

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2007-CA-000351-MR

PAMELA REVELETTE AND  
ANTHONY REVELETTE, INDIVIDUALLY  
AND AS HUSBAND AND WIFE

APPELLANTS

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE DAVID H. JERNIGAN, JUDGE  
ACTION NO. 05-CI-00629

RUSSELL L. CROLEY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KELLER AND TAYLOR, JUDGES; HENRY,<sup>1</sup> SENIOR JUDGE.

TAYLOR, JUDGE: Pamela Revelette and Anthony Revelette, individually and as husband and wife, (collectively referred to as the Revelettes) bring this appeal from a January 17, 2007, summary judgment of the Muhlenberg Circuit Court dismissing their legal malpractice action against Russell L. Croley. We affirm.

<sup>1</sup> Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

On September 23, 1999, Pamela was involved in a motor vehicle accident. Russell L. Croley, an attorney practicing in Central City, Kentucky, was retained by the Revelettes to represent them in connection with the motor vehicle accident. The record indicates that Pamela incurred medical expenses following the accident, including prescriptions filled by Poole's Pharmacy (Poole's). Pamela's automobile liability carrier was Safeco Insurance Company. Safeco paid basic reparation benefits (BRB) on behalf of Pamela under its insurance policy. Relevant to this appeal, Safeco made a BRB payment on behalf of Pamela to Poole's on September 27, 2003.

In November 2005, the Revelettes allege Croley informed them that he may have unintentionally permitted the statute of limitations to expire as to any tort action arising from the motor vehicle accident. Consequently, the Revelettes retained new counsel. On November 17, 2005, the Revelettes filed a complaint in Muhlenberg Circuit Court alleging that Croley negligently allowed the statute of limitations to expire on the tort action arising from the motor vehicle accident. Kentucky Revised Statutes (KRS) 304.39-230.

At some point, Croley apparently contacted Poole's and inquired about BRB payments made on behalf of Pamela by Safeco. Thereafter, Croley determined that Safeco failed to pay a BRB claim for two prescriptions filled on November 12, 2003. Safeco received the BRB claim on December 18, 2003. Croley apparently contacted Safeco, and in turn, Safeco contacted Poole's regarding the unpaid BRB claim. Poole's confirmed to Safeco that the BRB claim remained unpaid, and Safeco indicated payment

would be forthcoming. Safeco issued a check to Poole's on February 25, 2006, in the amount of \$192.41, as payment for the BRB claim received on December 18, 2003.

In December 2006, the Revelettes filed a motion for summary judgment in the legal malpractice action. Therein, the Revelettes argued that the statute of limitations was not tolled by submission of the December 18, 2003, BRB claim; thus, they were entitled to summary judgment against Croley. In January 2007, Croley also filed a motion for summary judgment. Croley asserted the statute of limitations was tolled and he was entitled to judgment dismissing the Revelettes' legal malpractice claim. On January 17, 2007, summary judgment was entered in favor of Croley. This appeal follows.

The Revelettes contend that the circuit court erred by granting summary judgment dismissing their legal malpractice action against Croley. Specifically, the Revelettes argue that Croley negligently allowed the statute of limitations to expire upon their tort claims arising from the September 23, 1999, motor vehicle accident.

Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). In this case, the material facts are undisputed, and resolution is dependent upon questions of law.

The Revelettes maintain that the circuit court erred as a matter of law by determining that the two-year statute of limitations contained in KRS 304.39-230(6) had not expired and, thus, the tort claims were not time-barred. The Revelettes argue that the last timely BRB payment was made by Safeco on September 27, 2003. The Revelettes

believe that the BRB payment made by Safeco on February 25, 2006, was “tardy,” as it was made more than two years after the last BRB payment (September 27, 2003). As such, the Revelettes maintain that the February 25, 2006, BRB payment did not operate to toll the limitation period. For the reasons subsequently stated, we disagree.

Under KRS 304.39-230(6), a tort action arising from a motor vehicle accident must be commenced within two years of the injury or the last BRB payment, whichever is later. In order for a BRB payment to restart the running of the two-year statute of limitations for a tort claim in KRS 304.39-230(6), the claim or action for recovery of the BRB payment must have been submitted or commenced within two years of the last BRB payment made under KRS 304.39-230(1). *Milby v. Wright*, 952 S.W.2d 202 (Ky. 1997). And, the timely submission of a claim for BRB payment effectively “tolls” the limitation period found in KRS 304.39-230(1). *Id.*<sup>2</sup>

In the case *sub judice*, it is uncontroverted that a BRB payment was made by Safeco on September 27, 2003, and that within two years therefrom, Poole's submitted another claim for BRB payment that Safeco received on December 18, 2003. Thereafter, Safeco failed to timely reject the BRB claim or to timely make a payment thereupon.

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<sup>2</sup>Under *Milby v. Wright*, 952 S.W.2d 202 (Ky. 1997), the date the basic reparation benefit (BRB) payment was submitted operates to toll the limitation period of KRS 304.39-230(1). However, in this case, we were not supplied with the date the BRB claim for the November 12, 2003, prescriptions was submitted to Safeco Insurance Company (Safeco). Therefore, we shall utilize the date the BRB claim was received by Safeco (December 18, 2003) as the operative date tolling the statute of limitations under KRS 304.39-230(1). As the claim was received before expiration of the two-year limitation period of KRS 304.39-0230(1), the use of the later date (date BRB was received) makes no difference in the outcome of this appeal. Obviously, if Safeco received the claim within the two-year limitation period, it naturally follows that the BRB claim was also submitted by Poole's Pharmacy within said limitation period.

KRS 304.39-210. Rather, it was not until Safeco was again contacted about the December 18, 2003, BRB claim that Safeco finally made the BRB payment on February 25, 2006.

Under the authority of *Milby*, 952 S.W.2d 202, we conclude that the December 18, 2003, BRB claim was timely submitted for payment and operated to “toll” the statute of limitations contained in KRS 304.39-230(1). When Safeco finally made the BRB payment on February 25, 2006, the two-year limitation period for a BRB claim under KRS 304.39-230(1) was again restarted and began to run anew upon that date. Consequently, the February 25, 2006, BRB payment also operated to restart the two-year limitation period for tort actions in KRS 304.39-230(6). *See id.* Accordingly, we hold that the circuit court properly concluded that the Revelettes' tort action arising from the September 23, 1999, motor vehicle accident was not time-barred by KRS 304.39-230(6).

The Revelettes also argue that “the fact that the legal negligence action against Croley was filed before the tardy 'PIP' [BRB] payment was made is the determinative factor allowing her to maintain her action as against Croley . . . .” The Revelettes point out that the instant legal malpractice action was filed on November 17, 2005, and it was some four months later that Safeco made the last BRB payment on February 25, 2006. As such, the Revelettes believe the legal malpractice action should not have been dismissed.

We flatly reject this argument. As the two-year statute of limitations period in KRS 304.39-230(6) was restarted by the February 25, 2006, BRB payment, Croley did

not negligently allow said limitation period to expire. Thus, there is no basis for a legal malpractice action against Croley for expiration of the statute of limitations found in KRS 304.39-230(6).

In sum, we conclude that the circuit court properly entered summary judgment dismissing the legal malpractice action.

For the foregoing reasons, the summary judgment of the Muhlenberg Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Wesley G. Lile  
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

Douglas W. Gott  
Bowling Green, Kentucky