

SUPREME COURT OF MONTANA

Nelson v. Nelson

310 Mont. 329 (Mont. 2002) · No. No. 01-109 · Decided July 2, 2002

SUMMARY

The Montana Supreme Court considered whether a personal-injury negligence action arising from pesticide exposure and a vaccine injection was barred by the three-year statute of limitations. Applying Montana's discovery rule and relying on *Hando v. PPG Industries, Inc.*, the Court held that the causal connection between the plaintiff's ailments and the exposures involved potentially self-concealing facts. The Court reversed the grant of summary judgment and remanded the case for trial.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Patricia O. Cotter; Karla M. Gray; James C. Nelson; Jim Regnier; Jim Rice; W. William Leaphart; Terry N. Triewelier
JURISDICTION	Montana
DECIDED	July 2, 2002
DOCKET	No. 01-109
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order granting the defendant summary judgment on the ground that the plaintiff's negligence claim was barred by Montana's three-year statute of limitations.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, applying the same Rule 56 evaluation as the district court. The court reviews legal determinations and statutory interpretations for correctness.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	M. Elizabeth Nelson v. Robert Y. Nelson

TOPICS

- statute of limitations
- summary judgment
- negligence
- personal injury
- civil procedure

PRACTICE AREAS

- negligence
- personal injury
- civil procedure
- statute of limitations

QUESTIONS PRESENTED

1. Whether the district court erred in granting summary judgment on the ground that Elizabeth's negligence claim was barred by Montana's three-year statute of limitations.
2. Whether the discovery rule delayed accrual until Elizabeth discovered, or in the exercise of due diligence should have discovered, the causal relationship between her ailments and the chemical and vaccine exposures.
3. Whether Elizabeth's statements in a prior motion to modify a marital settlement judicially estopped her from asserting that the causal relationship was not established until 1996.

HOLDINGS

1. When the facts constituting a personal-injury claim are by their nature concealed or self-concealing, the statute of limitations does not begin until the injured party discovers those facts or, through due diligence, should have discovered them. The causal relationship between Elizabeth's ailments and the chemical and vaccine exposures was self-concealing, and the district court erred in treating her immediate loss of consciousness as establishing accrual of the entire claim in 1989.
2. Summary judgment was improper because the record did not establish as a matter of law that Elizabeth discovered or should have discovered the causal relationship more than three years before filing suit.
3. Judicial estoppel did not bar Elizabeth's claim because her prior statements that doctors believed her problems might stem from ranch chemicals were speculative and were not inconsistent with her later assertion that a medically established causal relationship was not identified until 1996.

KEY QUOTATIONS

"Therefore, we conclude this case is on all fours with Hando, and disagree with the District Court's conclusions to the contrary." (50 P.3d 143)

"Therefore we conclude as a matter of law that Elizabeth's complaint was timely filed." (50 P.3d 145)

"Accordingly, the District Court's order granting summary judgment is reversed and this case is remanded for trial on the merits." (50 P.3d 145)

FACTUAL BACKGROUND

Elizabeth Nelson regularly assisted Robert Nelson with ranching activities from 1989 until their divorce proceedings began in 1994. During that period, she was exposed to pesticides and insecticides and, in July 1989, was accidentally injected in the hand with a bovine ecthyma vaccine containing live sore-mouth-disease virus, causing immediate dizziness and unconsciousness. She later developed or experienced worsening of numerous physical ailments, but her physicians remained uncertain for years whether the ailments were causally related to the chemical and vaccine exposures. A physician identified a possible causal relationship in May 1996, and Elizabeth filed suit in May 1998.

PROCEDURAL HISTORY

Elizabeth Nelson filed a personal-injury complaint against Robert Nelson on May 14, 1998, alleging injuries from pesticide and insecticide exposure and an accidental injection with bovine ecthyma vaccine. Robert moved for summary judgment based on the statute of limitations. The Sixteenth Judicial District Court, Custer County, granted the motion, concluding that the claim accrued when Elizabeth was injected in July 1989. The Montana Supreme Court reversed and remanded for trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for trial on the merits.

CASES CITED

- Sleath v. West Mont Home Health Services, 2000 MT 381, 304 Mont. 1, 16 P.3d 1042
- Oliver v. Stimson Lumber Co., 1999 MT 328, 297 Mont. 336, 993 P.2d 11
- Steinback v. Bankers Life and Casualty Co., 2000 MT 316, 302 Mont. 483, 15 P.3d 872
- Hando v. PPG Industries, Inc., 236 Mont. 493, 771 P.2d 956 (1989)
- Gomez v. State, 1999 MT 67, 293 Mont. 531, 975 P.2d 1258
- Kaeding v. W.R. Grace & Co., 1998 MT 160, 289 Mont. 343, 961 P.2d 1256
- Wheelsmith Fabrication v. Department of Labor, 2000 MT 27, 298 Mont. 187, 993 P.2d 713
- Kauffman-Harmon v. Kauffman, 2001 MT 238, 307 Mont. 45, 36 P.3d 408
- Hill v. E.R. Squibb & Sons, 181 Mont. 199, 592 P.2d 1383 (1979)
- McCormick v. Brevig, 1999 MT 86, 294 Mont. 144, 980 P.2d 603
- Werre v. David, 275 Mont. 376, 913 P.2d 625 (1996)
- Bennett v. Dow Chemical Co., 220 Mont. 117, 713 P.2d 992 (1986)
- Johnson v. St. Patrick's Hospital, 148 Mont. 125, 417 P.2d 469 (1966)
- E.W. v. D.C.H., 231 Mont. 481, 754 P.2d 817 (1988)
- In re Raymond W. George Trust, 1999 MT 223, 296 Mont. 56, 986 P.2d 427
- Fiedler v. Fiedler, 266 Mont. 133, 879 P.2d 675 (1994)
- Rowland v. Klies, 223 Mont. 360, 726 P.2d 310 (1986)
- Davidson v. State of Texas, 737 S.W.2d 942 (1987)
- Colwell v. Great Falls, 117 Mont. 126, 157 P.2d 1013 (1945)
- Czajkowski v. Chicago, 810 F. Supp. 1428 (N.D. Ill. 1993)
- Jackson v. County of Los Angeles, 60 Cal. App. 4th 171, 70 Cal. Rptr. 2d 96 (1997)
- Russell v. Rolfs, 893 F.2d 1033 (9th Cir. 1990)

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