

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GAYLE QUINETTE BOMAR,

Plaintiff-Appellant,

v

AMERITECH SERVICES INC. and  
AMERITECH OF MICHIGAN,

Defendants-Appellees.

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UNPUBLISHED

July 27, 2001

No. 222060

Wayne Circuit Court

LC No. 99-919196-CL

Before: Wilder, P.J. and Hood and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a former employee of defendants, was notified of her dismissal on November 7, 1995. She filed a retaliatory discharge action on October 30, 1998. Defendants were served with process on February 2, 1999, a few days after the summons had expired. The clerk entered an order of dismissal pursuant to MCR 2.102(E) on February 5, 1999. The trial court set the order aside sua sponte a month later and denied defendants' motion to set aside the order of dismissal. This Court peremptorily reversed, ruling that the clerk had acted properly and the case had been dismissed as of February 5, 1999.<sup>1</sup> Plaintiff refiled her complaint on July 21, 1999.

The parties apparently agreed that the limitations period was tolled while the first action was pending. Defendants asserted that it began to run again after the clerk dismissed the case and expired eight days later. Plaintiff argued that the order of reinstatement and subsequent appeal stayed the clerk's order, which did not take effect until July 18, 1999, and this action, which was filed three days later, was timely. The trial court agreed with defendants and dismissed the case.

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<sup>1</sup> *Bomar v Ameritech Services, Inc*, unpublished order of the Court of Appeals, entered June 18, 1999 (Docket No. 219415).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). When reviewing a motion for summary disposition under MCR 2.116(C)(7), a court must accept the plaintiff's well-pleaded factual allegations as true. "If no facts are in dispute, and reasonable minds could not differ regarding the legal effect of those facts, whether the plaintiff's claim is barred by the statute of limitations is a question for the court as a matter of law. However, if a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate." *Baker v DEC Int'l*, 218 Mich App 248, 252-253; 553 NW2d 667 (1996), aff'd in part, rev'd in part on other grounds 458 Mich 247 (1998).

A personal injury action under the Elliott-Larsen Civil Rights Act must be filed within three years after the claim accrues. MCL 600.5805(1), (9), *Parker v Cadillac Gage Textron, Inc*, 214 Mich App 288; 542 NW2d 365 (1995). The parties do not dispute that plaintiff's claim accrued on November 7, 1995. Therefore, plaintiff had to file suit by November 7, 1998. She filed suit on October 30, 1998. Generally, the limitations period is tolled on the date the complaint is filed. *Goniwicha v Harkai*, 393 Mich 255, 257; 224 NW2d 248 (1974). However, where a prior action is instituted against the defendant and dismissed for reasons other than an adjudication on the merits, the limitations period is only tolled:

(a) At the time the complaint is filed and a copy of the summons and complaint are served on the defendant.

(b) At the time jurisdiction over the defendant is otherwise acquired.

(c) At the time the complaint is filed and a copy of the summons and complaint in good faith are [sic] placed in the hands of an officer for immediate service, but in this case the statute is not tolled longer than 90 days after the copy of the summons and complaint is received by the officer. [MCL 600.5856.]

Because plaintiff never effectuated service of process on defendants or delivered a copy of the summons and complaint to an officer for service and defendants never submitted to the trial court's jurisdiction, the limitations period was never tolled. It thus continued to run and expired on November 7, 1998. *Sanderfer v Mt Clemens Gen'l Hosp*, 105 Mich App 458; 306 NW2d 322 (1981); *Napier v Hawthorn Books, Inc*, 449 F Supp 576 (ED Mich, 1978).

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Harold Hood  
/s/ Richard Allen Griffin