

STATE OF MICHIGAN
COURT OF APPEALS

PEGGY MERRILL and ARNOL MERRILL,

Plaintiffs-Appellants,

v

MARLENE ANN REEVES,

Defendant-Appellee.

UNPUBLISHED
October 31, 1997

No. 197776
Benzie Circuit Court
LC No. 95-004528 NI

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Plaintiffs appeal by right from an order granting summary disposition to defendant on the basis that the statute of limitations had expired, MCR 2.116(C)(7). This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs acknowledge that the applicable period of limitation is three years, and that their complaint was filed more than three years after the motor vehicle accident in question. Their reliance on MCL 600.5853; MSA 27A.5853 to circumvent the statute of limitation is unavailing. Under § 5853, defendant's absence from the state for more than two months during the original period of limitation would have tolled the statute, unless a means for service of process sufficient to vest a Michigan court with personal jurisdiction existed. *Ewing v Bolden*, 194 Mich App 95, 100; 486 NW2d 96 (1992). Here, pursuant to MCL 257.403; MSA 9.2103, service of process could have been effectuated by serving the Secretary of State with a copy of the summons and complaint and mailing a copy to defendant. If, after due diligence—which plaintiffs have failed to establish on this record—plaintiffs were unable to locate defendant's then current address for mailing purposes, plaintiffs could have obtained personal jurisdiction over defendant by serving defendant's insurance carrier, with whom plaintiffs' counsel was in contact. *Krueger v Williams*, 410 Mich 144; 300 NW2d 910; 17 ALR 4th 902 (1981).

Plaintiff also contends that the filing of a prior suit had the effect of extending the period of limitation for 90 days, thus making the present suit timely. This claim is also without merit. Under MCL 600.5856; MSA 27A.5856, the filing of the prior action would have tolled the period of limitation only

if it resulted in service of process being effectuated or jurisdiction otherwise being acquired over the defendant, which never occurred in the prior suit. *Buscaino v Rhodes*, 385 Mich 474; 189 NW2d 202 (1971).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs