

STATE OF MICHIGAN
COURT OF APPEALS

FRANK JANUSZYK,

Plaintiff-Appellant,

v

JODI RANDALL BAKER and JENNIFER L.
VANTHOMME,

Defendants-Appellees.

UNPUBLISHED

March 21, 2006

No. 257866

Wayne Circuit Court

LC No. 03-341380-NI

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition. We affirm.

Plaintiff and defendant Baker were involved in an automobile accident on December 30, 2000. Plaintiff had three years, or until December 30, 2003, to file suit. MCL 600.5805(1), (10); *Stephens v Dixon*, 449 Mich 531, 538; 536 NW2d 755 (1995). Plaintiff filed suit on December 22, 2003, and delivered copies of the summons and complaint to a private process server that day. Defendants were served with process in February and March 2004.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), asserting that plaintiff's claim was barred by the applicable statute of limitations. They argued that plaintiff had three years, or until December 30, 2003, in which to file suit, and that while he filed his complaint within that three-year period, filing alone did not toll the running of the limitations period. Defendants contended that plaintiff was required to effectuate service of process on them or deliver the summons and complaint to an officer for service by December 30, 2003, and because he did not do so, the limitations period expired.

At a hearing, plaintiff argued that he had delivered the summons and complaint to a process server on the day suit was filed. Defendants argued that delivery to a process server was not sufficient unless the server was an officer of the court. The trial court ruled that according to the statute as written, the summons and complaint had to be delivered "into the hands of an officer. Process Servers are not officers of any unit of government. . . ." The court dismissed the case, finding that the service in this case occurred after the expiration of the statute of limitations.

We review a trial court's ruling on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Which statute of limitations applied, whether the statute was tolled, and when the limitations period ended are questions of law, *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 147; 624 NW2d 197 (2000), and questions of law are also reviewed de novo on appeal. *Minority Earth Movers, Inc v Walter Toebe Constr Co*, 251 Mich App 87, 91; 649 NW2d 397 (2002). Finally, statutory interpretation is a question of law which is reviewed de novo on appeal. *Roberts v Mecosta Co General Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

This case is controlled by *Gladych v New Family Homes, Inc*, 468 Mich 594; 664 NW2d 705 (2003), which was given prospective application effective September 1, 2003, and remained in effect until abrogated in April 2004 by 2004 PA 87.¹ Overruling *Buscaino v Rhodes*, 385 Mich 474; 189 NW2d 202 (1971), which held that as long as a complaint is filed within the limitations period, it is timely even if the defendant is not served with process until later, the *Gladych* Court held that the filing of the complaint alone is insufficient to toll the statute of limitations. The statute of limitations is tolled only when the complaint is filed and the requirements of MCL 600.5856 are met. *Id.* at 595, 605. MCL 600.5856(c), which is at issue here, provided that the limitations period is tolled “[a]t 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”

It has long been the law that “any person of suitable age and discretion” is qualified to serve process in Michigan. MCL 600.1908(1); *Taylor v Mathews*, 224 Mich 133, 135; 194 NW 533 (1923). Nevertheless, MCL 600.5856(c) refers to an “officer” rather than a “person” or a “process server.” Even the Committee comment following MCL 600.5856 notes, “in order to secure the benefits of subsection (3) [sic], a copy of the summons and complaint must be placed in the hands of an ‘officer,’ and not just any person of suitable age and discretion.” Case law predating *Buscaino*, *supra*, and consistent with *Gladych*, *supra*, indicates that an “officer” for purposes of MCL 600.5856(c) is a governmental agent or employee whose duties statutorily include making service of process, such as a sheriff or his deputy, MCL 600.582(a); MCL 600.1801(1); MCL 600.8321(1), a township constable, MCL 41.83, or the bailiff of the 36th District Court, MCL 600.8322(1). See *Coleman v Bolton*, 24 Mich App 547, 551-553; 180 NW2d 319 (1970); *Dolland v Academy Asphalt Paving Co*, 24 Mich App 95, 99-100; 180 NW2d 115 (1970). Any other person, while qualified to serve process, is not an “officer” as that term is used in MCL 600.5856(c). See *Kyes v Pisco*, 31 Mich App 72, 75; 187 NW2d 551 (1971), rev'd on other grounds on rehearing, 31 Mich App 75, aff'd 387 Mich 778 (1972); *Coleman*, *supra*; *Salmanovitz v Dexter-Davison Markets, Inc*, 17 Mich App 390, 391-392; 169 NW2d 516 (1969); *Constantini v Hofer*, 5 Mich App 597, 600-601; 147 NW2d 433 (1967). If the plaintiff utilizes a private process server to make service of process, he must still deliver a copy of the summons

¹ The Legislature effectively overturned *Gladych* by amending MCL 60.5856(a) to provide for tolling at the time the complaint is filed if the summons and complaint are served on the defendant within the life of the summons, and deleting subsection (c). However, that amendment did not take effect until April 2004 and is inapplicable in this case.

and complaint to the sheriff or other officer to obtain the benefit of the tolling period. *Hoseney v Zantop*, 17 Mich App 141, 145-146; 169 NW2d 124 (1969).

Because a private process server is not an “officer” as that term is used in MCL 600.5856(c), and plaintiff did not deliver a copy of the summons and complaint to an officer, the limitations period was not tolled and expired on December 30, 2003. Therefore, the trial court did not err in granting defendants’ motion for summary disposition.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald