

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

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GEORGE R. LUBESKI and BARBARA  
LUBESKI,

UNPUBLISHED  
May 17, 2005

Plaintiffs-Appellants,

v

No. 260453  
Oakland Circuit Court  
LC No. 03-053764-NO

ROTUNDA CLEANING COMPANY,

Defendant/Cross-Defendant-  
Appellee,

and

CYNAMIC INDUSTRIES, f/k/a EXPRESS  
CLEAN SYSTEMS,

Defendant/Cross-Plaintiff-Appellee.

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Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's orders granting defendants' motion for summary disposition and dismissing the cross-complaint filed by defendant Cynamic Industries, f/k/a Express Clean Systems. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On October 30, 2000 George R. Lubeski fell during the course of his employment at Farmer Jack. On October 29, 2003 plaintiffs filed suit naming Cynamic, which contracted with Farmer Jack for floor cleaning services, and Rotunda, which subcontracted with Cynamic, as defendants. On October 30, 2003 plaintiffs served Rotunda with a copy of the summons and complaint via certified mail. Rotunda's agent received the documents on October 31, 2003. Plaintiffs personally served Cynamic with a copy of the summons and complaint on December 23, 2003.

Rotunda and Cynamic moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiffs' suit was barred by the applicable three-year statute of limitations, MCL 600.5805(10), because plaintiffs did not perform the actions required by MCL 600.5856 to toll the limitations period.<sup>1</sup> The trial court granted the motion, rejecting plaintiffs' assertion that mailing a copy of the summons and complaint was the equivalent of placing the documents in the hands of an officer for service. Subsequently, the trial court entered a stipulated order dismissing Cynamic's cross-complaint.

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).

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). If the plain and ordinary meaning of statutory language is clear, judicial construction is neither necessary nor permitted. *Cherry Growers, Inc v Agricultural Marketing & Bargaining Bd*, 240 Mich App 153, 166; 610 NW2d 613 (2000).

A party may not bring or maintain an action to recover damages for injuries unless the action is commenced within the period of time prescribed by statute. MCL 600.5805(1). MCL 600.5856 provides additional requirements to be met in order to toll the limitations period. If those requirements are not met, the limitations period is not tolled. *Gladych, supra* at 605.

In order to toll the statute of limitations, plaintiffs were required to file a complaint and meet the requirements of MCL 600.5856 as it read prior to April 22, 2004. Plaintiffs filed their complaint prior to October 30, 2003; however, they did not meet the requirements of MCL 600.5856 on or prior to that date. Specifically, plaintiffs did not place a copy of the summons and complaint in the hands of an officer for immediate service on defendant. MCL 600.5856(c). Plaintiffs cite no authority to support their assertion that placing a copy of the summons and complaint in the mail equated to placing the documents with an officer for immediate service. A party cannot simply assert a position and then leave it to this Court to search for authority to support or reject that position. *Leitch v Switchenko*, 169 Mich App 761, 764; 426 NW2d 804

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<sup>1</sup> At the time plaintiffs filed their complaint, MCL 600.5856 provided that a limitations period was tolled: (a) at the time the complaint was filed and a copy of the summons and complaint was served on the defendant; (b) at the time jurisdiction over the defendant was otherwise acquired; (c) at the time the complaint was filed and a copy of the summons and complaint was placed in the hands of an officer for immediate delivery; or (d) as otherwise provided in the case of medical malpractice actions. If the requirements of MCL 500.5856 are not met, the statute of limitations continues to run. *Gladych v New Family Homes, Inc*, 468 Mich 594, 605; 664 NW2d 705 (2003). The *Gladych* decision applied prospectively, effective September 1, 2003. *Id.* at 608. 2004 PA 87, effective April 22, 2004, amended MCL 600.5856 to provide that a statute of limitations is tolled at the time the complaint is filed "if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules." MCL 600.5856(a). The court rules allow service to be made by registered or certified mail. MCR 2.105(K). This action was filed prior to April 22, 2004; therefore, the amended version of MCL 600.5856 is inapplicable here.

(1988). Plaintiffs did not comply with the requirements of MCL 600.5856 in effect at the time this case was filed. Therefore, the trial court properly determined that the statute of limitations continued to run and plaintiffs' complaint was time-barred. *Gladych, supra*. Summary disposition was proper.

Affirmed.

/s/ William B. Murphy  
/s/ Helene N. White  
/s/ Michael R. Smolenski