

STATE OF MICHIGAN
COURT OF APPEALS

JESSICA L. JOHNSON,

Plaintiff-Appellant,

V

VIRGIE A. KUDLA,

Defendant-Appellee.

UNPUBLISHED

February 1, 2002

No. 223055

Macomb Circuit Court

LC No. 98-004425-NO

Before: Bandstra, C.J., and Doctoroff and White, JJ.

MEMORANDUM.

Plaintiff appeals as of right, challenging the circuit court's orders granting defendant's motion for summary disposition, setting aside orders extending the summons, and denying plaintiff's motion for reconsideration. We affirm in part and reverse in part.

The circuit court properly granted defendant's motion for summary disposition and dismissed plaintiff's complaint, without prejudice, because the second summons was issued *after* the original summons expired. A second summons may only be issued within the ninety-one day life of the original summons. MCR 2.102(D); *Durfy v Kellogg*, 193 Mich App 141, 144; 483 NW2d 664 (1992). Upon expiration of the original summons, the action was deemed dismissed, without prejudice, with respect to defendant, who had not yet been served with process. MCR 2.102(E)(1). Although plaintiff's request for a second summons was made before the original summons expired, under MCR 2.102(D) as construed in *Durfy, supra*, it was necessary that the second summons be issued before the original summons expired. Because a second summons was not issued before the first summons expired, the circuit court properly granted summary disposition pursuant to MCR 2.116(C)(2), and dismissed the action without prejudice.

Plaintiff also contends that the circuit court erred in denying her motion for reconsideration and then dismissing the action with prejudice on the basis of the statute of limitations.

Because the circuit court did not err in granting the motion, it did not err in denying reconsideration.¹ We agree, however, that the circuit court's ruling concerning the statute of

¹ We reject the argument that the circuit court did not have the authority to set aside the orders of
(continued...)

limitations and resulting dismissal with prejudice were improper. The statute of limitations issue had not been briefed by the parties and was not properly before the court. Accordingly, we reverse that portion of the court's order dismissing plaintiff's complaint with prejudice. We express no opinion on the statute of limitations issue.

Affirmed in part and reversed in part. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Martin M. Doctoroff
/s/ Helene N. White

(...continued)

the other circuit court judges who entered the orders for issuance of the second summons retroactively. These orders were expressly entered by those judges "in the absence of Judge Schwartz," i.e., standing in for Judge Schwartz in his stead.