

STATE OF MICHIGAN  
COURT OF APPEALS

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MICHAEL WLODARCZAK and MARY  
WLODARCZAK,

Plaintiff-Appellants,

v

RONALD SMITH,

Defendant-Appellee.

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UNPUBLISHED  
September 29, 2005

No. 254032  
Saginaw Circuit Court  
LC No. 03-049182-NI

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

PER CURIAM.

In this no fault tort action, plaintiffs appeal as of right from the trial court's order granting summary disposition to defendant Ronald Smith. The sole issue on appeal is whether the trial court erred in ruling that the statute of limitations requirements set forth in *Gladych v New Family Homes, Inc*, 468 Mich 594; 664 NW2d 705 (2003) should be given retroactive application to the instant case. We conclude that the trial court erred and, thus, reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court granted summary disposition for defendant pursuant to MCR 2.116(C)(7) and (10). This Court reviews rulings on motions for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Under MCR 2.116(C)(10), summary disposition may be granted when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."

Before *Gladych, supra*, our Michigan Supreme Court had interpreted MCL 600.5805 and MCL 600.5856 to require plaintiffs to file their cause of action within the statute of limitations, but ruled that the statute was tolled until the expiration of the summons; thus, plaintiffs could give a process server the summons and complaint to deliver to defendants after the final date of their statute of limitations period had passed, so long as the action was filed prior to the final date of the statute. *Buscaino v Rhodes*, 385 Mich 474, 483-484; 189 NW2d 202 (1971).

In *Gladych*, our Supreme Court overruled *Buscaino* because it incorrectly nullified MCL 600.5856. *Id.* at 595, 600. The Court held that "the mere filing of a complaint is insufficient to toll the statute of limitations." *Id.* at 595. To toll a statute of limitations, the Supreme Court required that plaintiff comply with MCL 600.5856, *id.*, which read as follows at the time:

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.
- (d) If, during the applicable notice period under section 2912, a claim would be barred by the statute of limitations or repose, for not longer than a number of days equal to the number of days in the applicable notice period after the date notice is given in complaint with section 2912b.

Though the decision gave the statute its proper meaning, the Court recognized that it effectively created new law. *Id.* Because the Court wished to avoid the injustice that would be wrought by unqualified retroactive effect of this new law, it instead limited the retroactivity of *Gladych*:

Upon consideration of the effect our decision would have on the administration of justice, however, we find it appropriate to give our holding limited retroactive application. Therefore, this case will apply retroactively only to those cases in which this specific issue has been raised and preserved. In all other cases, this opinion will apply prospectively, effective September 1, 2003. [*Id.*]

Our Supreme Court further explained its holding regarding this limited retroactivity while denying leave in *Collins v Comerica Bank*, 469 Mich 1223, 1223-1224; 668 NW2d 357 (2003):

In order to avoid any potential misunderstanding regarding our limited retroactive holding in *Gladych* . . . we note that *Gladych* applies retroactively only to cases in which the specific issue in *Gladych* was raised or preserved before *Gladych* was released on July 1, 2003. . . . *Only pending cases that preserved this particular statute of limitations challenge as of July 1, 2003* are covered by the limited retroactive application of our holding in *Gladych*. In all other cases, *Gladych* has prospective application only to complaints filed on or after September 1, 2003. [Emphasis added.]

Plaintiff's action was filed July 25, 2003—*before* September 1, 2003—while defendant raised the affirmative defenses regarding the statute of limitations on October 6, 2003—*after* July 1, 2003. However, as stated in *Collin, supra* at 357, *Gladych* applies only to two categories of cases: (1) cases instituted on or after September 1, 2003 [prospective relief] and (2) cases instituted before September 1, 2003, where defendant raised an affirmative defense regarding plaintiff's noncompliance with MCL 600.5856 *on or before July 1, 2003* [limited retrospective relief]. Because defendant's affirmative defenses meet neither of these conditions, *Gladych* does

not control. *Id.* Because *Gladych* does not apply, *Buscaino, supra* at 483-484, would control, thus, tolling the statute of limitations as soon as the trial court issued the summons. Because plaintiffs served defendant within the time of the summons, they satisfied the statute of limitations requirements set forth in *Buscaino. Id.* Consequently, the trial court erred in granting defendant's motion for summary disposition.

For the above reasons, we reverse the trial court's order granting summary disposition to defendant and remand this case to the trial court for further proceedings. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Jane E. Markey