

Order

Michigan Supreme Court
Lansing, Michigan

January 25, 2013

Robert P. Young, Jr.,
Chief Justice

145239

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack,
Justices

PAUL MARSACK,
Plaintiff-Appellee,

v

SC: 145239
COA: 291153
Sanilac CC: 08-032206-NI

CLAUDIA MAEDEL, Personal
Representative of the Estate of LAURA
GABRIEL,
Defendant-Appellant,

and

HASTINGS MUTUAL INSURANCE
COMPANY,
Defendant.

On order of the Court, the application for leave to appeal the May 3, 2012 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and we REMAND this case to the Sanilac Circuit Court for entry of summary disposition in favor of defendant Claudia Maedel. Because "MCR 2.102 does not provide the authority to issue a so-called 'third' summons," *Hyslop v Wojjusik*, 252 Mich App 500, 506 (2002), plaintiff's initial complaint "is deemed dismissed without prejudice" as to Maedel. MCR 2.102(E)(1). Because plaintiff did not file a new complaint until after the three-year statute of limitations expired, MCL 600.5805(10), and this action is not "commenced by the personal representative of the deceased person" to toll the statute of limitations pursuant to MCL 600.5852, defendant is entitled to summary disposition. MCR 2.116(C)(7).



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 25, 2013

Corbin R. Davis

Clerk