STATE OF MICHIGAN

COURT OF APPEALS

TACCARA KENNEDY,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
April 6, 2006

No. 259453
Wayne Circuit Court
LC No. 04-400795-NF

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting summary disposition in favor of defendant on the ground that her no-fault claim was barred by the statute of limitations. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On February 27, 1997, plaintiff, who was seated on the hood of a vehicle owned by her aunt, fell and struck her head as the vehicle began to move. The vehicle was not insured and no police report was made. Plaintiff was fourteen years of age at the time of the accident. On March 1, 2001, plaintiff filed an application for benefits with the Assigned Claims Facility claiming a closed head injury from the accident. Defendant was subsequently assigned plaintiff's claim and did not pay any benefits. Plaintiff filed suit on January 9, 2004. Defendant thereafter moved for, and was granted, summary disposition on the ground that the statute of limitations had expired.

On appeal, plaintiff argues that the no-fault statute of limitations should be tolled in accordance with MCL 600.5851(1). In addition, plaintiff argues that the trial court incorrectly applied this Court's decision in *Cameron Auto Club Ins Ass'n*, 263 Mich App 95; 687 NW2d 354 (2004), lv granted 472 Mich 899; (2005), thereby violating her constitutional rights to equal protection and due process.

The "one year back and notice" rule of MCL 500.3145 bars a claimant from recovering benefits payable under the no-fault act for accidental bodily injury not noticed to the insurer within one year of the accident or for any portion of a loss that occurred more than one year before the action was commenced. Although plaintiff's injuries occurred on February 27, 1997, she did not file a claim until January 9, 2004. Therefore, plaintiff's claim is barred pursuant to the "one year back and notice" rule.

Plaintiff incorrectly argues that MCL 600.5851 of the Revised Judicature Act (RJA) tolls the statute of limitations of the no-fault act because she was a minor at the time of the accident and did not understand her legal rights relative to her accidental bodily injury. The saving provision of the RJA provides that if the person entitled to make a claim "*under this act*"[1] is a minor or insane at the time the action accrues, "the person shall have one 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." MCL 600.5851(1) (emphasis added). This Court has determined that MCL 600.5851 does not apply to no-fault cases because "[t]he language of the saving provision clearly and unambiguously states that it now applies only to actions commenced under the RJA." *Cameron, supra,* at 100. Therefore, plaintiff cannot rely on the saving provision to preserve her claim. Furthermore, because *Cameron* teaches that the RJA is inapplicable to claims under the no-fault act, a constitutional challenge involving the RJA savings proposition is not sustainable.

With regard to the equal protection claim, a statute that does not create a suspect class (such as race, alienage, or national origin), is evaluated under the rational basis test. *Zdrojewski v Murphy*, 254 Mich App 50, 79; 657 NW2d 721 (2002). In the instant case, the saving provision of the RJA creates two classes of minors or insane persons—those whose causes of action are governed by the RJA and those whose causes of action are governed by another statute. Neither classification constitutes a suspect class. Therefore, the RJA amendment is evaluated under the rational basis test.

To apply the rational basis test, the Court must determine whether the provisions or classifications at issue are rationally related to a legitimate state interest. *Shavers v Attorney General*, 402 Mich 554, 611-613; 267 NW2d 72 (1978). The challenger bears the burden of proving that the statute is arbitrary and not rationally related to the state interest. *Id*. In addition, the Court must construe every reasonable presumption in favor the challenged provision. *Phillips v Mirac, Inc*, 470 Mich 415, 423; 685 NW2d 174 (2004). The state interest of enforcing a statute of limitations is to provide a time frame within which responsible plaintiff's may bring their claims while protecting potential defendants from fraud and delay. *Gladych v New Family Homes, Inc,* 468 Mich 594, 600; 664 NW2d 705 (2003). In contrast, "the purpose of a tolling provision is to protect a plaintiff from a statute of limitations defense." *Burton v Reed City Hosp Corp*, 471 Mich 745, 754-755; 691 NW2d 424 (2005). It is not disputed that the government's creation and enforcement of the statute of limitations constitute a legitimate state interest. Moreover, the creation of the one year saving provision for minors and insane persons is rational because it provides plaintiffs a timeframe within which to pursue their claims and yet still protects defendants because the tolling period ends once the disability is removed. Therefore, the RJA saving provision satisfies the rational basis test.

Regarding plaintiff's due process challenge, the challenged provision must also satisfy rational basis scrutiny to be constitutional. *Phillips, supra* at 436. Applying the above analysis, the tolling provision of the RJA satisfies this test. In addition, because a statute of limitations is procedural rather than substantive, *Gleason v Dep't of Transportation*, 256 Mich App 1, 2; 662

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[1] This language was added as part of the 1993 amendments to the RJA (hereafter referred to as "RJA amendment.")

NW2d 822 (2003), a statute of limitations will be upheld unless a party can show that it is so harsh and unreasonable as to violate the party's right to "the access to the courts intended by the grant of the substantive right." *Id*., quoting *Forest v Parmalee*, 402 Mich 348, 359; 262 NW2d 653 (1978). In the instant case, the RJA statute of limitations provision does not deny minors or insane persons access to the courts because guardians may bring suits in their stead. In addition, plaintiff has made no showing that the RJA tolling limitation is harsh or unreasonable. Thus, plaintiff's due process challenge must fail.

Therefore, the trial court did not err in granting defendant's motion for summary disposition because the "one year back and notice" rule bars plaintiff's claim and because the saving provision of the RJA amendment is inapplicable.[2]

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio

[2] Defendant's reliance on *Lewis v Detroit Auto Inter-Ins Exch*, 426 Mich 93; 393 NW2d 167 (1986), and *Johnson v State Farm*, 183 Mich App 752; 455 NW2d 420 (1990), to preserve her claim is incorrect because both cases were explicitly overruled by *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 593; 702 NW2d 539 (2005). Also, there is no evidence to support plaintiff's assertion that defendant admitted she was eligible for benefits. Therefore, that issue is not properly before this Court. *Viculin v Dep't of Civil Service*, 386 Mich 375, 381; 192 NW2d 449 (1971).