STATE OF MICHIGAN

COURT OF APPEALS

JOHN VANDELUYSTER, Personal Representative of the Estate of ANGELYN VANDELUYSTER,

Plaintiff-Appellant,

v

BARTHOLOMEW D. SAK, M.D. and DONALD M. FIX, M.D.,

Defendants-Appellees,

and

HOLLAND COMMUNITY HOSPITAL,

Defendant.

UNPUBLISHED
November 28, 2006

No. 257046
Ottawa Circuit Court
LC No. 02-042262-NH

Before: Zahra, P.J., and Murphy and Neff, JJ.

MURPHY, J (*dissenting*).

Because I am of the opinion that MCL 600.5852 and *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29; 658 NW2d 139 (2003), dictate that the two-year saving period under § 5852 began to run anew when subsequent letters of authority were issued in December 2000, I respectfully dissent.

This Court reviews de novo whether an action is time-barred under MCR 2.116(C)(7). *Bryant v Oakpointe Villa Nursing Centre*, 471 Mich 411, 419; 684 NW2d 864 (2004). MCL 600.5852 provides:

> 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. [Emphasis added.]

Our primary task in construing a statute is to discern and give effect to the intent of the Legislature. *Shinholster v Annapolis Hosp*, 471 Mich 540, 548-549; 685 NW2d 275 (2004). The words contained in a statute provide us with the most reliable evidence of the Legislature's intent. *Id.* at 549. In ascertaining legislative intent, this Court gives effect to every word, phrase, and clause in the statute. *Id.* We must consider both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme. *Id*.

Our Supreme Court addressed § 5852 in *Eggleston, supra*, in which the decedent died on June 21, 1996, and decedent's widower was appointed temporary personal representative, with letters of authority being issued to him on April 4, 1997. However, decedent's widower died in August 1997, and the plaintiff, the son of decedent and decedent's widower, was appointed successor personal representative, with letters of authority being issued to him on December 8, 1998. He filed a medical malpractice complaint on June 9, 1999, which was more than two years after the first letters of authority had been issued to his father, but within two years of the issuance of the plaintiff's letters of authority. *Eggleston, supra* at 30-31.

The *Eggleston* Court, relying on the plain language of § 5852, held:

> The statute simply provides that an action may be commenced by the personal representative "at any time within 2 years after letters of authority are issued although the period of limitations has run." The language adopted by the Legislature clearly allows an action to be brought within two years after letters of authority are issued to the personal representative. The statute does not provide that the two-year period is measured from the date letters of authority are issued to the initial personal representative.
>
> Plaintiff was "the personal representative" of the estate and filed the complaint "within 2 years after letters of authority [were] issued," and "within 3 years after the period of limitations ha[d] run." The action was therefore timely. [*Id.* at 33 (citations omitted; alterations in original).]

Likewise, here, plaintiff is the personal representative of the estate, and he filed the complaint within two years after letters of authority were issued, and it matters not under *Eggleston* whether previous letters of authority had been issued. See also *Verbrugghe v Select Specialty Hosp-Macomb Co, Inc*, 270 Mich App 383, 389-390; 715 NW2d 72 (2006). The plain language of the statute allows for no other construction or conclusion. *Eggleston* cannot be read to limit its application to situations where the latest letters of authority were issued to a different personal representative. The focus was simply on the issuance of letters of authority, and this is consistent with the statutory language. MCL 600.5852 does not state that the personal representative must commence an action within two years after the "original" letters of authority were issued, but rather it allows consideration of the issuance of any letters of authority.

The majority relies on *Lindsey v Harper Hosp*, 455 Mich 56; 564 NW2d 861 (1997). In *Lindsay*, letters of authority were issued to the plaintiff as temporary personal representative, and then subsequently the plaintiff was appointed personal representative pursuant to newly issued letters of authority. The medical malpractice complaint was filed within two years of issuance of the subsequent letters of authority, but if the original issuance of letters of authority commenced the two-year period, the claim would be time-barred. *Id.* at 59-60. The Court held:

> Because we find no constructive difference in the Revised Probate Code regarding the authority and responsibility of temporary personal representatives and that of personal representatives, we hold that the statute of limitations savings provision ran from . . . when plaintiff was appointed temporary personal representative. Therefore, plaintiff's claim was not timely under MCL 600.5852. [*Id.* at 67.]

It is evident in examining *Lindsey* that the Court's entire focus in rendering its ruling was on the powers of temporary personal representatives versus personal representatives and not on whether the plain language of the statute could be construed to allow a *new* two-year period to run when subsequent letters of authority were issued, which was the focus in *Eggleston* and the issue presented here. To the extent that *Lindsey* conflicts with *Eggleston* by suggesting that the Legislature only contemplated one absolute date upon which the two-year period commences to run under § 5852, i.e., the date when the first letters of authority are properly issued regardless of valid subsequent letters, "[w]e are obligated to follow the most recent pronouncement of the Supreme Court on a principle of law." *Washington Mut Bank, FA v ShoreBank Corp*, 267 Mich App 111, 119; 703 NW2d 486 (2005). The most recent pronouncement was in *Eggleston*, which I believe controls our analysis.

I would reverse.

/s/ William B. Murphy