

STATE OF MICHIGAN
COURT OF APPEALS

DELORES ANN HOWLAND,

Plaintiff-Appellant,

v

ESTATE OF INA LEONE BEARDSLEE,

Defendant-Appellee.

UNPUBLISHED

December 18, 2001

No. 225617

Montcalm Circuit Court

LC No. 99-000570-NO

Before: Meter, P.J., and Jansen and Gotham*, JJ

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition, based on law of the case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed an identical previous action, which was disposed of by the trial court on statute of limitations grounds and appealed to this Court. This Court found that the statute of limitations was tolled for four months by the Revised Probate Code, MCL 700.707. However, the trial court should have granted defendant's motion to dismiss based on the failure to timely serve the summons. *Howland v Estate of Beardslee*, unpublished decision of the Court of Appeals, issued July 30, 1999 (Docket No. 206796). Plaintiff asserted that any dismissal should be without prejudice, allowing her to re-file. The Court stated:

In light of our conclusion that § 707 tolled the statute of limitations applicable to the tort alleged in this case, plaintiff had until March 5, 1997, three years and four months after the date of the accident and one month after her lawsuit was deemed dismissed, to re-file an identical complaint in this matter. Although plaintiff filed a motion to set aside the dismissal and issue a new summons on March 3, 1997, she did not re-file her action before the statute of limitations expired. Plaintiff's cause of action is therefore barred.

Plaintiff argues that this paragraph is dicta, and that this Court failed to consider the effect of tolling during the pendency of the initial action. Plaintiff raised the question of tolling in her motion for rehearing, which was denied by this Court.

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff's second action is barred by law of the case. The rule of law of the case provides that if an appellate court has ruled on a legal question, the legal question thus determined will not be differently determined in the same case where the facts remain materially the same. *CAF Investment Co v Saginaw Twp*, 410 Mich 428, 454; 302 NW2d 164 (1981).

There is no reason to limit the precedential effect of dicta where the same parties are involved in the same action with identical facts. See *Bauer v Garden City (After Remand)*, 163 Mich App 562, 570-571; 414 NW2d 891 (1987). Where the litigants have had the opportunity to argue the issue decided and the issue was properly before this Court, the Court's decision on the question is binding on the lower court and on any later panels that hear the case, under the law of the case doctrine. *Id.* at 571. The trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Roy D. Gotham