

STATE OF MICHIGAN
COURT OF APPEALS

EULA WASHINGTON, as Personal
Representative for the Estate of Lisa B. Griffin,

UNPUBLISHED
December 1, 2005

Plaintiff-Appellant,

v

SINAI HOSPITAL OF GREATER DETROIT,
d/b/a SINAI-GRACE HOSPITAL, DETROIT
MEDICAL CENTER, DR. KUNTA, THOMAS
PISKOROWSKI, D.O., and DR. AL-SAYAD,

No. 253777
Wayne Circuit Court
LC No. 03-330934-NM

Defendants-Appellees.

Before: Jansen, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals by right an order granting summary disposition in favor of defendants. We reverse.

The issue presented by plaintiff is whether res judicata operates to bar a wrongful death action by a successor personal representative of an estate where, in an identical action brought by the original representative, the trial court granted summary disposition for defendants on statute of limitations grounds.

Following decedent's death, her brother was appointed as personal representative of her estate. As representative, he initiated a wrongful death medical malpractice action against defendants. However, in that action, the trial court granted summary disposition for defendants after finding the plaintiff filed his complaint beyond the statute of limitations. The brother did not appeal the trial court's decision.

Rather, after dismissal of the first action, plaintiff was appointed as successor representative of decedent's estate. Under MCL 600.5852, plaintiff initiated the instant wrongful death action against defendants by filing a complaint identical to that filed in the first action. In response, defendants moved for summary disposition on the ground that plaintiff's claims were barred by res judicata. The trial court agreed and granted summary disposition for defendants. Plaintiff appealed.

The wrongful death saving statute, MCL 600.5852, 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.

Under MCL 600.5852, a successor representative may bring a wrongful death action as long as the action is filed within two years after the issuance of letters of authority to the successor representative and within three years after the period of limitations has run. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 33; 658 NW2d 580 (2003). The successor representative need not bring her action within two years after the issuance of letters of authority to the original representative. *Id.*

We find that res judicata does not bar the current claim. Res judicata operates to bar a second action when: (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first action, and (3) both actions involve the same parties or their privies. *Sewell v Clean Cut Management*, 463 Mich 569, 575; 621 NW2d 222 (2001).

Generally, a summary disposition ruling is the procedural equivalent of a trial on the merits. *Mable Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 510; 686 NW2d 770 (2004). However, under these circumstances, plaintiff's successor representative complaint was not barred by res judicata because a grant of summary disposition on grounds that the statute of limitation has expired does not constitute an adjudication on the merits of a cause of action. See *Rogers v Colonial Fed Savings & Loan Assoc*, 405 Mich 607, 619 n 5; 275 NW2d 499 (1979); *Nordman v Earle Equipment Co*, 352 Mich 342, 346; 89 NW2d 594 (1958); *Ozark v Kais*, 184 Mich App 302, 308; 457 NW2d 145 (1990). We find that the trial court improperly denied plaintiff's claim under the doctrine of res judicata.

Reversed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood