

STATE OF MICHIGAN
COURT OF APPEALS

MARTHA E. JORDAN,

Plaintiff-Appellee,

v

UNITED TECHNOLOGIES AUTOMOTIVE,
INC.,

Defendant-Appellant.

UNPUBLISHED
December 18, 2003

No. 226538
Bay Circuit Court
LC No. 99-003817-NO

ON REMAND

Before: Bandstra, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

This case is before us on remand from the Michigan Supreme Court¹ for reconsideration in light of *Gladych v New Family Homes, Inc*, 468 Mich 594; 664 NW2d 705 (2003). In light of *Gladych*, we reverse the circuit court order denying defendant's motion for summary disposition of plaintiff's complaint on the basis that the applicable limitations period barred plaintiff's claim.

The facts of this case were succinctly stated in our previous opinion:²

Plaintiff's complaint alleged that on July 21, 1996, she suffered an injury during the course of her temporary employment with defendant. Though plaintiff intended to file a circuit court action against defendant, her attorney's law clerk mistakenly filed plaintiff's personal injury complaint in the 74th District Court on July 20, 1999, one day before the three-year limitations period within MCL 600.5805(9) expired. The complaint and a summons were not served on defendant until October 18, 1999, after the district court had transferred the case to the circuit court.

¹ *Jordan v United Technologies Automotive, Inc*, order of the Supreme Court, entered September 18, 2003 (Docket No 121031).

² *Jordan v United Technologies Automotive, Inc*, unpublished opinion per curiam of the Court of Appeals, entered December 18, 2001 (Docket No. 226538).

Defendant's motion for summary disposition focused on whether, pursuant to MCL 600.5856, some action had occurred that tolled the limitations period. The circuit court concluded that plaintiff's filing of a complaint and summons in the district court sufficed to toll the limitations period because the district court generally effected service of filed complaints, and plaintiff reasonably relied on the district court's service policy.

In our previous opinion, we found defendant's reliance on MCL 600.5856 inappropriate, stating that § 5856 becomes relevant only when the statutory period of limitation has run, barring an action. However, in *Gladych*, the Supreme Court held that "the unambiguous language of MCL 600.5805 and MCL 600.5856 provides that the mere filing of a complaint is insufficient to toll the statute of limitations. In order to toll the limitations period, one must also comply with the requirements of § 5856." *Gladych, supra* at 595. In light of *Gladych*, we conclude that plaintiff's mere filing of a complaint in this matter did not toll the limitations period. In our previous opinion we did not dispute defendant's contentions that no events occurred that would satisfy the tolling requirement of § 5856, and we likewise do not now dispute those contentions. However, we will expand our analysis.

MCL 600.5856 provides in relevant part as follows:

The statutes of limitations or repose are 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 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.

In this case, it appears it was undisputed that subsection 5856(a) was not satisfied because although a complaint was filed in the district court one day before the end of the limitations period, no complaint or summons was served on defendant until several months later. Plaintiff's counsel acknowledged that although she had directed her law clerk to serve copies of the complaint and summons on the day they were filed in the district court, the law clerk's service attempt proved unsuccessful because defendant's place of business had closed and was unoccupied. Furthermore, plaintiff has never suggested that "jurisdiction over the defendant [was] otherwise acquired" according to subsection 5856(b).

A review of the record likewise shows subsection 5856(c) unsatisfied because plaintiff expressly acknowledged, in response to a request to admit from defendant, that she did not place a copy of the summons and complaint with an officer for immediate service before the limitations period expired on July 21, 1999. Beyond the law clerk's failed attempt to serve defendant on the day of the district court filing, plaintiff made no further efforts at service until months after the limitations period had expired. This Court has long recognized that an attorney does not constitute an "officer" in whose hands placement of a complaint and summons will toll

a limitations period under MCL 600.5856. *Constantini v Hofer*, 5 Mich App 597, 599-601; 147 NW2d 433 (1967). Furthermore, plaintiff's attorney's reliance on the district court clerk's alleged assurance that "it was their policy and they would mail to my office true copies of the Complaint and issued Summons" plainly establishes no event that would toll the limitations period under MCL 600.5856.

We conclude that the circuit court misinterpreted the law when it found tolling appropriate on the basis that "plaintiff I think had a reasonable right to assume . . . that that [summons] would be served by the District Court and that it would be in to the hands of an officer of the District Court to serve it."³ The un rebutted evidence demonstrated plaintiff's failure to establish any tolling circumstances contemplated by MCL 600.5856. In light of *Gladych*, because defendant was served beyond the three-year limitations period set forth in MCL 600.5805(9), plaintiff's claim was time barred.

Reversed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage

³ We further note that the circuit court erred to the extent that it relied on a general district court policy to issue summonses and arrange their service "through a Court Officer or a process server that the Court has a contract with to do service of complaints" because plaintiff presented no evidence substantiating such a policy in response to defendant's motion. Plaintiff's statement that her law clerk relied on the district court's representation that it would effect service constituted an unsubstantiated hearsay allegation. MCR 2.116(G)(5), (6); *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).