

STATE OF MICHIGAN
COURT OF APPEALS

MARGARET WILLIAMS, Personal
Representative of the Estate of
EUGENE C. WILLIAMS,

Plaintiff-Appellant,

v

SHORES MEDICAL ASSOCIATES, PLLC, and
CLARITA S. KETELS, D.O.,

Defendants-Appellees.

UNPUBLISHED
December 19, 2006

No. 265817
Macomb Circuit Court
LC No. 04-001124-NH

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition in this medical malpractice case. Based upon the recent decisions of two conflict panels of this Court, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Eugene Williams was treated by defendants from November 27, 2000 through March 13, 2001, and he died on June 6, 2001. Plaintiff was appointed personal representative of decedent's estate, and letters of authority were issued to her on September 19, 2001.¹ On May 14, 2003, plaintiff filed a notice of intent (NOI) to file a medical malpractice action, as required by MCL 600.2912d. During the time period relevant to this case, the filing of the NOI tolled the statute of limitations for 182 days.² Plaintiff filed suit alleging medical malpractice on October 19, 2003.

¹ The limitations period for a medical malpractice action is two years. MCL 600.5805(6). MCL 600.5852, a savings provision applicable to wrongful death actions, provides that if a person dies prior to the expiration of the limitations period, as happened in this case, the personal representative may commence an action within two years after letters of authority are issued. An action cannot be maintained unless it is filed within three years after the limitations period has expired.

² 2004 PA 87, effective April 1, 2004, rewrote MCL 600.5856. The amended version of the
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Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff's complaint was barred by the statute of limitations because it was filed more than two years after the date of the alleged malpractice, and no savings provision applied. Defendants relied on *Waltz v Wyse*, 469 Mich 642, 650; 677 NW2d 813 (2004), in which the Supreme Court held that the tolling provision provided for in MCL 600.5856(d) did not apply to the savings provision in MCL 600.5852. In response, plaintiff argued that *Waltz* should not be applied retroactively, or that equitable tolling should apply. The trial court granted defendants' motion.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Plaintiff's first argument, that *Waltz, supra*, should be given prospective effect only, is contrary to this Court's holding in *Ousley v McLaren*, 264 Mich App 486; 691 NW2d 817 (2004), and therefore fails. A conflict was created with *Ousley* in *Mullins v St. Joseph Mercy Hosp*, 269 Mich App 586; 711 NW2d 448 (2006), and that conflict was recently resolved by a conflict panel convened by the Court of Appeals in favor of retroactive application of *Waltz*. *Mullins v St. Joseph Mercy Hosp*, 271 Mich. App 503; 722 NW2d 666, Docket No. 263210, issued July 11, 2006.

Plaintiff's second argument, that equitable tolling should apply, likewise fails due to the decision of a conflict panel convened by this Court. A conflict was created with *Mazumder v University of Michigan Regents*, 270 Mich App 42; 715 NW2d 96 (2006) in *Ward v Siano*, 270 Mich App 584; 718 NW2d 371 (2006). That conflict was recently resolved against the application of equitable tolling where the retroactive application of *Waltz* deprives a plaintiff of an otherwise valid claim. *Ward v Siano*, ___ Mich App ___; ___ NW2d ___, Docket No. 265599, issued November 14, 2006.

Affirmed.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Jane E. Markey

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statute does not apply in this case.