

SUPREME COURT OF MISSISSIPPI

James Allen Burch, William Harold Burch, and Nancy Burch
McCloud, as Wrongful Death Beneficiaries of Harold E. Burch,
Deceased v. Illinois Central Railroad Company

Burch v. Illinois Central Railroad Co. · No. No. 2013-CA-00414-SCT · Decided February 12, 2013

SUMMARY

The Mississippi Supreme Court affirmed dismissal of a wrongful-death action against Illinois Central Railroad Company as barred by the three-year Federal Employers' Liability Act statute of limitations. The court held that equitable tolling did not apply because the plaintiffs' first action was dismissed without prejudice after counsel failed to timely substitute a party following the death of the original plaintiff and otherwise failed to prosecute the case. The court concluded that the statute of limitations had expired before the plaintiffs filed their second complaint.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Coleman, Justice; Waller, C.J.; Dickinson, P.J.; Lamar, J.; Kitchens, J.; Chandler, J.; King, J.; Coleman, J.
JURISDICTION	Mississippi
DECIDED	February 12, 2013
DOCKET	No. 2013-CA-00414-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed the Hinds County Circuit Court's dismissal of their wrongful-death action as barred by the three-year Federal Employers' Liability Act statute of limitations.
STANDARD OF REVIEW	De novo review applies to a trial court's grant or denial of a motion to dismiss and to the application of a statute of limitations, which is a question of law. The trial court's findings concerning good cause or excusable neglect are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.

PARTIES

James Allen Burch, William Harold Burch, Nancy Burch McCloud, as wrongful death beneficiaries of Harold E. Burch, deceased v. Illinois Central Railroad Company

TOPICS

statute of limitations

civil procedure

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether equitable tolling tolled the three-year FELA statute of limitations during the pendency of the first wrongful-death action.
2. Whether the failure to substitute a party within ninety days after the death of the original plaintiff constituted excusable neglect or otherwise justified equitable tolling.
3. Whether the second wrongful-death action was barred because the statute of limitations had expired.

HOLDINGS

1. Equitable tolling did not apply because the first action was dismissed without prejudice after the plaintiffs failed to substitute a party and otherwise failed to prosecute the case; therefore, the statute of limitations was not tolled during the pendency of that action.
2. Counsel's unexplained oversight and failure to file the substitution motion did not constitute excusable neglect, and the trial court did not abuse its discretion in finding no excusable neglect.
3. The second complaint was filed after the FELA statute of limitations had expired and was properly dismissed.

KEY QUOTATIONS

“Statutes of limitations are primarily designed to assure fairness to defendants. Such statutes promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.” (¶ 6)

“This holding, however, does not mean that all cases dismissed without prejudice after the statute of limitations has expired cannot be refiled. Some will be revived by the savings statute, equitable tolling, or otherwise.” (¶ 7)

FACTUAL BACKGROUND

Harold Burch worked for Illinois Central Railroad from 1950 to 1983 and allegedly was exposed to asbestos. He was diagnosed with asbestosis and lung cancer and died in August 2006. His widow timely filed a wrongful-death action in April 2009, but she died while the action was pending and her attorneys failed to substitute a party within the required ninety-day period or promptly respond to the suggestion of death and motion to

dismiss. After the first action was dismissed without prejudice, Harold's children filed a second action the next day, more than six years after Harold's death.

PROCEDURAL HISTORY

Harold Burch's widow filed a timely FELA wrongful-death action in April 2009. After her death in September 2011, no party was substituted within ninety days, and the circuit court dismissed the first action without prejudice in September 2012. Harold's children filed a second complaint the next day, but the circuit court dismissed it after finding that the statute of limitations had expired and that equitable tolling did not apply. The Mississippi Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Foss v. Williams, 993 So. 2d 378 (Miss. 2008)
- Burleson v. Lathem, 968 So. 2d 930 (Miss. 2007)
- Sarris v. Smith, 782 So. 2d 721 (Miss. 2001)
- ABC Manufacturing Corp. v. Doyle, 749 So. 2d 43 (Miss. 1999)
- Price v. Illinois Central Gulf Railroad Co., 584 So. 2d 1279 (Miss. 1991)
- Burnett v. New York Central Railroad Co., 380 U.S. 424 (1965)
- [case] Knight v. Knight, Knight v. Knight, 85 So. 3d 832 (Miss. 2012)
- King v. Lujan, 646 P.2d 1243 (N.M. 1982)
- Suppeland v. Nilz, 623 P.2d 832 (Ariz. Ct. App. 1980)
- Shaw v. Corcoran, 570 S.W.2d 96 (Tex. App. 1978)
- Owens v. Weingarten's Inc., 442 F. Supp. 497 (W.D. La. 1977)
- Stutts v. Miller, 37 So. 3d 1 (Miss. 2010)
- Holmes v. Coast Transit Authority, 815 So. 2d 1183 (Miss. 2002)
- Webster v. Webster, 834 So. 2d 26 (Miss. 2002)
- Clark v. Knesal, 113 So. 3d 531 (Miss. 2013)
- Long v. Memorial Hospital at Gulfport, 969 So. 2d 35 (Miss. 2007)