

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ALBERTA WASHINGTON, Personal  
Representative of the Estate of BARBARA  
RICHARDSON, Deceased,

Plaintiff-Appellee/Cross-Appellee,

v

GLACIER HILLS NURSING CENTER d/b/a  
GLACIER HILLS, INC.,

Defendant-Cross-Appellant,

and

KRISTEN TYSZKOWSKI, M.D. and LONA  
MODY, M.D.,

Defendants-Appellants/Cross-  
Appellees.

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CAROL A. MACKENZIE, Personal  
Representative of the Estate of BONNIE L.  
MCELHANEY,

Plaintiff-Appellee,

v

PETER WALTER BARRETT, M.D., M.S.,  
F.A.C.S., and THE DOCTORS GROUP, P.C.,

Defendants-Appellants,

and

BATTLE CREEK HEALTH SYSTEM, P.C.,

Defendant.

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Before: Markey, P.J. and Sawyer and Bandstra, JJ.

UNPUBLISHED  
August 16, 2007

No. 266487  
Washtenaw Circuit Court  
LC No. 04-000909-NH

No. 266557  
Calhoun Circuit Court  
LC No. 05-001693-NH

PER CURIAM.

In Docket No. 266487, defendants appeal by leave granted the trial court's October 28, 2005 order denying their motion for summary disposition. In Docket No. 266557, defendants also appeal by leave granted the trial court's October 28, 2005 order denying their motion for summary disposition. We affirm.

We consolidated the two captioned cases for appeal because they present the same issue: whether, pursuant to MCL 600.5852, a successor personal representative has two years from the date he or she received letters of authority to commence a wrongful death action when the predecessor personal representative, who served as personal representative for two years, did not commence such an action.

We review a trial court's decision on a motion for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Summary disposition is proper under MCR 2.116(C)(7) if "[t]he claim is barred because of . . . statute of limitations." In reviewing a trial court's decision under MCR 2.116(C)(7), this Court "consider[s] all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict it." *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004); MCR 2.116(G)(5), (6). Whether a period of limitations applies in a particular circumstance is a legal question that this Court reviews de novo. *Detroit v 19675 Hasse*, 258 Mich App 438, 444; 671 NW2d 150 (2003).

In *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 33; 658 NW2d 139 (2003), our Supreme Court stated the following regarding MCL 600.5852, the wrongful death saving provision:

The statute simply provides that an action may be commenced by the personal representative "at any time within 2 years after letters of authority are issued although the period of limitations has run." The language adopted by the Legislature clearly allows an action to be brought within two years after letters of authority are issued to the personal representative. The statute does not provide that the two-year period is measured from the date letters of authority are issued to the initial personal representative. [Citation omitted.]

It is undisputed that plaintiffs filed their respective complaints within two years after being issued letters of authority and within three years after the statute of limitations expired. Therefore, the plaintiffs' complaints were timely filed, and the trial courts did not err in denying the defendants' motions for summary disposition.

Moreover, the two present cases are distinguishable from *McLean v McElhaney*, 269 Mich App 196, 201-202; 711 NW2d 775 (2005). Unlike the predecessor personal representatives in *McLean*, the predecessor personal representatives in the present cases did not file untimely actions. Accordingly, plaintiffs were not attempting to revive untimely, but otherwise valid, complaints. See, *Boodt v Borgess Medical Ctr*, 272 Mich App 621, 660, 664; 728 NW2d 471 (2006) (Whitbeck, J). Rather, plaintiffs filed original complaints under the two-

year saving provision afforded to them by the issuance of their letters of authority. *Eggleston, supra* at 33.

We affirm.

/s/ Jane E. Markey  
/s/ David H. Sawyer  
/s/ Richard A. Bandstra