

SUPREME COURT OF APPEALS OF WEST VIRGINIA

David M. Smith and Doris Smith v. The Velotta Company and Safety Caution Equipment Co.

No. 14-1285 (W. Va. Feb. 12, 2016) (memorandum decision) · No. No. 14-1285 · Decided February 12, 2016

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the dismissal of David and Doris Smith's personal-injury claims against The Velotta Company and Safety Caution Equipment Co. as barred by the applicable two-year statute of limitations. The court held that the discovery rule did not toll the limitations period because the plaintiffs knew of the accident and injuries and should have known, through reasonable diligence, the identities and alleged involvement of the respondents. The court also rejected the argument that the circuit court improperly weighed evidence or invaded the province of the jury.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Menis E. Ketchum; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II; Justice Robin Jean Davis
JURISDICTION	West Virginia
DECIDED	February 12, 2016
DOCKET	No. 14-1285
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners appealed the Kanawha County Circuit Court's order denying their motion to alter ruling after the court dismissed their personal-injury claims against respondents as barred by the statute of limitations.
STANDARD OF REVIEW	De novo review applies to an order granting a motion to dismiss; a circuit court's entry of summary judgment is also reviewed de novo. Challenges to findings and rulings on a motion to alter or amend are reviewed under an abuse-of-discretion standard for the ruling and reversible error, under a clearly erroneous standard for underlying factual findings, and de novo for questions of law.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision

PARTIES

David M. Smith, Doris Smith v. The Velotta Company, Safety Caution Equipment Co.

TOPICS

statute of limitations motions to dismiss standard of review appellate procedure civil procedure

PRACTICE AREAS

civil procedure statute of limitations torts appellate procedure construction law

QUESTIONS PRESENTED

1. Whether the discovery rule tolled the two-year statute of limitations for petitioners' personal-injury claims.
2. Whether the circuit court improperly invaded the province of the jury and weighed evidence when determining that petitioners knew or reasonably should have known the factual basis for their claims.
3. What standard of review governed the circuit court's dismissal and denial of the motion to alter ruling.

HOLDINGS

1. The discovery rule did not toll the limitations period because petitioners knew of Smith's injury and, through reasonable diligence, objectively should have known the identities of respondents and their alleged negligent conduct more than two years before filing suit.
2. The circuit court did not improperly weigh evidence or invade the jury's province; its factual findings and legal conclusions were supported by the record and legally sound.
3. The appeal was reviewed under the standard applicable to the underlying dismissal, with de novo review of the dismissal and summary judgment aspects of the ruling.

KEY QUOTATIONS

"First, the court should identify the applicable statute of limitation for each cause of action. Second, the court (or, if questions of material fact exist, the jury) should identify when the requisite elements of the cause of action occurred. Third, the discovery rule should be applied to determine when the statute of limitation began to run by determining when the plaintiff knew, or by the exercise of reasonable diligence should have known, of the elements of a possible cause of action, as set forth in Syllabus Point 4 of Gaither v. City Hosp., Inc., 199 W.Va. 706, 487 S.E.2d 901 (1997)." (at 4)

"Under the discovery rule set forth in Syllabus Point 4 of Gaither v. City Hosp., Inc., 199 W.Va. 706, 487 S.E.2d 901 (1997), whether a plaintiff "knows of" or "discovered" a cause of action is an objective test." (at 5)

FACTUAL BACKGROUND

On April 11, 2012, David Smith, a commercial truck driver, was driving through a road-construction area when traffic slowed and his tractor-trailer struck another vehicle. The truck then struck temporary concrete barriers,

crossed a bridge barrier, and fell onto an embankment, causing Smith injuries including a scalp laceration, concussion, and alleged memory impairment. The Velotta Company was the road-construction contractor, and Safety Caution Equipment Co. was its subcontractor responsible for part of the temporary traffic-control plan. Petitioners claimed they did not identify respondents or recognize a causal connection to respondents' conduct until contacted by an investigator in May 2014.

PROCEDURAL HISTORY

After an April 11, 2012 motor-vehicle accident, petitioners filed suit against respondents in Kanawha County Circuit Court on May 27, 2014. The circuit court granted respondents' motions to dismiss under West Virginia Code § 55-2-12 and later denied petitioners' motion to alter ruling. Petitioners appealed, arguing that the discovery rule tolled the limitations period and that the circuit court improperly weighed evidence. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- J.A. Street & Associates, Inc. v. Thundering Herd Development, LLC, 228 W. Va. 695, 724 S.E.2d 299 (2011)
- Wickland v. American Travellers Life Insurance Co., 204 W. Va. 430, 513 S.E.2d 657 (1998)
- Bowers v. Wurzburg, 205 W. Va. 450, 519 S.E.2d 148 (1999)
- Alden v. Harpers Ferry Police Civil Service Commission, 209 W. Va. 83, 543 S.E.2d 364 (2001)
- State ex rel. McGraw v. Scott Runyan Pontiac-Buick, 194 W. Va. 770, 461 S.E.2d 516 (1995)
- Chapman v. Kane Transfer Co., Inc., 160 W. Va. 530, 236 S.E.2d 207 (1977)
- Conley v. Gibson, 355 U.S. 41, 45-46 (1957)
- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Gaither v. City Hosp., Inc., 199 W. Va. 706, 487 S.E.2d 901 (1997)
- Dunn v. Rockwell, 225 W. Va. 43, 689 S.E.2d 255 (2009)
- Cart v. Marcum, 188 W. Va. 241, 423 S.E.2d 644 (1992)
- Worley v. Beckley Mech., Inc., 220 W. Va. 633, 648 S.E.2d 620 (2007)
- McCoy v. Miller, 213 W. Va. 161, 578 S.E.2d 355 (2003)
- State v. Vance, 207 W. Va. 640, 535 S.E.2d 484 (2000)
- Smith v. Velotta Co. and Safety Caution Equip., No. 15-0228 (W. Va. Feb. 12, 2016) (memorandum decision)

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