

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

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THOMAS D. MAYS, Personal Representative of  
the ESTATE OF DONNA J. MAYS,

Plaintiff-Appellee,

v

MICHIGAN HEART, P.C., BRUCE GENOVESE,  
M.D., TIMOTHY SHINN, M.D., MANSOOR A.  
QURESHI, M.D., and CATHY LISA GLICK,  
M.D.,

Defendants,

and

ST. JOSEPH MERCY HOSPITAL, ST. JOSEPH  
MERCY HEALTH SYSTEM, and MARY L.  
BENNETT, R.N.,

Defendants-Appellants.

UNPUBLISHED  
April 25, 2006

No. 261403  
Washtenaw Circuit Court  
LC No. 03-000933-NI

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THOMAS D. MAYS, Personal Representative of  
the ESTATE OF DONNA J. MAYS,

Plaintiff-Appellee,

v

MICHIGAN HEART, P.C., BRUCE GENOVESE,  
M.D., TIMOTHY SHINN, M.D., and MANSOOR  
A. QURESHI, M.D.,

Defendants-Appellants,

and

ST. JOSEPH MERCY HOSPITAL, ST. JOSEPH  
MERCY HEALTH SYSTEM, and MARY L.  
BENNETT, R.N.,

No. 261734  
Washtenaw Circuit Court  
LC No. 03-000933-NI

Defendants.

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Before: Wilder, P.J., and Zahra and Davis, JJ.

PER CURIAM.

In these consolidated cases,<sup>1</sup> defendants St. Joseph Mercy Hospital, St. Joseph Mercy Health System and Mary L. Bennett, R.N. (the Hospital defendants), and defendants Michigan Heart, P.C., Bruce Genovese, M.D., Timothy Shinn, M.D., and Mansoor A. Qureshi, M.D. (the physician defendants) appeal by leave granted the circuit court's order denying their motion for summary disposition under MCR 2.116(C)(7). We affirm.

### I. Facts and Proceedings

On September 18, 2000, defendant St. Joseph Mercy Hospital admitted the decedent into its care for heart problems. Blood cultures were ordered on September 24, 2000, and the decedent was discharged on September 29, 2000. The decedent was again hospitalized on October 3, 2000, and died on October 5, 2000. Plaintiff alleged that the decedent's death was the result of septic shock brought on by a staphylococcus infection. Plaintiff maintains that blood work done during the hospitalization revealed the infection, but that the decedent was never advised of or treated for it.

The probate court appointed plaintiff *special* personal representative and issued letters of authority *with restriction* on February 28, 2001. The letters authorized him to conduct "record gathering and research regarding possible wrongful death litigation only." On May 1, 2003, the probate court issued general letters of authority to plaintiff, authorizing him to "do and perform all acts authorized by law." Plaintiff filed a written notice of intent to file a claim on February 26, 2003, and he filed the instant suit on August 22, 2003.

Defendants moved for summary disposition, arguing that the lawsuit was barred because it was not commenced within two years of issuance of the letters of authority with restriction. In response to this issue, plaintiff argued that under *Eggleston v Bio-Medical Applications of Detroit*, 468 Mich 29; 658 NW2d 139 (2003), he had two years to file from the date that the general letters of authority were issued, May 1, 2003.

The trial court held that a two-year savings period was provided every time letters of authority were issued, and it therefore denied defendants' motion for summary disposition.

### II. Summary Disposition

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<sup>1</sup> This Court consolidated these two appeals on its own motion. *Thomas D Mays v Michigan Heart PC*, unpublished order of the Court of Appeals, issued August 4, 2005 (Docket Nos. 261403 and 261734).

## A. Standard of Review

This Court reviews de novo a determination under MCR 2.116(C)(7) that a claim is barred. *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004).

## B. Analysis

MCL 600.5852 states that:

If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action which survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run. But an action shall not be brought under this provision unless the personal representative commences it within 3 years after the period of limitations has run.

Our Supreme Court addressed the above statute in *Eggleston v Bio-Medical Applications of Detroit, Inc, supra*. In *Eggleston*, the decedent died on June 21, 1996. the decedent's widower was appointed temporary personal representative, and issued letters of authority on April 4, 1997. He died before filing a claim. The son of the decedent and the temporary personal representative was appointed successor personal representative and issued letters of authority on December 8, 1998. He filed a complaint on June 9, 1999, which was more than two years after the first letters of authority had been issued. In addressing MCL 600.5852, the Court stated:

The statute simply provides that an action may be commenced by the personal representative 'at any time within 2 years after letters of authority are issued although the period of limitations has run.' *Id.* The language adopted by the Legislature clearly allows an action to be brought within two years after letters of authority are issued to the personal representative. The statute does not provide that the two-year period is measured from the date letters of authority are issued to the initial personal representative. [*Eggleston, supra* at 33, quoting MCL 600.5852]

The Court held that the two-year period of the wrongful death provision began to run when the letters of authority were issued to the successor personal representative, not just the initial personal representative. *Eggleston, supra*.

Defendants claim that *Eggleston* is distinguishable from the instant case because here the same personal representative was twice issued letters of authority. While this case may be factually distinct from *Eggleston*, MCL 600.5852 must still be applied as written. In *Verbrugghe v Select Specialty Hosp-Macomb County, Inc*, \_\_ Mich \_\_; \_\_ NW2d \_\_ (2006), this Court, in addressing *Eggleston*, stated that:

the statute contains only two limitations on the circumstances under which a successor personal representative can take advantage of the two year period: the

decedent passing away during the limitation period, and the successor receiving letters of authority. Once these events occur, the statute simply indicates that if a lawsuit is brought by a successor, that it be filed within two years of the issuance of the letters of authority, but no more than five years after the cause accrued. [Slip op, at pp 4-5.]

“No further judicial construction is required or permitted. Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent.” *Sun Valley Foods Co, supra*, citing *Luttrell v Dep’t of Corrections*, 421 Mich 93; 365 NW2d 74 (1984). MCL 600.5852 does not distinguish whether letters of authority are issued to the initial, successor, or same personal representative. The plain language of MCL 600.5852 allows “the personal representative” to commence an action within 2 years of being issued letters of authority and within 3 years after the period of limitations expires. Further, defendants’ position would essentially require this Court to read into the statute the word “first” before the word “issued” to resolve an ambiguity that is not present. To do so would not only contravene the plain language of MCL 600.5852, but also the application of MCL 600.5852 in *Eggleston*, because the successor personal representative in that case did not file the action “within 2 years after letters of authority are [first] issued.” Plaintiff commenced this action within 2 years after letters of authority were issued, and not beyond three years after the statute of limitations had run, so plaintiff’s action is timely.

At oral argument, defense counsel asserted that the instant case is controlled by *Lindsey v Harper Hosp*, 455 Mich 56; 564 NW2d 861 (1997). In *Lindsey*, our Supreme Court addressed “whether the statute of limitations savings provision began to run when the court issued [the] plaintiff letters of authority as temporary personal representative . . . or when the court issued [the] plaintiff letters of authority as personal representative.” *Id* at 61. The Court held that savings provision began to run when the court issued the plaintiff letters of authority as temporary personal representative, so the plaintiff’s claim was time barred. *Id*.

While the instant case is factually similar to *Lindsey* in that the court twice issued the same personal representative letters of authority, the holding of *Lindsey* does not support defendants’ position. Specifically, *Lindsey* states that “[b]ecause we find no constructive difference in the Revised Probate Code regarding the authority and responsibility of temporary personal representatives and that of personal representatives, we hold that the statute of limitations savings provision ran from . . . when [the] plaintiff was appointed temporary personal representative.” *Lindsey, supra* at 67.

In the instant case, however, there is a substantive difference in regard to letters of authority first issued to plaintiff. That is, the letters of authority first issued allowed him to conduct “record gathering and research regarding possible wrongful death litigation only.” Those letters of authority did not authorize plaintiff to file a lawsuit. Thus, the court’s restriction on letters of authority first issued to plaintiff removes the underpinnings of *Lindsey*’s holding.

Further, *Eggleston*’s application of MCL 600.5852 casts doubt upon the continuing viability of *Lindsey*. As mentioned, in *Eggleston*, the Court held that the savings provision began to run when the letters of authority were issued to the successor personal representative. MCL 700.3613 expressly provides that “[e]xcept as the court otherwise orders, the successor personal representative has the powers and duties in respect to the continued administration that the

former personal representative would have had if the appointment had not been terminated.” In *Eggleston*, the initial personal representative and the successor representative had the exact same powers and responsibilities. Given *Lindsey*’s reliance on the powers and responsibilities of personal representatives, whether special, temporary, or successor, as the basis to begin running the saving provision, *Eggleston*’s application of MCL 600.5852 contravenes *Lindsey*.

Because of our resolution of this issue, we need not address purported alternative grounds to affirm raised in plaintiff’ s brief on appeal.

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra

/s/ Alton T. Davis