

SUPREME COURT OF MISSISSIPPI

Univ. of Miss. Med. Ctr. v. McGee

999 So. 2d 837 (Miss. 2008) · No. 2007-IA-00909-SCT · Decided December 11, 2008

SUMMARY

The Supreme Court of Mississippi addressed the statute of limitations for survival and wrongful-death claims under the Mississippi Tort Claims Act. It held that the survival claims accrued when the retained surgical sponge was discovered on September 7, 2004, and were time-barred, while the wrongful-death claim accrued on the decedent’s death and was timely because the notice of claim tolled the limitations period. The court reversed and rendered summary judgment for UMMC on the survival claim, affirmed denial of summary judgment on the wrongful-death claim, and remanded.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Smith, Chief Justice, for the Court; Waller, Presiding Justice; Diaz, Presiding Justice; Easley, Justice; Carlson, Justice; Dickinson, Justice; Randolph, Justice; Lamar, Justice; Graves, Justice
JURISDICTION	Mississippi
DECIDED	December 11, 2008
DOCKET	2007-IA-00909-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from the denial of the defendant's motion for summary judgment in a Mississippi Tort Claims Act medical-negligence and wrongful-death action.
STANDARD OF REVIEW	Questions of law, including statute-of-limitations issues, are reviewed de novo. Summary judgment is appropriate when the applicable law requires judgment for a party based on undisputed facts.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.
PARTIES	University of Mississippi Medical Center v. Latisha McGee, individually and on behalf of the heirs of Laura Williams

TOPICS

- statute of limitations
- wrongful death
- medical malpractice
- summary judgment
- civil procedure

PRACTICE AREAS

medical malpractice

wrongful death

civil procedure

statute of limitations

summary judgment

QUESTIONS PRESENTED

1. When did the Mississippi Tort Claims Act statute of limitations begin to run on the survival claims that Williams could have brought before her death?
2. When did the statute of limitations begin to run on McGee's wrongful-death claim?
3. Did McGee's notice of claim toll the limitations period sufficiently to make the wrongful-death claim timely?
4. Was UMMC entitled to summary judgment on the survival claims?

HOLDINGS

1. The statute of limitations for Williams's survival claims began to run on September 7, 2004, when the negligent act, injury, and causal connection were known or discoverable, and those claims were barred because notice was not provided within one year.
2. The wrongful-death claim belonging to McGee began to accrue, at the earliest, on December 19, 2004, the date Williams died.
3. McGee's notice, received by UMMC on November 28, 2005, was timely and tolled the limitations period for ninety-five days; the wrongful-death claim, filed within the additional ninety-day period, could proceed.
4. Caves and Jenkins applied retroactively because Mississippi judicial decisions generally apply retroactively unless the court expressly limits a ruling to prospective application.

KEY QUOTATIONS

“the MTCA's one-year statute of limitations begins to run when the claimant knows, or by exercise of reasonable diligence should know, of both the damage or injury, and the act or omission which proximately caused it.” (999 So. 2d at 839)

“The limitation period begins to run on the earliest date all of the elements[1] of a tort are present.” (999 So. 2d at 839)

“The plaintiff's survival claim occurred more than one year prior to providing notice; thus, that claim is barred by the statute of limitations.” (999 So. 2d at 841)

FACTUAL BACKGROUND

Laura Williams underwent a total abdominal hysterectomy and related cancer surgery at UMMC on September 1, 2004. A laparotomy sponge was inadvertently left in her abdomen and was discovered when she returned to UMMC with abdominal complaints on September 7; it was removed the next day. Williams died on December 19, 2004, and her daughter, Latisha McGee, later asserted survival and wrongful-death claims under theories of medical negligence and *res ipsa loquitur*.

PROCEDURAL HISTORY

The Circuit Court of Hinds County denied UMMC's motion for summary judgment based on the statute of limitations. UMMC petitioned for interlocutory appeal, and the Mississippi Supreme Court granted the petition. The Supreme Court reversed and rendered summary judgment for UMMC on the survival claims, affirmed the denial of summary judgment on the wrongful-death claim, and remanded that claim for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The survival claims are barred, and summary judgment is rendered for UMMC on those claims. The denial of summary judgment on the wrongful-death claim is affirmed, and the wrongful-death claim is remanded for further proceedings.

CASES CITED

- Caves v. Yarbrough, 991 So. 2d 142 (Miss. 2008)
- Chimento v. Fuller, 965 So. 2d 668 (Miss. 2007)
- Davis v. Hoss, 869 So. 2d 397 (Miss. 2004)
- Jenkins v. Pensacola Health Trust, Inc., 933 So. 2d 923 (Miss. 2006)
- Thiroux v. Austin, 749 So. 2d 1040 (Miss. 1999)
- Cleveland v. Mann, 942 So. 2d 108 (Miss. 2006)