STATE OF MICHIGAN

COURT OF APPEALS

BRANDY JO CAVERLY and CHERI ALEXANDER, Plaintiffs-Appellants, v HICS CORP., d/b/a COVE BAR, Defendant/Cross-Plaintiff-Appellee, and ROSS JOHN YULE and JOHN DANIEL BEATO, Defendants/Cross-Defendants-Appellees.	UNPUBLISHED January 24, 2006 No. 256329 Mackinac Circuit Court LC No. 02-005424-NI

Before: Meter, P.J., Whitbeck, C.J. and Schuette, J.

PER CURIAM.

In this dramshop action, plaintiffs appeal as of right from the trial court's order granting summary disposition to defendant HICS Corp., d/b/a Cove Bar, under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

The case arose from an accident in which an automobile struck a pedestrian, Brandy Jo Caverly, on July 5, 2001. Ms. Caverly and her mother, Cheri Alexander, filed suit against the allegedly intoxicated driver of the car, Ross John Yule, the owner of the car, John Daniel Beato, and defendant HICS Corp., d/b/a Cove Bar, which was alleged to have sold alcoholic beverages to Yule when he was visibly intoxicated in violation of MCL 436.1801(2). Defendant HICS moved for summary disposition under MCR 2.116(C)(10), arguing that it was entitled to judgment as a matter of law because plaintiffs failed to give written notice to defendant within 120 days of plaintiffs' entering an attorney-client relationship for the purpose of pursuing a dramshop claim as required by MCL 436.1801(4).

II. STANDARD OF REVIEW

This Court reviews the grant or denial of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In evaluating a motion brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties, MCR 2.116(G)(5), viewing the evidence in the light most favorable to the nonmoving party. Where the evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Id*. at 120.

In the instant case, there is no dispute that plaintiffs filed the complaint within the 120-day notice period and also within that time placed the complaint and summons in the hands of the sheriff for immediate service. It is also undisputed that defendant HICS was not served with the complaint or with any written notice in this matter until several weeks after the 120-day period had expired. Thus the question before us is whether the filing of the complaint and the placing of it and the summons in the hands of the sheriff for service constitute the giving of notice within the meaning of MCL 436.1801(4). Questions of statutory construction are subject to review de novo. *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 566; 702 NW2d 539 (2005).

III. ANALYSIS

Plaintiffs rely on the case of *Shepard v Kayler*, 141 Mich App 86; 366 NW2d 80 (1985), in which a complaint was filed and the summons and complaint were given to an authorized process server two days before the expiration of the two-year limitation period applicable to dramshop actions, but service was not effected until after the expiration of the two-year period. *Id*. at 87. The Court held under the predecessor dram shop act [MCL 436.22] that an action is instituted, so as to satisfy the dramshop statute of limitations, by filing a complaint and placing it with a summons in the hands of an authorized process service with the bona fide intent of having it served. *Id*. at 90. Plaintiffs argue that *Shepard*, *supra*, should be applied to conclude that the giving of notice is also accomplished by filing a complaint and placing it and the summons in the hands of the sheriff for immediate service. We believe that the plain language of the statute, requiring plaintiffs to "give written notice to all defendants within 120 days after entering an attorney-client relationship for the purpose of pursuing a [dramshop] claim," MCL 436.1801(4), precludes the interpretation by analogy that plaintiffs urge. When statutory language is clear and unambiguous, judicial interpretation is neither required nor permitted. *Brown v Jojo-Ab, Inc*, 191 Mich App 208, 212; 477 NW2d 121 (1991). While filing the complaint and placing it with the summons in the hands of a process server institutes an action, *Shepard*, *supra* at 90, giving the complaint and summons to a process server does not constitute giving notice to a defendant. The distinction is underscored by the fact that defendant HICS did not *receive* written notice of any intended action until the service of the complaint several weeks outside of the statutory notice period of 120 days.

Plaintiffs' claim that defendant HICS had actual notice of the potential claim, having received a telephone call from the bar manager within twelve hours of the accident, does not alter this outcome. This Court has repeatedly held that a dramshop defendant need not demonstrate prejudice in order to prevail on a notice defense. *Chambers v Midland Country Club*, 215 Mich App 573, 578; 546 NW2d 706 (1996); *Lautzenheiser v Jolly Bar & Grille*, 206 Mich App 67, 70; 520 NW2d 348 (1994); *Brown v Jojo-Ab*, *supra* at 212.

Plaintiffs alternatively claim, citing MCL 600.5856(c), that the notice period was tolled by the filing of the complaint and the placing of the summons and complaint in the hands of the sheriff for service. However, MCL 600.5856(c) by its terms applies only to statutes of limitations or repose. Notice provisions are separate and distinct from statute of limitations. *Pi-Con, Inc. v A.J. Anderson Constr Co*, 435 Mich 375, 393; 458 NW2d 639 (1990). The notice provision of MCL 436.1801(4) is not a statute of limitation or repose and therefore is not affected by the tolling provision. See *Davis v Farmers Ins Group,* 86 Mich App 45, 47; 272 NW2d 334 (1978) (notice provisions have different objectives than statutes of limitation).

Affirmed.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette