

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT GLADYCH,

Plaintiff-Appellant,

v

NEW FAMILY HOMES, INC.,

Defendant-Appellee.

UNPUBLISHED

June 5, 2001

No. 222343

Macomb Circuit Court

LC No. 99-000264-NI

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). When reviewing a motion for summary disposition under MCR 2.116(C)(7), a court must accept the plaintiff's well-pleaded factual allegations as true. "If no facts are in dispute, and reasonable minds could not differ regarding the legal effect of those facts, whether the plaintiff's claim is barred by the statute of limitations is a question for the court as a matter of law. However, if a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate." *Baker v DEC Int'l*, 218 Mich App 248, 252-253; 553 NW2d 667 (1996), *aff'd in part, rev'd in part* on other grounds 458 Mich 247 (1998).

Plaintiff was injured on January 23, 1996 and had three years from that date to file suit. MCL 600.5805(1), (9); MSA 27A.5805(1), (9). He filed this action on January 22, 1999. The trial court ruled that pursuant to MCL 600.5856(a), (c); MSA 27A.5856(a), (c), the limitations period continued to run until plaintiff either delivered the summons and complaint to a deputy sheriff for service or effectuated service of process on defendant and because plaintiff did neither by January 23, 1999, the action was barred. This was error. Because plaintiff filed this action before the three-year limitations period expired, it was timely filed. *Goniwicha v Harkai*, 393 Mich 255; 224 NW2d 248 (1974); *Buscaino v Rhodes*, 385 Mich 474, 481, 484; 189 NW2d 202 (1971), overruled in part on other grounds by *McDougall v Schanz*, 461 Mich 15; 597 NW2d 148

(1999). Because the limitations period had not expired before plaintiff filed suit, the tolling provisions of § 5856 were not implicated. *Id.* at 481-482.

Reversed.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly`