

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT HOLLINS, a Minor, by his Next Friend
and Mother, PATRICIA HOLLINS, and
PATRICIA HOLLINS, Individually,

UNPUBLISHED
March 16, 2006

Plaintiff-Appellant,

v

SINAI-GRACE HOSPITAL, DR. BRENDA
SNOWMAN, and DR. ELMERTHA BURTON,

No. 257682
Wayne Circuit Court
LC No. 03-335479-NH

Defendants-Appellees.

Before: Davis, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's orders granting summary disposition in favor of defendants, Sinai-Grace Hospital and Dr. Brenda Snowman, dismissing the case with prejudice and denying plaintiff's motion for reconsideration. We affirm.

Plaintiff does not dispute that she filed her complaint after Robert Hollins' ("Robert") 15th birthday and that her claim would be barred by MCL 600.5851(7), as added by 1986 PA 178. However, plaintiff argues that Robert was insane at the time his cause of action accrued and, therefore, the period of limitations is extended by the general savings provision provided in MCL 600.5851(1), as amended by 1986 PA 178. We disagree.

This Court reviews de novo the summary dismissal of an action under MCR 2.116(C)(7) to determine if it is barred by the statute of limitations. *Bryant v Oakpointe Villa Nursing Ctr, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004). "We consider all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict it." *Id.* Additionally, the interpretation and application of statutes are questions of law subject to de novo review. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

It is undisputed that Robert was born on May 14, 1987, and that the alleged injuries occurred on that date. Accordingly, the only issue is whether the period of limitations contained in § 5851(7) or the general savings provision contained in § 5851(1) applied to plaintiff's medical malpractice claim on behalf of Robert. At the relevant time, MCL 600.5851(1) provided, in pertinent part:

Except as otherwise provided in subsection [§ 5851](7), if the person first entitled to make an entry or bring an action is under 18 years of age, insane, or imprisoned at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run.

And, MCL 600.5851(7), provided:

If, at the time a claim alleging medical malpractice accrues to a person under section 5838a, the person is 13 years of age or less, an action based on the claim shall not be brought unless the action is commenced on or before the person's fifteenth birthday. If, at the time a claim alleging medical malpractice accrues to a person under section 5838a, the person is more than 13 years of age, he or she shall be subject to the period of limitations set forth in section 5838a.

Statutory construction requires an examination of the plain language of the statute to determine the intent of the legislature. *Danse Corp v Madison Heights*, 466 Mich 175, 181-182; 644 NW2d 721 (2002). “[A] court must presume that every word has some meaning and, if possible, effect should be given to each provision.” *Id.* at 182. “If the language of the statute is clear and unambiguous, no interpretation is necessary and the court must follow the clear wording of the statute.” *American Alternative Ins Co v York*, 470 Mich 28, 30; 679 NW2d 306 (2004).

This same issue has recently been addressed by this Court in *Vega v Landland Hosp at Niles & St Joseph, Inc*, 267 Mich App 565, 569-570; 705 NW2d 389 (2005), albeit the statutory language had been amended. In particular, at issue was whether the current version of MCL 600.5851(1), including its savings provision, applied to medical malpractice claimants. *Id.* at 569. MCL 600.5851(1) provides, in relevant part:

Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring an action under this act is under 18 years of old or insane at the time the claim accrues, the person or those claiming under the person have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run.

And, MCL 600.5851(7) provides:

Except as otherwise provided in subsection (8), if, at the time a claim alleging medical malpractice accrues to a person under section 5838a the person has not reached his or her eighth birthday, a person shall not bring an action based on the claim unless the action is commenced on or before the person's tenth birthday or within the period of limitations set forth in section 5838a, whichever is later. If, at the time a claim alleging medical malpractice accrues to a person under section 5838a, the person has reached his or her eighth birthday, he or she is subject to the period of limitations set forth in section 5838a.

The plaintiff in *Vega*, the conservator of an estate of a minor plaintiff, filed a medical malpractice claim after the two-year statutory period of limitations contained in MCL 600.5838a

had expired. *Vega, supra* at 567. However, the plaintiff argued that the minor was insane under MCL 600.5851(2) and, thus, the minor's claim was extended by the general savings provision contained in MCL 600.5851(1). *Id.* at 567-568.

This Court considered whether the phrase "[e]xcept as otherwise provided in subsections (7) and (8)" contained in MCL 600.5851(1) excluded application of the general savings provision to medical malpractice claimants proceeding under § 5851(7). The *Vega* court concluded that it unambiguously excluded such claimants. *Vega, supra* at 571. Further, the Court found that subsection one and subsection seven did not conflict or cause any ambiguity when read together because subsection one applies to all claims, except medical malpractice claims, that fall under the RJA. *Id.* Finally, this Court noted that subsection seven was enacted more recently and was more specific than subsection one. *Id.* at 571-572. Thus, this Court concluded that the plaintiff could not avail herself of the insanity disability and, because the plaintiff's claim was filed after the two-year period of limitations, the trial court properly granted the defendant's motion for summary disposition. *Id.* at 572.

The same analysis applies in this case, necessitating the same holding. The phrase "[e]xcept as otherwise provided in subsection (7)" unambiguously excluded the class of plaintiffs described in subsection (7), i.e., medical malpractice claimants, from relying on the savings provision. Further, subsection one and subsection seven do not conflict or create any ambiguity when read together. In 1987, § 5851(1) applied to those plaintiffs who brought either (1) an action under the RJA or (2) an action defined under separate statutory authority. See *Rawlins v Aetna Cas & Surety Co*, 92 Mich App 268, 277; 284 NW2d 782 (1979), superseded by statute as stated in *Cameron v Auto Club Ins Ass'n*, 263 Mich App 95, 99-100; 687 NW2d 354 (2004). Conversely, the § 5851(7) period of limitations specifically applied to those medical malpractice claimants that brought a claim under § 5838a. Accordingly, the plain language of the statute indicated the legislature's intent to separate medical malpractice plaintiffs who brought their claim under § 5838a from those plaintiffs who brought claims under separate sections of the RJA and under separate authority.

Here, plaintiff does not dispute that she filed her medical malpractice complaint after Robert's 15th birthday. Because the claim was subject to the requirements of MCL 600.5851(7), irrespective of any claimed disability, it is barred. Thus, the trial court did not err in granting summary disposition in favor of defendants, Sinai-Grace Hospital and Dr. Brenda Snowman.

In light of our conclusion, it is unnecessary to determine whether plaintiff submitted sufficient evidence to create a question of fact regarding whether Robert was insane at the time his claim accrued.

Affirmed.

/s/ Alton T. Davis
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot