

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JANUARY 21, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0627-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

DONNA WELCH,

Plaintiff-Appellant,

v.

**WILLIAM J. PLEIN and
STATE FARM FIRE AND CASUALTY COMPANY,**

Defendants-Respondents,

**AMERICAN FAMILY MUTUAL
INSURANCE COMPANY,**

Defendant.

APPEAL from a judgment of the circuit court for Milwaukee County: ARLENE D. CONNORS, Judge. *Reversed and cause remanded with instructions.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Donna Welch appeals from a summary judgment in favor of William Plein and State Farm Fire and Casualty Company (collectively "State Farm"). The issue is whether Welch's claim was brought before the statute of limitations expired. We conclude that summary judgment should not have been granted in favor of State Farm, and remand to the trial court to determine when American Family Mutual Insurance Company accepted payment from State Farm for property damage sustained by Welch.

Donna Welch sustained personal injuries and property damage to her car when she was involved in an automobile accident with William Plein on March 8, 1992. Plein's insurer, State Farm, decided that Plein was responsible for the property damage caused by the accident and issued a check to Welch for the \$250 deductible on her insurance policy. Welch cashed that check on March 25, 1992. Meanwhile, Welch's insurer, American Family, paid the remaining amount for the property damage to her car. American Family then entered into negotiations with State Farm seeking reimbursement of its property damage payment. State Farm agreed to pay for the damages and issued a check to American Family on April 3, 1992, mailing the check that evening. The record is unclear as to who had possession of the check and what happened to the check for the next four months. On August 10, 1992, American Family cashed the check.

On May 1, 1995, Welch brought an action for personal injuries against Plein and State Farm. State Farm moved to dismiss on the grounds that Welch had failed to timely commence the action. The trial court agreed and granted summary judgment in State Farm's favor.

There is a three-year statute of limitations for bringing personal injury lawsuits. Section 893.54, STATS. However, if a payment is made pursuant to § 885.285(1), STATS., the statute of limitations is extended for "either the period of time remaining under the original statute of limitations or 3 years from the date of the last payment made under § 885.285(1), whichever is greater." Section 893.12, STATS.¹ The statute of limitations in personal injury

¹ Section 885.285, STATS., provides that no admission of liability shall be inferred from "[a] settlement with or any payment made to any injured person, or to another on behalf of any injured person, or any person entitled to recover damages on account of injury or death of such person."

lawsuits that also involve property damage claims is thus extended to three years after any payment made in advance or settlement of either the personal injury or property damage claim. See *Abraham v. Milwaukee Mut. Ins. Co.*, 115 Wis.2d 678, 681, 341 N.W.2d 414, 416 (Ct. App. 1983).

To determine whether Welch filed this action within the statute of limitations, the first issue is whether the payment made by State Farm to Welch's insurer, American Family, for the property damage to Welch's car was made "to [Welch], or to another on [her] behalf." See § 885.285, STATS.

We conclude that the payment made by State Farm to American Family was a payment made on behalf of Welch as contemplated by § 885.285, STATS. Although the payment was made to Welch's insurer, rather than to her directly, the payment was for property damage sustained by Welch, and thus was made "on her behalf."

The next issue is when the last payment for the property damage was made. Welch contends that the last payment was made on the date that American Family negotiated the check from State Farm, August 10, 1992. She thus contends that the statute of limitations did not run until three years from that date, August 10, 1995. State Farm argues that the last payment was made on the date it issued the check to American Family, April 3, 1992. State Farm thus contends that the statute of limitations expired on April 3, 1995, and this action was not timely filed.

This court has held that "payment" requires an acceptance of a tendered check in order to extend the three-year statute [of limitations]." *Parr v. Milwaukee Bldg. & Constr. Trades*, 177 Wis.2d 140, 148, 501 N.W.2d 858, 861 (Ct. App. 1993). We stated that "the mere tender of a check" does not constitute "payment." *Id.* Because it is unclear from the record when American Family received the check from State Farm and when it "accepted" the check in payment of Welch's property claim, we remand to the trial court for a factual determination as to when State Farm's check was accepted by American Family Insurance. The statute of limitations began to run on the date that the check was accepted.

By the Court.—Judgment reversed and cause remanded with instructions.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.