, 2000, to July 14, 2003, which is outside the two-year period. Wehner countered that the period should begin with August 13, 2001, the date the original check was reissued, which was within the two-year period. The circuit court granted summary judgment to the appellees.

The sole issue on appeal is whether the two-year statute of limitations in KRS 304.39-230(6) had run. Section 6 provides: "An action for tort liability not abolished by KRS 304.39-060 may be commenced not later than two (2) years after the injury, or the death, or the last basic or added reparation payment made by any reparation obligor, whichever later occurs." In Wilder v. Noonchester, 113 S.W.3d 189, 191 (Ky.App. 2003), a panel of this Court, decided that "the date the PIP provider issued the check is the date the PIP provider 'made' the payment." Id.

In our case, the last PIP payment was December 13, 2000. Thus, the circuit court was correct that the statute of limitations had run as of December, 2002, and the complaint filed on July 14, 2003 was time-barred. Wehner argues without authority that the reissuance of the check in August of 2001 extended the statute of limitations to August of 2003. We disagree. Wilder, 113 S.W.3d at 190, makes it clear that the

date a check is received or deposited has nothing to do with the date of final payment. Final payment is the date the last check is cut, dated, or "made". That date was December 13, 2000. The August 13, 2001, check was not a check "made" for additional services, but a replacement check between MRI and State Farm. Payment on December 13, 2000, was final payment "made" as far as Wehner is concerned. There is no contrary authority, thus, we agree with the circuit court's interpretation.

For the foregoing reasons, the judgment of the Laurel Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Robert Stansbury
London, Kentucky

BRIEF FOR APPELLEES:

John G. McNeill
Evan B. Jones
Lexington, Kentucky