

RENDERED: NOVEMBER 21, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000584-MR

CARL KILLIN AND HELEN KILLIN

APPELLANTS

v.

APPEAL FROM BOYD CIRCUIT COURT
HONORABLE MARC I. ROSEN, JUDGE
ACTION NO. 06-CI-00696

EDWARD J. BOGGS AND
S & S READY MIX

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; NICKELL, JUDGE; GRAVES,¹ SENIOR
JUDGE.

GRAVES, SENIOR JUDGE: Carl Killin and Helen Killin appeal from a summary
judgment granted against them on the basis of their failure to file suit within the
applicable statute of limitations. We affirm.

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

On November 20, 2002, the Killins and appellee, Edward J. Boggs, were involved in an automobile accident. Boggs was driving a truck owned by S & S Ready Mix. The Killins each alleged that they sustained injuries in the accident. Helen Killin sought medical attention and her insurance company paid basic reparation benefits. The last of these payments occurred on February 3, 2003. Carl Killin, however, did not seek medical attention and did not receive any basic reparation benefits.

After the accident, the Killins attempted to negotiate a settlement of their claims with S & S and Boggs' insurance carrier, Federated Mutual Insurance Company. The claims were not settled. On July 10, 2006, the Killins filed suit against S & S and Boggs alleging negligence and gross negligence. The Killins also brought a bad faith claim against Federated. The trial court granted summary judgment in favor of S & S Ready Mix and Boggs based on the Killins' failure to file suit within the limitations period contained in Kentucky Revised Statutes (KRS) 304.39-230. The trial court overruled Federated's motion for summary judgment. This appeal followed the grant of summary judgment.

KRS 304.39-230(6) states:

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.

The accident occurred on November 20, 2002. The last basic reparation benefit paid to Helen Killin occurred on February 3, 2003. Carl Killin did not receive any basic reparation benefits. The Killins filed suit on July 10, 2006.

The Killins argue that the filing of their complaint was delayed because of alleged bad faith and unfair dealing on the part of Federated in the settlement of their claims. We note that Federated has not been made a party to this appeal. We are not cited to any authority that bad faith in settlement negotiations by an insurance company tolls the statute of limitations for suit against an alleged tortfeasor. However, in *Milby v. Wright*, 952 S.W.2d 202, 204 (Ky. 1997), our Supreme Court held that the denial of a request for reparation benefits made outside the limitations period did not toll the statute. Likewise in the case at bar, Federated made the Killins an offer of \$2,000.00 to settle their claim on July 22, 2004. The Killins rejected the offer. They reasserted their demand for \$25,000.00 on November 10, 2004. Federated requested additional medical records for review on November 19, 2004. On December 9, 2004, Federated informed the Killins that the claimed injuries did not appear to be related to the automobile accident of November 20, 2002. On January 11, 2005, Federated sent a request for additional medical records. Federated made no further communications to the Killins' inquiries.

We cannot conclude that a reasonable view of the evidence supports the Killins' assertion that the alleged bad faith of Federated prevented them from

timely filing their complaint against S & S Ready Mix and Boggs. The deadline for filing the complaint was February 3, 2005. Federated's final communication occurred on January 11, 2005. The Killins responded on January 19, 2005. The Killins did not seek further contact with Federated until May 5, 2005, more than three months after the filing deadline. The actual complaint was not filed until July 10, 2006. Moreover, the alleged bad faith of Federated cannot be imputed to S & S Ready Mix and Boggs because KRS 304.12-220 states "[f]or the purpose of KRS 304.12-230 (Unfair claims settlement practices), 'person' shall not mean an insured."

Accordingly, the judgment of the Boyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEES:

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