

Court of Appeals, State of Michigan

ORDER

Estate of Asia Imani Barnes v St John Providence Health System

Docket No. 327899

LC No. 14-014807-NH

Michael J. Riordan
Presiding Judge

Michael J. Talbot

Cynthia Diane Stephens
Judges

The Court orders that, pursuant to MCR 7.205(E)(2), in lieu of granting leave to appeal, the Wayne Circuit Court's May 26, 2015 order denying defendants' motion for summary disposition is REVERSED.

Although MCL 600.5856 tolled the limitations period during the pendency of plaintiff's initial complaint against defendant Tushar Patel, M.D., the tolling ceased upon Patel's dismissal without prejudice on September 10, 2010. See *Kirkaldy v Rim*, 478 Mich 581, 586; 734 NW2d 201 (2007) (where the limitations period for a medical malpractice action is tolled under MCL 600.5856 and the action is subsequently dismissed without prejudice, "the plaintiff would then have whatever time remains in the period of limitations within which to file a complaint . . ."). Accordingly, since only seven days remained before expiration of the limitations period with respect to the claim against Patel, plaintiff's second complaint against Patel, filed on November 17, 2014, was time-barred. The plaintiff's argument that the court intended that the dismissal against Patel be without prejudice is unavailing. Moreover, because an order granting summary disposition based on the statute of limitations is an adjudication on the merits, defendants St. John Providence Health System and St. John Providence Hospital and Medical Centers, Inc., cannot be held vicariously liable for Patel's actions. See *Al-Shimmari v Detroit Med Ctr*, 477 Mich 280, 284-285; 731 NW2d 29 (2007) (an order granting summary disposition to an agent based on the statute of limitations is an adjudication on the merits foreclosing claims of vicarious liability against the principal), citing MCR 2.504(B)(3). The trial court erred in failing to grant the motion for summary disposition under MCR 2.116(C)(7).

This order is to have immediate effect. MCR 7.215(F)(2)

This Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

DEC 03 2015

Date

Chief Clerk