

STATE OF MICHIGAN
COURT OF APPEALS

BRENDA BANKS,

Plaintiff-Appellant,

v

FREDERICK JAMES DELONG, ROBERT L.
CAREY, CAREY TRANSPORTATIONS and
ROBERT L. CAREY TRANSPORTATION,

Defendants-Appellees.

UNPUBLISHED
February 24, 2005

No. 251600
Wayne Circuit Court
LC No. 03-300999-NI

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition on the ground that the complaint was barred by the applicable statute of limitations. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured in an automobile accident on January 11, 2000, and filed this negligence action on January 10, 2003, one day before the limitations period expired. See MCL 600.5805(1), (10). Defendants were not served with process until May 2003. They asserted that plaintiff's claim was barred because, although the complaint was timely filed, plaintiff failed to meet the requirements of MCL 600.5856 for tolling the limitations period. See *Gladych v New Family Homes, Inc*, 468 Mich 594, 595, 605; 664 NW2d 705 (2003). The only issue was whether, in light of *Gladych's* limited retroactive effect, it applied to this case. The trial court held that it did and, therefore, granted defendants' motion.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Whether a cause of action is barred by the statute of limitations is a question of law that is also reviewed de novo on appeal. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

The *Gladych* Court stated that its decision applies "only to those cases in which this specific issue has been raised and preserved. In all other cases, the decision is given prospective application, effective September 1, 2003." *Gladych, supra* at 607-608. The Court explained this limitation more fully in *Collins v Comerica Bank*, 469 Mich 1223; 668 NW2d 357 (2003):

Gladych applies retroactively only to cases in which the specific issue in *Gladych* was raised or preserved before *Gladych* was released on July 1, 2003. The specific issue addressed in *Gladych* was the requirement that tolling of the relevant statute of limitations can only be accomplished by complying with the provisions of MCL 600.5856, which includes service of process on the defendant prior to the expiration of the period of limitation. Only pending cases that preserved this particular statute of limitations challenge as of July 1, 2003, are covered by the limited retroactive application of our holding in *Gladych*. In all other cases, *Gladych* has prospective application only to complaints filed on or after September 1, 2003. [*Collins, supra* at 1223.]

Although this action was pending before July 1, 2003, defendants first raised the *Gladych* issue in their answer to the complaint, which was filed on July 10, 2003. Because they “failed to preserve this specific issue as of July 1, 2003, *Gladych* has no retroactive application to the present case.” *Id.* at 1223-1224. Therefore, the trial court erred in ruling that the issue had been preserved.

Defendants argue that plaintiff should be estopped from relying on the limited retroactivity of *Gladych* because her dilatory actions precluded them from raising the *Gladych* issue in a timely manner. Alternatively, they assert that their answer should be deemed to relate back to June 6, 2003, the date their answer to the complaint was originally due. Because our review is limited to issues actually decided by the trial court, *Allen v Keating*, 205 Mich App 560, 564-565; 517 NW2d 830 (1994), and these issues were not raised and addressed below, they have not been preserved for appellate review. *Herald Co, Inc v Ann Arbor Pub Sch*, 224 Mich App 266, 278; 568 NW2d 411 (1997). Accordingly, we decline to consider them.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio