

NEBRASKA SUPREME COURT

Jane and John Doe v. William Bruce McCoy

297 Neb. 321 (2017) · No. No. S-16-746 · Decided July 28, 2017

SUMMARY

The Nebraska Supreme Court affirmed dismissal of a tort action alleging childhood sexual abuse because the applicable statutes of limitations had expired before the enactment of a later statute extending the limitations period. The court held that Neb. Rev. Stat. § 25-228 did not revive claims already barred when the statute was enacted and declined to address whether the plaintiffs could proceed under pseudonyms.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Wright, J.; Cassel, J.; Stacy, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	July 28, 2017
DOCKET	No. S-16-746
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from the Douglas County District Court's order granting the defendant's motion to dismiss their tort complaint as time barred and because it was filed under pseudonyms.
STANDARD OF REVIEW	A grant of a motion to dismiss is reviewed de novo. The determination of which statute of limitations applies is a question of law, and questions of law are independently reviewed.
PRECEDENTIAL VALUE	Published opinion; binding Nebraska Supreme Court precedent.
PARTIES	Jane and John Doe v. William Bruce McCoy

TOPICS

- statute of limitations
- statutory interpretation
- legislative history
- motions to dismiss
- appellate procedure

PRACTICE AREAS

- civil procedure
- torts
- statute of limitations
- appellate procedure

QUESTIONS PRESENTED

1. Whether Neb. Rev. Stat. § 25-228 extended the limitations period for claims that had already been extinguished under the statutes in effect before § 25-228 was enacted.
2. Whether the plaintiffs were entitled to proceed under pseudonyms.

HOLDINGS

1. Neb. Rev. Stat. § 25-228 does not apply to actions for which the existing statute of limitations had run before § 25-228 was enacted.
2. The loss-of-consortium claim was properly dismissed because it was derivative of Jane Doe's barred underlying claims.

KEY QUOTATIONS

“An amendment cannot resurrect an action which the prior version of the statute had already extinguished.”
(297 Neb. at 328)

“Therefore, to the extent the phrase “any other provision of law” in § 25-228 is ambiguous, the legislative history makes clear that the Legislature did not intend for the language to indicate, as the plaintiffs urge, that the new statute, § 25-228, would apply “notwithstanding” Neb. Const. art. I, § 3, and this court’s interpretation of this constitutional provision.” (297 Neb. at 329)

FACTUAL BACKGROUND

The complaint alleged that William Bruce McCoy sexually abused Jane Doe and her sister on numerous occasions from 1991 through 1999, when Jane Doe was a minor. Jane Doe was born in 1985 and turned 21 on September 21, 2006; under the then-applicable limitations provisions, the claims were therefore barred by September 21, 2010. The plaintiffs filed suit in 2016 and argued that a 2012 statute, Neb. Rev. Stat. § 25-228, extended the limitations period through 2018. John Doe asserted a derivative loss-of-consortium claim.

PROCEDURAL HISTORY

The plaintiffs filed a complaint in February 2016 alleging sexual abuse occurring between 1991 and 1999, using the pseudonyms Jane Doe and John Doe. The district court dismissed the complaint on statute-of-limitations grounds and because the action was not brought in the real names of the parties in interest. The Nebraska Supreme Court affirmed based on the statute of limitations and declined to reach the pseudonym issue.

DISPOSITION

affirmed

CASES CITED

- *Harring v. Gress*, 295 Neb. 852, 890 N.W.2d 502 (2017)
- *Lindner v. Kindig*, 293 Neb. 661, 881 N.W.2d 579 (2016)
- *Irwin v. West Gate Bank*, 288 Neb. 353, 848 N.W.2d 605 (2014)

- Schendt v. Dewey, 246 Neb. 573, 520 N.W.2d 541 (1994)
- Givens v. Anchor Packing, 237 Neb. 565, 466 N.W.2d 771 (1991)
- California Public Employees' Retirement System v. ANZ Securities, Inc., 582 U.S. 497, 137 S. Ct. 2042 (2017)
- Stewart v. Nebraska Department of Revenue, 294 Neb. 1010, 885 N.W.2d 723 (2016)
- Rasmussen v. State Farm Mutual Automobile Insurance Co., 278 Neb. 289, 770 N.W.2d 619 (2009)

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