

STATE OF MICHIGAN
COURT OF APPEALS

LOLA P. PORCH, Personal Representative of the
Estate of WILLIE BARROW, Deceased,

UNPUBLISHED
December 13, 2005

Plaintiff-Appellant,

V

No. 255365
Wayne Circuit Court
LC No. 03-338291-NO

ALPHA MANOR NURSING HOME, DETROIT
RIVERSIDE HOSPITAL, GARDEN CITY
HOSPITAL, and QUALICARE NURSING
HOME,

Defendants-Appellees,

and

L & L NURSING HOME,

Defendant.

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendants under MCR 2.116(C)(7) on the basis that plaintiff's claims for negligence, wrongful death, and medical malpractice were barred by the applicable statutes of limitation. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court's decision granting summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Questions whether a statute of limitation bars a claim and questions of statutory interpretation are also reviewed de novo. *Farley v Advanced Cardiovascular Health Specialists, PC*, 266 Mich App 566, 570-571; 703 NW2d 115 (2005).

The alleged deficient care by defendants occurred between May 1, 1998, and plaintiff's decedent's death on December 21, 1998. Plaintiff was issued letters of authority and appointed personal representative of the decedent's estate on May 22, 2001. On May 20, 2003, plaintiff served a notice of intent to file a claim pursuant to MCL 600.2912b. On November 9, 2003, plaintiff filed this lawsuit.

Plaintiff did not file the lawsuit within the two-year period for filing a medical malpractice action, MCL 600.5805(6), or the three-year period for filing a claim for ordinary negligence, MCL 600.5805(10). Therefore, unless an exception applies, plaintiff's action was barred.

Plaintiff relies on the wrongful death saving provision, MCL 600.5852, and the notice tolling provision, MCL 600.5856(d).¹ MCL 600.5852 states:

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.

We reject plaintiff's contention that this statute extends the deadline for filing a wrongful death action based on medical malpractice to five years (i.e., three years after the general two-year period of limitations has run) and extends the deadline for filing a wrongful death action based on ordinary negligence to six years (i.e., three years after the general three-year period of limitations has run). The first sentence of the statute provides a two-year saving period that begins with the issuance of letters of authority. Plaintiff did not file this action within two years after letters of authority were issued. Rather, she filed it approximately 2-1/2 years after letters of authority were issued. The second sentence of the statute applies to an action "brought under this provision" Plaintiff's action was not "brought under this provision" because it was not filed within two years after letters of authority were issued. Contrary to plaintiff's position, the extension afforded by the statute is inextricably tied to the issuance of letters of authority; it does not create an independent, extended period of limitation for wrongful death actions. See *Farley*, *supra*, p 573 n 16.

Plaintiff argues that her action was timely by virtue of the notice tolling provision applicable to this case, former MCL 600.5856(d), because she filed a notice of intent to sue before the two-year wrongful death saving provision expired. We disagree. The filing of the notice does not toll or extend the period allowed under the wrongful death saving provision. *Waltz v Wyse*, 469 Mich 642, 655; 677 NW2d 813 (2004). The position advanced by plaintiff in this case was squarely rejected in *Farley*, *supra*, pp 574-576, wherein this Court stated, "Having considered the present case in light of *Waltz*, we hold that the filing of [the plaintiff's] notice of intent did not toll the two-year period in which to file suit under the wrongful death provision (MCL 600.5852)."

¹ This provision was amended, effective April 22, 2004, but the amendment applies only to civil actions filed on or after that date and does not apply if a statute of limitation or repose expired before that date. Therefore, the amendment is not applicable to this case.

Because plaintiff's action was filed after the limitations periods for medical malpractice and ordinary negligence expired, and because plaintiff did not file the action within two years after letters of authority were issued, the trial court properly determined that plaintiff's action was untimely.²

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Patrick M. Meter

² Because the application of the three-year limitations period for claims sounding in ordinary negligence would not salvage plaintiff's action, this Court need not address whether plaintiff's negligence claim actually sounds in medical malpractice.