STATE OF MICHIGAN

COURT OF APPEALS

FLORENCE SHORT, Personal Representative of the Estate of JONATHON CROSS, Deceased,

Plaintiff-Appellant,

v

AUDBERTO C. ANTONINI, M.D., ADDIE JO BRISKIE, R.N., and ANITA YOUNG, R.N.,

Defendants-Appellees,

and

DUANE WATERS HOSPITAL and OAKS CORRECTIONAL FACILITY,

Defendants.

UNPUBLISHED
December 20, 2005

No. 256423
Jackson Circuit Court
LC No. 03-002370-NI

Before: Kelly, P.J. and Meter and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to Audberto C. Antonini, M.D. under MCR 2.116(C)(7) and to Addie Jo Briskie, R.N. and Anita Young, R.N. under MCR 2.116(C)(6). We affirm.

Plaintiff was appointed as personal representative of decedent on November 11, 2000, after decedent's death on May 11, 2000. On October 1, 2002, plaintiff sent to all defendants a notice of intent to file a medical malpractice claim, MCL 600.6912b. She then filed a complaint in United States District Court against Briskie and Young alleging a 42 USC § 1983 claim alleging deliberate indifference to decedent's extreme medical needs, and intentional deprivation of required medical care and treatment. Plaintiff then filed her complaint initiating this action on April 21, 2003. The federal claim was dismissed on July 16, 2003, but plaintiff appealed. That appeal was still pending when the trial court heard defendants' motions to dismiss.

Plaintiff first argues that the trial court erred in granting Antonini's motion for summary disposition based on the statute of limitations by misinterpreting our Supreme Court's decision in *Waltz v Wyse*, 469 Mich 642; 677 NW2d 813 (2004). We disagree. This Court reviews rulings

on motions for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999).

In *Farley v Advanced Cardiovascular Health Specialists PC*, 266 Mich App 566, 574; 703 NW2d 115 (2005), this Court held that, according to *Waltz*, the wrongful death saving provision, MCL 600.5852, was not tolled by the notice tolling provision, MCL 600.5856(d). In *Farley*, the plaintiff filed the notice of intent after the original statutory limitations period had expired. She also filed her complaint after two years from the date the letters of authority were issued. The procedural facts of this case are virtually identical to those in *Farley*. Plaintiff also argues that *Waltz* should only be applied prospectively. However, this contention was already rejected in *Ousley v McLaren*, 264 Mich App 486; 691 NW2d 817 (2004).[1] Accordingly, we conclude that the trial court did not err in applying *Waltz* and dismissing plaintiff's claims against Antonini.

Plaintiff also contends that the trial court erred in granting Briskie's and Young's motion for summary disposition under MCR 2.116(C)(6) because her federal claims were not the same or substantially the same claims presented in this action. Summary disposition under MCR 2.116(C)(6) is proper where "resolution of either action will require examination of the same operative facts." *JD Candler Roofing Co, Inc v Dickson*, 149 Mich App 593, 600-601; 386 NW2d 605 (1986). Here, resolution of the state and federal claims requires examination of the same operative facts. In both, the essential question is whether the decedent received adequate medical care. Therefore, the trial court properly granted summary disposition in favor of Briskie and Young.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter

[1] Leave to appeal was denied by our Supreme Court. *Ousley v MacLaren*, 472 Mich 927; 697 NW2d 525 (2005). Moreover, our Supreme Court has directed this Court to give the *Waltz* holding full retroactive application in at least two other cases. See, *Evans v Hall*, 472 Mich 929; 697 NW2d 525 (2005) and *Forsyth v Hopper*, 472 Mich 929, 697 NW2d 525 (2005).