Court of Appeals, State of Michigan

ORDER

John Robinson v Dr Augustine Kole-James

Docket No. 260839

LC No. 04-405672-NH

Brian K. Zahra
Presiding Judge

Helene N. White

Kirsten Frank Kelly
Judges

In lieu of granting defendants' application for leave to appeal, the Court orders, pursuant to MCR 7.205(D)(2), that the February 1, 2005 order denying defendants' motion for summary disposition is REVERSED.

Because MCL 600.5852 does not create a separate limitations period but is only a savings provision, it does not govern when plaintiff's cause of action accrued. *Waltz v Wyse,* 469 Mich 642, 650-651; 677 NW2d 813 (2004). *Waltz* applies retroactively. *Ousley v McLaren,* 264 Mich App 486, 494-495; 691 NW2d 817 (2004). Plaintiff's claim accrued at the latest on July 3, 2001, the date of the decedent's death and plaintiff had two years from that date in which to file suit. MCL 600.5805(6); MCL 600.5838a(1). Therefore, the limitations period would have expired on July 3, 2003 unless it was tolled.

Plaintiff served the requisite notice of intent on June 11, 2003. Because notice was served within the original two-year limitations period but that limitations period would have expired during the 182-day waiting period, the limitations period was tolled. MCL 600.2912b(1); MCL 600.5856(d); *Omelenchuk v City of Warren,* 461 Mich 567, 574; 609 NW2d 177 (2000), overruled in part of other grounds by *Waltz, supra*. At the time the limitations period was tolled, twenty-one days remained. The 182-day waiting period ended on December 10, 2003. At that time, the limitations period began to run again and expired three weeks later on December 31, 2003, two months before plaintiff filed suit.

Plaintiff's claim was not saved by MCL 600.5852. That statute allows the personal representative to file suit within two years "after the letters of authority are issued although the period of limitations has run." The letters of authority were issued on September 28, 2001 and the two-year period expired on September 28, 2003. That period was not subject to tolling under MCL 600.5856(d). *Waltz, supra* at 655. However, the original two-year limitations period was tolled and because of that tolling, it had not expired when the two-year savings period ended. Therefore, § 5852 was inapplicable. Cf. *Lipman v William Beaumont Hosp,* 256 Mich App 483, 490; 664 NW2d 245 (2003).

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 06 2005
Date

Sandra Schultz Mengel
Chief Clerk