

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA

Jesus Fierro, et al. v. Zachary Taylor Hammer, et al.

Fierro v. Hammer · No. 1:25-cv-00416 · Decided November 21, 2025

SUMMARY

In this diversity action arising from a Tennessee automobile collision, the magistrate judge recommends granting defendants’ Rule 12(b)(6) motion to dismiss the plaintiffs’ negligence claims as untimely. Applying North Carolina choice-of-law principles and North Carolina General Statute § 1-21, the recommendation concludes that Tennessee’s one-year personal-injury statute of limitations applies because the claims arose in Tennessee and the plaintiffs were Texas residents when the claims accrued. The recommendation rejects the plaintiffs’ arguments based on contrary North Carolina Supreme Court and federal district court decisions.

CASE DETAILS

COURT	United States District Court for the Middle District of North Carolina
WRITING FOR THE COURT	L. Patrick Auld
JURISDICTION	United States District Court for the Middle District of North Carolina
DECIDED	November 21, 2025
DOCKET	1:25-cv-00416
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved to dismiss the negligence complaint under Federal Rule of Civil Procedure 12(b)(6), asserting that the claims were barred by the applicable statute of limitations. The magistrate judge issued a memorandum opinion and recommendation that the motion be granted.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court evaluates the complaint in its entirety and tests the sufficiency of the pleading rather than resolving factual contests, claim merits, or the applicability of defenses. Dismissal is appropriate when the face of the complaint clearly reveals a meritorious affirmative defense, including when the complaint shows that the statute of limitations has run.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

motions to dismiss

statute of limitations

affirmative defenses

statutory interpretation

civil procedure

PRACTICE AREAS

civil procedure

torts

choice of law

statute of limitations

QUESTIONS PRESENTED

1. Whether the complaint could be dismissed under Rule 12(b)(6) based on the statute of limitations appearing on the face of the complaint.
2. Whether North Carolina General Statute section 1-21 requires application of Tennessee's one-year statute of limitations to Texas residents' personal-injury claims arising from a collision in Tennessee.
3. Whether the North Carolina Court of Appeals' established interpretation of section 1-21 was controlling or persuasive authority for the federal court sitting in diversity.

HOLDINGS

1. Dismissal under Rule 12(b)(6) is appropriate when the face of the complaint clearly reveals that the statute of limitations has run and the claim is therefore barred.
2. Under North Carolina General Statute section 1-21, a claim arising outside North Carolina that is barred by the law of the jurisdiction where it arose is also barred in North Carolina, unless the claim originally accrued in favor of a North Carolina resident.
3. A federal court sitting in diversity must follow a state intermediate appellate court's decisions on state law unless persuasive data indicates that the state's highest court would decide differently.

KEY QUOTATIONS

"When sitting in diversity, a federal court must apply the law of the forum state as it is interpreted by the state's highest court." (2)

"Under these circumstances, the Court should follow the well-established precedent from the North Carolina Court of Appeals, pursuant to which Tennessee's one-year statute of limitations applies to Plaintiffs' claims." (8)

FACTUAL BACKGROUND

On or about May 23, 2022, Zachary Taylor Hammer was driving an eighteen-wheeler westbound on I-40 in Madison County, Tennessee, when he lost control and collided with a concrete barrier; the Fierros' vehicle then collided with Hammer's vehicle. Hammer was allegedly acting within the course and scope of his employment with VMT Transportation, LLC. The Fierros, who resided in Texas, alleged serious bodily injuries and aggravation of preexisting conditions, but did not file suit until May 23, 2025.

PROCEDURAL HISTORY

Texas residents Jesus and Erika Fierro sued North Carolina residents Zachary Taylor Hammer and VMT Transportation, LLC, in diversity jurisdiction for injuries arising from a vehicle collision in Tennessee. Defendants moved to dismiss under Rule 12(b)(6), and Plaintiffs opposed the motion. The magistrate judge recommended dismissal because Tennessee's one-year limitations period barred the claims under North Carolina's borrowing statute.

DISPOSITION

other

CASES CITED

- E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc., 637 F.3d 435, 448 (4th Cir. 2011)
- Philips v. Pitt Cnty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009)
- Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. 1992)
- Brooks v. City of Winston-Salem, 85 F.3d 178, 181 (4th Cir. 1996)
- Moore v. Equitrans, L.P., 27 F.4th 211, 220 (4th Cir. 2022)
- F.D.I.C. ex rel. Co-op Bank v. Rippy, 799 F.3d 301, 310 (4th Cir. 2015)
- Fortress Re, Inc. v. Central Nat'l Ins. Co. of Omaha, 766 F.2d 163, 165 (4th Cir. 1985)
- Martin Marietta Materials, Inc. v. Bondhu, LLC, 241 N.C. App. 81, 83, 772 S.E.2d 143, 145 (2015)
- George v. Lowe's Cos., Inc., 272 N.C. App. 278, 280-82, 846 S.E.2d 787, 788-89 (2020), disc. rev. denied, 378 N.C. 372, 860 S.E.2d 919 (2021)
- Glynn v. Stoneville Furniture Co., 85 N.C. App. 166, 169, 354 S.E.2d 552, 553-54 (1987), disc. rev. denied, 320 N.C. 512, 358 S.E.2d 518 (1987)
- Laurent v. USAir, Inc., 124 N.C. App. 208, 211-12, 476 S.E.2d 443, 446 (1996), disc. rev. denied, 346 N.C. 178, 486 S.E.2d 205 (1997)
- Stokes v. Wilson & Redding L. Firm, 72 N.C. App. 107, 113, 323 S.E.2d 470, 475 (1984), disc. rev. denied, 313 N.C. 612, 332 S.E.2d 83 (1985)
- Merchants & Planters Nat'l Bank of Sherman v. Appleyard, 238 N.C. 145, 77 S.E.2d 783 (1953)
- Hill v. Lindsay, 210 N.C. 694, 188 S.E. 406 (1936)
- Stokes v. Southeast Hotel Props., Ltd., 877 F. Supp. 986 (W.D.N.C. 1994)
- Smith v. Cessna Aircraft Co., 571 F. Supp. 433 (M.D.N.C. 1983)
- Snyder v. Wylie, 239 F. Supp. 999, 1003 (W.D.N.C. 1965)
- Cochrane v. Turner, 582 F. Supp. 971 (W.D.N.C. 1983)
- Little v. Stevens, 267 N.C. 328, 334, 148 S.E.2d 201, 205 (1966)
- Camreta v. Greene, 563 U.S. 692, 709 n.7 (2011)
- Bessinger v. Food Lion, Inc., 305 F. Supp. 2d 574, 578 n.7 (D.S.C. 2003), aff'd sub nom. Bessinger v. Food Lion, LLC, 115 F. App'x 636 (4th Cir. 2004)
- West v. American Tel. & Tel. Co., 311 U.S. 223, 237 (1940)
- Knibbs v. Momphard, 30 F.4th 200, 232 (4th Cir. 2022)

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