

DISTRICT OF COLUMBIA COURT OF APPEALS

Drake v. McNair

993 A.2d 607 (D.C. 2010) · No. No. 07-CV-445 · Decided April 29, 2010

SUMMARY

The District of Columbia Court of Appeals affirmed dismissal of Sherry Miles St. Claire Drake’s fraud and negligent misrepresentation claims concerning the transfer of property from an estate-related transaction to a trust beneficiary. The court held that public land records provided inquiry notice sufficient to trigger the statute of limitations and that the parties’ Settlement Agreement independently barred the claims. The court also held that considering the public records did not convert the motion to dismiss into a motion for summary judgment.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                            |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | District of Columbia Court of Appeals                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Terry, Senior Judge; Washington, Chief Judge; Blackburne-Rigsby, Associate Judge                                                                                                                                                                           |
| JURISDICTION          | District of Columbia                                                                                                                                                                                                                                       |
| DECIDED               | April 29, 2010                                                                                                                                                                                                                                             |
| DOCKET                | No. 07-CV-445                                                                                                                                                                                                                                              |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Appeal from an order dismissing fraud and negligent misrepresentation claims under Super. Ct. Civ. R. 12(b)(6) on statute-of-limitations and settlement-agreement grounds, with the trial court also ruling that res judicata barred at least some claims. |
| STANDARD OF REVIEW    | De novo review of dismissal under Rule 12(b)(6).                                                                                                                                                                                                           |
| PRECEDENTIAL VALUE    | Published opinion; precedential                                                                                                                                                                                                                            |
| PARTIES               | Sherry Miles St. Claire Drake v. James McNair, Tyrone Thompson, Necia Drake                                                                                                                                                                                |

TOPICS

- probate procedure
- trust administration
- motions to dismiss
- fraud
- statute of limitations

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the trial court was required to convert the Rule 12(b)(6) motion into a Rule 56 summary-judgment motion because it considered recorded deeds and other public records.
2. Whether Drake's fraud and negligent misrepresentation claims were barred by the applicable three-year statute of limitations because she was on actual or inquiry notice of the alleged wrongdoing more than three years before filing suit.
3. Whether the incorporation and release provisions of the 1998 Settlement Agreement barred Drake's claims, including her contention that the agreement was procured by fraud.
4. Whether res judicata barred the claims.

## HOLDINGS

1. The trial court properly considered the recorded Substitute Trustee's Deed and Confirmatory Substitute Trustee's Deed without converting the motion to dismiss into a motion for summary judgment because Drake referred to the deeds in her pleadings and they were public records.
2. The claims were barred by the three-year statute of limitations because the recorded deeds supplied inquiry notice of the alleged injury, its cause, and evidence of wrongdoing more than three years before Drake filed suit.
3. The incorporation and release provisions of the Settlement Agreement barred Drake's claims because she failed to allege fraud sufficient to invalidate the agreement or make reliance on omitted representations reasonable.
4. The court did not decide the res judicata issue because the statute of limitations and Settlement Agreement independently disposed of all claims.

## KEY QUOTATIONS

*"A statute of limitations begins to run when a plaintiff has either actual or inquiry notice of (1) the existence of the alleged injury, (2) its cause in fact, and (3) some evidence of wrongdoing." (617)*

*"The Substitute Trustee's Deed and the Confirmatory Substitute Trustee's Deed revealed all of the facts necessary to support Mrs. Drake's claim of fraud." (619)*

*"Although the court did not engage in any significant discussion of the differences between the fraud claims in One-O-One and those at hand in Whelan, and although the discussion of fraud in the inducement in One-O-One is technically dictum, we agree with the court's general statement in Whelan that an integration clause does not provide a blanket exemption to claims of fraud in the inducement." (624)*

## FACTUAL BACKGROUND

Shortly before Carthur Drake's death, Tyrone Thompson purchased the Q Street property using Designmark funds but took title in the name of Taurus Investments Company, a fictitious entity. After Drake's death, the title

was changed by a Confirmatory Substitute Trustee's Deed from Taurus to Designmark, a company benefiting the Drake Trusts. Sherry Drake, the surviving spouse, claimed that this transaction diverted an estate asset into the trusts and deprived her of her spousal interest. The relevant deeds were recorded in 1995 and 1996, but she did not file the present civil action until 2005.

## PROCEDURAL HISTORY

Drake previously litigated claims concerning her deceased husband's will, trusts, and alleged diversion of estate assets in the Probate Division and entered a 1998 Settlement Agreement. She filed the present civil action in 2005 based on the alleged diversion of the Q Street property from the estate to the trusts. The Superior Court dismissed the action, denied reconsideration, and Drake appealed. The Court of Appeals affirmed on Rule 12(b)(6), statute-of-limitations, and settlement-agreement grounds without reaching *res judicata*.

## DISPOSITION

affirmed

## CASES CITED

- *In re Estate of Curseen*, 890 A.2d 191, 193 (D.C. 2006)
- *Smith v. Public Defender Service*, 686 A.2d 210, 212 (D.C. 1996)
- *Oparaugo v. Watts*, 884 A.2d 63, 76 n.10 (D.C. 2005)
- *In re Estate of Barfield*, 736 A.2d 991, 995 n.8 (D.C. 1999)
- *Diamond v. Davis*, 680 A.2d 364, 372, 375-380 (D.C. 1996)
- *Ray v. Queen*, 747 A.2d 1137, 1141-1142 (D.C. 2000)
- *In re Estate of Delaney*, 819 A.2d 968, 982 (D.C. 2003)
- *Kropinski v. World Plan Executive Council—US*, 853 F.2d 948, 955 (D.C. Cir. 1988)
- *Hendel v. World Plan Executive Council*, 705 A.2d 656, 661 (D.C. 1997)
- *Colbert v. Georgetown University*, 641 A.2d 469, 473 (D.C. 1994) (en banc)
- *East v. Graphic Arts Industry Joint Pension Trust*, 718 A.2d 153, 157 (D.C. 1998)
- *Robinson v. Orem*, 198 F.2d 86, 87 (D.C. Cir. 1952)
- *District-Florida Corp. v. Penny*, 66 F.2d 794, 795 (D.C. Cir. 1933)
- *Estate of Chappelle v. Sanders*, 442 A.2d 157, 158 (D.C. 1982)
- *William J. Davis, Inc. v. Young*, 412 A.2d 1187, 1192 (D.C. 1980)
- *Cevenini v. Archbishop of Washington*, 707 A.2d 768, 773-774 (D.C. 1998)
- *In re Estate of McKenney*, 953 A.2d 336, 343 (D.C. 2008)
- *Howard v. Riggs National Bank*, 432 A.2d 701, 707 (D.C. 1981)
- *Partnership Placements, Inc. v. Landmark Insurance Co.*, 722 A.2d 837, 844 (D.C. 1998)
- *Synanon Foundation, Inc. v. Bernstein*, 503 A.2d 1254, 1259-1262 (D.C. 1986)
- *One-O-One Enterprises, Inc. v. Caruso*, 848 F.2d 1283, 1285-1287 (D.C. Cir. 1988)
- *Hercules & Co. v. Shama Restaurant Corp.*, 613 A.2d 916, 918-934 (D.C. 1992)

- In re U.S. Office Products Co. Securities Litigation, 251 F. Supp. 2d 77, 102 (D.D.C. 2003)
- Whelan v. Abell, 48 F.3d 1247, 1258 (D.C. Cir. 1995)
- Adler v. Abramson, 728 A.2d 86, 90 (D.C. 1999)
- Management Assistance, Inc. v. Computer Dimensions, Inc., 546 F. Supp. 666, 672 (N.D. Ga. 1982), aff'd sub nom. Computer Dimensions v. Basic Four, 747 F.2d 708 (11th Cir. 1984)
- Firestone v. Firestone, 76 F.3d 1205, 1209 (D.C. Cir. 1996)