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MICHIGAN SUPREME COURT AFFIRMS CAMERON IN 4-3 DECISION

By John H. Cowley, Jr.

The Michigan Supreme Court, in a decision released on July 28, 2006, held that the minority/insanity tolling provision of the Revised Judicature Act (RJA) does not toll the one-year back rule in MCL 500.3145(1). The RJA provision concerns when an action may be brought, but §3145 of the No-Fault act limits the amount of personal injury protection benefits that a person injured in an automobile accident may recover. The Supreme Court went on to vacate the portion of the Court of Appeals' decision allowing a tolling argument to be utilized in claiming benefits that accrued between October 1, 1973, and October 1, 1993, the date of the statutory amendment to the minority/insanity tolling provision in MCL 600.5851(1). In essence, a majority of the Court held that although the tolling provision instructs minors and insane persons that they are entitled to wait until one year after their legal disabilities have been removed to bring their civil actions, if they do wait, they will only be allowed to recover what may be a portion of the total damages recoverable under MCL 500.3145.

In *Cameron v Auto Club Insurance Association*, ___ Mich ___ (2006), Daniel Cameron, age 13, was involved in a bicycle/car accident and sustained a closed-head injury with personality changes resulting in aggressive behavior. Daniel's parents took care of him for three years following a 1996 accident before admitting him to an inpatient rehab program. In 2002, the plaintiff filed suit in Washtenaw County Circuit Court claiming attendant care benefits incurred from 1996 through 1999.

At the trial court level, ACIA argued that the plaintiffs (guardians of the estate) could not recover attendant care benefits because MCL 500.3145(1) of the No-Fault Act specifically limited plaintiff's recovery to one-year prior to the date of filing the lawsuit. In further support, ACIA argued that the tolling provisions of the Revised Judicature Act were not applicable to the No-Fault Act. The Court of Appeals' decision reported at 263 Mich App 95 (2004) held that as of the effective date of the 1993

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This decision bars claims for no fault benefits that have been incurred more than one year prior to the institution of litigation, regardless of any statutory tolling provisions. Further, the Michigan Supreme Court vacated the portion of the *Cameron* Court of Appeals decision which allowed a tolling argument to be utilized in claiming benefits that accrued between October 1, 1973 and October 1, 1993. Absent an amendment of the statute by the legislature or a change in the makeup of the Supreme Court, the one year back rule of Section 3145 of the No Fault Act limits claims to those which have been incurred within one year prior to the filing of a lawsuit.

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RJA amendment (October 1, 1993) the general savings provision did not apply to actions commenced under the No-Fault Act. Prior to the amendment of MCLA 600.5851(1), the courts consistently held that the general savings provision of the Revised Judicature Act applied to all causes of action created by the Michigan statutes even when the statute creating the right contained its own limitation period. Thus, Michigan courts had previously ruled that the one-year statute of limitations (MCLA 500.3145(1)) of the No-Fault Act was subject to the minor savings provision of §600.5851(1), giving a minor a one-year grace after termination of his disability of minority (19 years of age) in which to commence an action. The wording of the 1993 amendment changed the statutory language from "an action" to "an action under this Act." The Court of Appeals in *Cameron*, utilizing the strict constructionist view that has been embraced by the Michigan Supreme Court, held that the tolling provisions of the RJA did not apply to the No-Fault Act. The Court of Appeals' decision did allow a tolling argument to be utilized in claiming benefits that accrued between October 1, 1973 and October 1, 1993 through the date of the statutory amendment. The Supreme Court granted leave to appeal.

The Supreme Court affirmed the Court of Appeals in a majority opinion authored by Justice Taylor joined by Justices Corrigan, Young, and Markman. The majority held that by its unambiguous terms, MCL 600.5851(1) concerns when a minor or person suffering from insanity may "make the entry or bring the action." The tolling provision does not pertain to the damages recoverable once an action has been brought. Therefore, MCL 600.5851(1) is irrelevant to the damages—eliminated by the one-year-back provision of MCL 500.3145(1). The minority/ insanity tolling provision of the RJA does not operate to toll the one-year back rule of MCLA 500.3145(1). The Supreme Court specifically overruled *Geiger v DAIE*, 114 Mich App 283 (1982) that reached the opposite conclusion which held that the minority/insanity provision did toll the one-year back rule. The Court of Appeals in *Geiger* reached its conclusion by looking behind the clear language of the statute and focusing on a purported legislative intent. According to the Supreme Court majority, *Geiger* was erroneous because the Court of Appeals conclusion was contrary to the clear language of the statutes enacted by the legislature.

Justices Cavanaugh, Weaver and Kelly dissented. The dissenters suggested that the majority's interpretation created an absurd result in acknowledging a tolling of claims of children and mentally-impaired persons which preserves merely the right to file papers rather than the right to recover damages. Judge Markman who concurred with the majority urged the present Michigan legislature to review the opinions in this case and ascertain whether the Court's holdings were consistent with the legislature's present intentions.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

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CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chair

John H. Cowley, Jr.

Editor

Carina Nelson

We welcome your questions and comments.

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