

STATE OF MICHIGAN
COURT OF APPEALS

JOAN JONES,

Plaintiff-Appellant,

v

MARSHALL ROSS WINKLER,

Defendant-Appellee.

UNPUBLISHED

June 24, 2008

No. 278276

Kalamazoo Circuit Court

LC No. 06-000454-NI

Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On August 22, 2006, plaintiff sued defendant for damages arising out of a pedestrian-motor vehicle accident. The summons was valid through November 21, 2006. In December 2006, plaintiff moved to extend the summons. The trial court granted the motion on December 8, 2006. And defendant was served on December 18, 2006. The trial court later determined that the extension was invalid, making service of process invalid, and dismissed the case.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Questions concerning which statute of limitations applies, whether the statute was tolled, and when the limitation period ended are questions of law that are also reviewed de novo. *Minority Earth Movers, Inc v Walter Toebe Constr Co*, 251 Mich App 87, 91; 649 NW2d 397 (2002); *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 147; 624 NW2d 197 (2000).

Unless a defendant consents to jurisdiction, service of process is necessary to enable the court to acquire personal jurisdiction over a defendant. See *Dogan v Michigan Basic Prop Ins Ass'n*, 130 Mich App 313, 320; 343 NW2d 532 (1983); MCL 600.701. Service of a valid summons is a necessary part of service of process. *Holliday v Townley*, 189 Mich App 424, 426; 473 NW2d 733 (1991). A summons is valid only for a limited time; it expires 91 days after the date the complaint is filed. MCR 2.102(D). The summons may be extended upon a showing of good cause, *id.*, but the order extending the summons must be entered within the life of the summons. *Moriarity v Shields*, 260 Mich App 566, 572-575; 678 NW2d 642 (2004). If the defendant is not served with process during the life of the summons, the action is deemed dismissed,

MCR 2.102(E)(1), and an extended summons entered after the summons has expired is invalid. *Durfy v Kellogg*, 193 Mich App 141, 144-145; 483 NW2d 664 (1992).

Because the extension was invalid and defendant was not served with process within the life of the original summons, the limitations period was not tolled. See MCL 600.5856(a). Hence, the period of limitations expired on December 24, 2006. Furthermore, equitable or judicial tolling was not available to save the expired cause of action. Although the doctrine was recognized in *Lewis v Detroit Automobile Inter-Ins Exch*, 426 Mich 93, 95; 393 NW2d 167 (1986), that case was overruled by *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 590-593; 702 NW2d 539 (2005). The Supreme Court has limited the doctrine “to those circumstances when the courts themselves have created confusion,” as where there is a “jumble” of conflicting and irreconcilable case law. *Trentadue v Buckler Automatic Lawn Sprinkler Co*, 479 Mich 378, 406-407; 738 NW2d 664 (2007), citing *Devillers*, *supra* at 590 n 65.

In this case, plaintiff could not have been misled. Although she claims that she reasonably relied on the trial court’s mistake in extending the expired summons, it is well settled that a summons cannot be extended after it expires, *Moriarity*, *supra*, and that a failure to make service of process within the life of the summons requires dismissal, *Holliday*, *supra* at 426. Therefore, plaintiff should have known at the time she filed her motion that it could not lawfully be granted. Plaintiff’s own failure to seek an extended summons within the life of the original summons necessitated dismissal of her complaint and equitable tolling cannot save it. *Ward v Rooney-Gandy*, 265 Mich App 515, 528-529; 696 NW2d 64 (2005) (O’Connell, J., dissenting), *rev’d* for reasons stated in dissent 474 Mich 917 (2005).

Affirmed.

/s/ Patrick M. Meter
/s/ Michael R. Smolenski
/s/ Deborah A. Servitto