

SUPREME COURT OF MISSISSIPPI

Clark Sand Co. v. Kelly

60 So. 3d 149 (Miss. 2011) · Decided April 28, 2011

SUMMARY

The Mississippi Supreme Court reviewed an interlocutory appeal from the denial of summary judgment in a wrongful-death action arising from silica exposure. The court held that Kelley lacked standing as the decedent’s personal representative because she had not been formally appointed when suit was filed, but that a genuine issue of material fact existed as to whether she was the decedent’s Alabama common-law wife and therefore a wrongful-death claimant. The court also held that the saving statute did not apply to the survival-type claims because the earlier action had not included a wrongful-death claim.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Waller, Chief Justice; Carlson, P.J.; Chandler, J.; Dickinson, P.J.; King, J.; Kitchens, J.; Lamar, J.; Pierce, J.; Randolph, J.; Waller, C.J.
JURISDICTION	Mississippi
DECIDED	April 28, 2011
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Clark Sand sought interlocutory review under Mississippi Rule of Appellate Procedure 5 of the Warren County Circuit Court's denial of its motions for summary judgment in Kelley’s wrongful-death action.
STANDARD OF REVIEW	Standing and the grant or denial of summary judgment are reviewed de novo.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.
PARTIES	Clark Sand Co., Inc. v. Ruby C. Kelley

TOPICS

- summary judgment
- standing
- statute of limitations
- appellate procedure
- civil procedure

PRACTICE AREAS

- civil procedure
- torts
- probate

QUESTIONS PRESENTED

1. Whether Kelley had standing to bring the wrongful-death action as Bozeman's personal representative, a listed relative or widow, or an interested party.
2. Whether Kelley's evidence created a genuine issue of material fact concerning the existence of an Alabama common-law marriage.
3. Whether Mississippi's saving statute made Kelley's survival-type and wrongful-death claims timely after dismissal of the prior McBride action without prejudice.
4. Whether summary judgment was proper on the limitations and standing issues.

HOLDINGS

1. A plaintiff must be formally appointed executor or administrator before filing a wrongful-death action on behalf of the decedent's estate. Kelley therefore lacked standing as Bozeman's personal representative because she had not been formally appointed executrix when she filed suit.
2. Kelley could proceed past summary judgment on standing because her evidence created a genuine issue of material fact concerning whether she and Bozeman had a valid Alabama common-law marriage at the time of his death. If she was Bozeman's common-law wife, she qualified as his widow and as a listed relative authorized to bring the wrongful-death action.
3. An interested party under Mississippi's wrongful-death statute must have a legally recognized relationship to the decedent, suffer an invasion of a legally protected interest, and be able to assert an arguable right of recovery. Kelley did not qualify independently as an interested party when she filed suit because her will-based relationship had not yet been legally recognized through probate.
4. The survival-type claims in Kelley's wrongful-death action were time-barred. The saving statute did not apply because Kelley was not the proper representative when she filed and had not been substituted as the real party in interest in the earlier action before its dismissal.
5. Kelley's independent wrongful-death claims were filed within three years of Bozeman's death and were not time-barred, assuming Kelley had standing to bring them.

KEY QUOTATIONS

"The elements of a common-law marriage in Alabama are: "(1) capacity; (2) present agreement or mutual consent to enter into the marriage relationship ...; (3) public recognition of the existence of the marriage; and (4) cohabitation or mutual assumption openly of marital duties and obligations." (¶ 24)

"Put simply, an interested party is a person who has a relationship to the decedent that is recognized by law, and who therefore has suffered a remediable injury (i.e., the invasion of a legally protected interest) by the wrongful deprivation of the decedent's life at the defendant's hands." (¶ 38)

"But Kelley did bring this suit within three years of Bozeman's death, so her "wrongful-death" claims are not time-barred, if she had standing to bring them in the first place." (¶ 46)

FACTUAL BACKGROUND

David T. Bozeman developed silicosis-related lung cancer after working with silica and died while his personal-injury action was pending. Ruby C. Kelley, his live-in girlfriend and named executrix in his will, filed a new action asserting survival-type personal-injury claims and wrongful-death claims, but she had not yet been formally appointed executrix when she filed. Kelley presented sworn evidence that she and Bozeman had agreed to be husband and wife, cohabited, and held themselves out as married, while Clark Sand presented contrary evidence, including Bozeman's deposition denying that he had a wife and a death certificate listing him as widowed.

PROCEDURAL HISTORY

Kelley filed a wrongful-death action in Warren County Circuit Court after an earlier mass-tort action, McBride, was dismissed without prejudice. The circuit court denied Clark Sand's motions for summary judgment, holding that Kelley had standing as either the decedent's personal representative or an interested party and that the saving statute rendered the action timely. The Mississippi Supreme Court granted interlocutory review, reversed summary judgment as to the survival-type claims, affirmed denial of summary judgment as to the wrongful-death claims because a genuine factual dispute existed regarding Kelley's common-law marriage to the decedent, and remanded for trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Warren County Circuit Court must conduct a trial of Kelley's wrongful-death action. The fact-finder must determine under Alabama law whether Kelley and Bozeman maintained a common-law marriage at the time of Bozeman's death. The survival-type claims are to be dismissed as time-barred; only the timely wrongful-death claims may proceed, subject to resolution of standing.

CASES CITED

- Canadian National v. Smith, 926 So. 2d 839, 845 (Miss. 2006)
- Janssen Pharmaceutica v. Armond, 866 So. 2d 1092, 1099 (Miss. 2004)
- Kirk v. Pope, 973 So. 2d 981, 986 (Miss. 2007)
- City of Picayune v. Southern Regional Corp., 916 So. 2d 510, 519 (Miss. 2005)
- Brown v. Mississippi Department of Human Services, 806 So. 2d 1004, 1005-06 (Miss. 2000)
- Monsanto v. Hall, 912 So. 2d 134, 136 (Miss. 2005)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)
- Delta Health Group, Inc. v. Estate of Pope, 995 So. 2d 123, 126 (Miss. 2008)
- Long v. McKinney, 897 So. 2d 160, 168, 174 (Miss. 2004)
- George v. George, 389 So. 2d 1389, 1390 (Miss. 1980)
- Mantachie Natural Gas District v. Mississippi Valley Gas Co., 594 So. 2d 1170, 1172 (Miss. 1992)
- Creel v. Creel, 763 So. 2d 943, 946 (Ala. 2000)

- Blocker v. Blocker, 885 So. 2d 796, 799 (Ala. Civ. App. 2004)
- Johnson v. Johnson, 270 Ala. 587, 588, 120 So. 2d 739, 740 (1960)
- Burley v. Douglas, 26 So. 3d 1013, 1021-22 (Miss. 2009)
- Alack v. Phelps, 230 So. 2d 789, 793 (Miss. 1970)
- Cleveland v. Mann, 942 So. 2d 108, 118 (Miss. 2006)
- Caves v. Yarbrough, 991 So. 2d 142, 148-49 (Miss. 2008)
- University of Mississippi Medical Center v. McGee, 999 So. 2d 837 (Miss. 2008)
- W.T. Raleigh Co. v. Barnes, 143 Miss. 597, 109 So. 8, 9 (1926)
- Thiroux v. Austin, 749 So. 2d 1040, 1042 (Miss. 1999)
- Canadian National v. Smith, 926 So. 2d 839 (Miss. 2006)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/mississippi-supreme-court-of-mississippi/2011/clark-sand-co-v-kelly-60lip190>