

STATE OF MICHIGAN
COURT OF APPEALS

ERMA WOODHULL, Personal Representative of
the Estate of MICHAEL WOODHULL, Deceased,

Plaintiff-Appellant,

v

RYAN VEENEMAN, FAMILY OUTREACH
CENTER, TAMMY SYSWERDA, R.N.,
CATHERINE WHITE, R.N., DANIEL CARREL,
D.O., NASIM YACOB, M.D., GWEN
LANSWER, R.N., NANCY SQUIRES, R.N., and
CORRECTIONAL MEDICAL SERVICES, INC.,

Defendants-Appellees.

UNPUBLISHED
September 29, 2005

No. 262569
Kent Circuit Court
LC No. 04-012428-NH

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals from the trial court's order that granted summary disposition to defendants pursuant to MCR 2.116(C)(7). The court dismissed this case because this wrongful death medical malpractice action is barred by the statute of limitations. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

We review de novo a trial court's decision granting summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Questions whether a statute of limitation bars a claim, and questions of statutory interpretation are also reviewed de novo. *Farley v Advanced Cardiovascular Health Specialists, PC*, 266 Mich App 566, 570-571; 703 NW2d 115 (2005).

The alleged medical malpractice occurred between September 11 and 14, 2001, and plaintiff's decedent died on November 3, 2001. Plaintiff was issued letters of authority and appointed personal representative of the decedent's estate on June 25, 2002. On June 22, 2004, plaintiff served a notice of intent to file a claim pursuant to MCL 600.2912b. On December 22, 2004, plaintiff filed this lawsuit.

Plaintiff did not file her lawsuit within the two-year period for filing a medical malpractice action. MCL 600.5805(6). She relies on the wrongful death saving provision, MCL 600.5852, which provides:

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.

Because plaintiff failed to file this claim within two years of being appointed personal representative of the estate, plaintiff's claim is time-barred by MCL 600.5805(6).

The first sentence of MCL 600.5852 provides a *two*-year saving period that begins with the issuance of letters of authority. Plaintiff failed to file this action within the additional two-year period allowed by MCL 600.5852.¹ Plaintiff's reliance on the second sentence of MCL 600.5852 as a basis for arguing that her action was timely, is misplaced and erroneous under our Court's decision in *Farley, supra*. In *Farley*, this Court explained:

We note that the three-year ceiling in this provision does not establish an independent period during which a personal representative may bring suit. Specifically, it does not authorize a personal representative to file suit at any time within three years after the period of limitations has run. Rather, the three-year ceiling limits the two-year saving period to those cases brought within three years of when the malpractice limitations period expired. As a result, while the three-year ceiling can *shorten* the two-year window during which a personal representative may file suit, it cannot *lengthen* it. [*Id.*, p 573 n 16.]

Here, plaintiff's action was not filed within the two-year period after letters of authority were issued, and the three-year ceiling does not lengthen the period. Rather, it is an additional limitation that is irrelevant where, as here, the action was not filed within two years after the issuance of letters of authority.² The trial court properly granted defendants' motion for summary disposition.

¹ Although she filed a notice of intent to sue within the two-year period, the filing of the notice does not extend the period allowed under the wrongful death saving provision. *Waltz v Wyse*, 469 Mich 642, 655; 677 NW2d 813 (2004).

² Plaintiff recognizes that her position is clearly contrary to *Farley, supra*, but contends that the case was wrongly decided and is contrary to *Waltz, supra*. We disagree. In *Waltz, supra*, p 652 n 14, the Court observed that a plaintiff bringing a wrongful death medical malpractice action may "[p]otentially" have a period of five years plus 182 days to file the action. However, the circumstances in which the period would extend that long are not present here.

Affirmed.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Jane E. Markey