

SUPREME COURT OF SOUTH CAROLINA

Hooper v. Ebenezer Senior Services & Rehabilitation Center, 386 S.C.
108

687 S.E.2d 29 (2009) · No. 26748 · Decided December 14, 2009

SUMMARY

The Supreme Court of South Carolina considered whether wrongful-death and survival claims were barred by the statute of limitations when service of process was delayed. The court held that equitable tolling was appropriate because the defendant failed to maintain accurate registered-agent information, which hindered the plaintiff's diligent efforts to effect service. The court reversed the grant of summary judgment and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Beatty; Chief Justice Toal; Justice Waller; Justice Pleicones; Justice Kittredge
JURISDICTION	South Carolina
DECIDED	December 14, 2009
DOCKET	26748
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for a writ of certiorari from the South Carolina Court of Appeals following affirmance of summary judgment for Ebenezer in a wrongful-death and survival action.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the trial court: judgment is proper only when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The evidence and reasonable inferences are viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of South Carolina; precedential.
PARTIES	Floree Hooper, as Personal Representative of the Estate of Albert L. Clinton, Deceased v. Ebenezer Senior Services and Rehabilitation Center

TOPICS

statute of limitations

service of process

summary judgment

wrongful death

civil procedure

PRACTICE AREAS

Civil procedure

Appellate procedure

Statute of limitations

Service of process

Nursing home liability

Wrongful death

QUESTIONS PRESENTED

1. Whether the statute of limitations should be equitably tolled for the period during which Hooper diligently attempted to serve Ebenezer's nonexistent or unlocatable registered agent listed in public records.
2. Whether summary judgment was properly granted on the ground that service was completed after expiration of the statute of limitations and more than 120 days after filing under Rule 3(a)(2), SCRCp.
3. What standard governs appellate review of summary judgment.

HOLDINGS

1. Equitable tolling may be applied when justified by all the circumstances, including when a defendant's failure to maintain accurate registered-agent information required by law hinders a plaintiff's diligent efforts to effect service. Under the unique circumstances of this case, the statute of limitations was equitably tolled for the time Hooper pursued service on Ebenezer's nonexistent agent.
2. Summary judgment for Ebenezer was improper because the circumstances warranted equitable tolling of the statute of limitations.
3. An appellate court reviews the grant of summary judgment under the same standard applied by the trial court, viewing the evidence and reasonable inferences in the light most favorable to the nonmoving party.

KEY QUOTATIONS

"Equitable tolling may be applied where it is justified under all the circumstances." (at 117)

"We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." (at 117)

"Thus, under the unique circumstances of this case, we conclude it is appropriate to equitably toll the statute of limitations for the time Hooper spent in pursuit of Ebenezer's nonexistent agent." (at 119)

"The statute of limitations' purpose of protecting defendants from stale claims must give way to the public's interest in being able to rely on public records required by law." (at 119)

FACTUAL BACKGROUND

Albert L. Clinton was admitted to Ebenezer nursing home in February 2003 with memory deficits, impaired decision-making ability, and a known risk of developing decubitus ulcers. He developed severe ulcers within

three weeks, was later hospitalized with dehydration, hypernatremia, and severe ulcers, was transferred to another long-term-care facility, and died on May 15, 2003. Hooper filed wrongful-death and survival claims on February 6, 2006, but repeated attempts to serve Ebenezer's registered agent failed because the agent's address in the Secretary of State's records was inaccurate and the agent could not be located; service was ultimately made on June 15, 2006.

PROCEDURAL HISTORY

Hooper filed the action in the York County Court of Common Pleas after service was delayed by unsuccessful attempts to serve Ebenezer's registered agent. The trial court converted Ebenezer's motion to dismiss into a motion for summary judgment because the parties submitted materials outside the pleadings, and granted summary judgment on the ground that service occurred after the statute of limitations and Rule 3(a)(2)'s 120-day period. The South Carolina Court of Appeals affirmed. The Supreme Court of South Carolina granted certiorari, reversed, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion, with Hooper's claims allowed to proceed.

CASES CITED

- Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 659 S.E.2d 213 (Ct. App. 2008)
- Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000)
- Ocana v. American Furniture Co., 135 N.M. 539, 91 P.3d 58 (2004)
- Rodriguez v. Superior Court, 176 Cal. App. 4th 1461, 98 Cal. Rptr. 3d 728 (2009)
- Irby v. Fairbanks Gold Mining, Inc., 203 P.3d 1138 (Alaska 2009)
- Abbott v. State, 979 P.2d 994 (Alaska 1999)
- Kaplan v. Morgan Stanley & Co., 2009 Vt. 78, 987 A.2d 258 (2009)
- Beecher v. Stratton Corp., 170 Vt. 137, 743 A.2d 1093 (1999)
- Machules v. Department of Administration, 523 So. 2d 1132 (Fla. 1988)
- Hausman v. Hausman, 199 S.W.3d 38 (Tex. App. 2006)
- Hopkins v. Floyd's Wholesale, 299 S.C. 127, 382 S.E.2d 907 (1989)
- Schriber v. Anonymous, 848 N.E.2d 1061 (Ind. 2006)
- Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999)
- Bovain v. Canal Insurance, 383 S.C. 100, 678 S.E.2d 422 (2009)