

STATE OF MICHIGAN  
COURT OF APPEALS

MINA O'LAUGHLIN, Personal  
Representative of the Estate  
of PATRICIA O'LAUGHLIN,  
Deceased,

JAN 06 1989

Plaintiff-Appellant,

v

No. 94100

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

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BEFORE: H. Hood, P.J., R. M. Maher and J. B. Sullivan, JJ.

PER CURIAM

Plaintiff appeals as of right from the April 30, 1986 order granting defendant's motion for partial summary disposition in this no-fault insurance action.

On July 30, 1976, plaintiff's daughter, Patricia O'Laughlin, was involved in an automobile accident. Plaintiff suffered a closed head injury which rendered her comatose and a total invalid. Plaintiff was appointed Patricia's guardian on November 1, 1976. Patricia remained an invalid until her death on February 11, 1984. After her death, the guardianship estate was closed and a decedent's estate was opened, and plaintiff was appointed personal representative of the estate.

At the time of the accident, Patricia was covered by a no-fault automobile insurance policy issued by defendant. Between 1976 and 1984, defendant made substantial personal protection benefit payments to cover Patricia's surgical, nursing, and rehabilitation services. At one point, Patricia received care at the home of Helen Baranowski, a private nurse who lived in Pennsylvania. Defendant made payments to the Baranowskis to cover Patricia's room and board and the nursing and therapy services provided by the Baranowskis.

The instant suit resulted from defendant's failure to pay for the construction of a therapy room which was added to the Baranowskis' home for Patricia rehabilitation, and for dental work performed on Patricia. Between December, 1982 and October, 1983, the therapy room was built for Patricia onto the Baranowski's home. Defendant showed some reservations about paying for the modification of a third party's home, but recognized that Patricia was to receive treatment and care in the new facility. As early as November 4, 1982, plaintiff and her attorney were aware that they might have to file suit against defendant to get money for the therapy room. Yet, negotiations between the parties continued and it was not until January 17, 1984 that defendant sent plaintiff a letter indicating defendant had no obligation to pay for the facility.

In March, 1983, plaintiff underwent dental work. On September 1, 1983, defendant rejected plaintiff's claim for this work, alleging that the required work was not related to the accident.

On February 5, 1985, plaintiff filed suit against defendant to recover benefits due for the dental work and the construction of the therapy room. The court granted defendant's motion for partial summary disposition, finding that both claims were barred by the one-year statute of limitations, MCL 500.3145(1); MSA 24.13145(1). The court rejected plaintiff's contention that the mental incompetency savings provision, MCL 600.5851; MSA 27A.5851 or the death savings provision, MCL 600.5852; MSA 27A.5852 operated to extend the statute of limitations.

The one-year no fault statute of limitations, MCL 500.3145(1); MSA 24.13145(1) states:

"An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made

a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced." (emphasis added).

This statute of limitations may be extended in some instances by the mental incompetency savings provision, MCL 600.5851; MSA 27A.5851, which states in pertinent part:

"(1) Except as otherwise provided in subsection (7), if the person first entitled to make an entry or bring an action is under 18 year 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."

Thus, an incapacitated person, or a person claiming under him, has one year after the disability is removed through death or otherwise to bring an action. The appointment of a guardian for a mentally incapacitated person does not remove the disability for purpose of MCL 600.5851; MSA 27A.5851. Paavola v St. Joseph Hospital, 119 Mich App 10, 14-15; 325 NW2d 609 (1982), lv den 417 Mich 944 (1983); Wallisch v Fosnaugh, 126 Mich App 418, 426; 336 NW2d 923, lv den 418 Mich 871 (1983). In Paavola and Wallisch, this Court reasoned that nothing in MCL 600.5851 suggests legislative intent that an insane person's exemption from the running of the statute of limitations is to end upon appointment of a guardian.

In the instant case, because the dates of the dental work (March, 1983), and of the construction work (December, 1982 to October, 1983) are more than one year before plaintiff filed suit (February 5, 1985), claims for these expenses would be barred by MCL 500.3145; MSA 24.13145 if the limitations period is not extended. Pursuant to MCL 600.5851(1); MSA 27A.5851(1), Patricia's mental disability was not removed until her death on February 11, 1984. Thus, plaintiff had a one-year grace period beyond February 11, 1984, to sue defendant. Therefore, the February 5, 1985 filing of the instant action was timely as

within the one-year grace period. Defendant's attempts to distinguish Paavola and Wallisch are unavailing. The applicable law unequivocally states that the appointment of a guardian does not remove the disability of a mentally incapacitated person for purpose of MCL 600.5851; MSA 27A.5851. Thus, the court erred in concluding that the no-fault statute of limitations was not tolled by the mental incompetency savings provision.

The court also erred in holding that the statute of limitations was not extended by the death savings provision, MCL 600.5852; MSA 27A.5852. This statute states:

"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 or against the executor or administrator of the deceased person . . . at any time within 2 years after letters testamentary or letters of administration are granted, although the period of limitations has run . . ."

On February 11, 1984, when Patricia died, the one-year statute of limitations had not yet run on either claim. Thus, pursuant to MCL 600.5852; MSA 27A.5852, plaintiff had two years after her March, 1984 appointment as personal representative to bring this action. Therefore, plaintiff's February 5, 1985 filing of this action was timely.

REVERSED.

/s/ Harold Hood  
/s/ Richard M. Maher  
/s/ Joseph B. Sullivan