UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Lew S. McGinnis v. Nationwide Life and Annuity Insurance Co. et al.

McGinnis · No. CIV-23-641-G · Decided March 30, 2026

SUMMARY

The United States District Court for the Western District of Oklahoma grants Defendant James A. Mueller's motion for summary judgment in an action arising from the procurement and alleged misrepresentation of life insurance policies. The Court holds that Plaintiff's fraud, negligent misrepresentation, Oklahoma Consumer Protection Act, breach of contract, and breach of fiduciary duty claims are time-barred, and that Oklahoma law provides no private right of action under the cited deceptive insurance practices statute. The order was entered on March 30, 2026.

CASE DETAILS

COURT	United States District Court for the Western District of Oklahoma
JURISDICTION	United States District Court for the Western District of Oklahoma
DECIDED	March 30, 2026
DOCKET	CIV-23-641-G
DISPOSITION	other
PROCEDURAL POSTURE	Defendant James A. Mueller moved for summary judgment on all claims remaining against him. The court granted the motion.
STANDARD OF REVIEW	Summary judgment must be granted when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court views the evidence and reasonable inferences in the light most favorable to the nonmoving party, but the nonmovant must identify admissible evidence permitting a reasonable jury to find in its favor.
PRECEDENTIAL VALUE	Unknown
PARTIES	Lew S. McGinnis v. James A. Mueller, Nationwide Life and Annuity Insurance Co., Nationwide Life Insurance Co., The ASA Group

TOPICS

summary judgment · statute of limitations · breach of contract · insurance · civil procedure

PRACTICE AREAS

civil procedure · insurance · contracts · torts · consumer protection

QUESTIONS PRESENTED

1. Whether McGinnis's fraud, constructive fraud, negligent misrepresentation, and Oklahoma Consumer Protection Act claims were barred by the applicable statutes of limitations.
2. Whether McGinnis's breach-of-contract claim was governed by the three-year limitations period for an oral contract and was untimely.
3. Whether Oklahoma title 36, section 1204 provides a private right of action for deceptive insurance practices.
4. Whether McGinnis presented a genuine issue of material fact regarding the existence of a fiduciary relationship with Mueller.
5. Whether McGinnis's breach-of-fiduciary-duty claim was barred by the applicable two-year statute of limitations and whether equitable estoppel prevented Mueller from asserting that defense.

HOLDINGS

1. The claims were time barred because McGinnis knew or should have known of the alleged injury and misrepresentations no later than October 31, 2018, and he filed suit in July 2023. The record did not support equitable tolling or estoppel based on Mueller's later statements.
2. The breach-of-contract claim was governed by Oklahoma's three-year limitations period for an oral contract and was untimely because the alleged breach occurred no later than August 7, 2017, while the action was filed on July 21, 2023.
3. Oklahoma title 36, section 1204 does not provide a private right of action, so McGinnis could not obtain relief against Mueller under the deceptive-insurance-practices statute.
4. McGinnis's breach-of-fiduciary-duty claim was time barred. The court did not need to resolve whether the parties' relationship created a fiduciary duty because McGinnis knew of the facts underlying his injury no later than October 31, 2018 and filed suit outside the applicable two-year limitations period.

KEY QUOTATIONS

> *"The Court must grant summary judgment when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.""* (at 2)

> *"The mere existence of a scintilla of evidence in support of the [nonmovant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmovant]."* (at 3)

> *"In Oklahoma, "[a]n action for breach of contract accrues when the contract is breached," "regardless of whether the plaintiff knows, or in the exercise of reasonable diligence, should have known of the breach.""* (at 9)

> *"Accordingly, Defendant Mueller is entitled to summary judgment on this claim."* (at 11)

FACTUAL BACKGROUND

McGinnis and Mueller had known each other for approximately 30 to 40 years, and Mueller acted as McGinnis's independent insurance agent. Through Mueller, McGinnis purchased two life insurance policies from Nationwide in 2016 and 2017. McGinnis alleged that the policies were misrepresented, unsuitable for his needs, failed to perform as guaranteed, and were not physically delivered. The record showed that McGinnis knew he had a problem with the policies by August 7, 2017, and that he became aware of the alleged misrepresentations and omissions no later than October 31, 2018, but did not file suit until July 21, 2023.

PROCEDURAL HISTORY

McGinnis filed the action on July 21, 2023, against Mueller, Nationwide Life and Annuity Insurance Co., Nationwide Life Insurance Co., and The ASA Group. The court previously dismissed the claims against The ASA Group and dismissed identical claims against the Nationwide defendants as untimely. Mueller then moved for summary judgment on the remaining claims against him, and the court granted the motion in full.

DISPOSITION

other

CASES CITED

- Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)
- Garrison v. Gambro, Inc., 428 F.3d 933, 935 (10th Cir. 2005)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986)
- Pepsi-Cola Bottling Co. of Pittsburg, Inc. v. PepsiCo, Inc., 431 F.3d 1241, 1255 (10th Cir. 2005)
- Miller v. Armstrong World Indus., Inc., 949 F.2d 1088, 1089 n.3 (10th Cir. 1991)
- Hi-Tex, LLC v. Vorel, No. CIV-21-1125-D, 2025 WL 1679640, at *7-8 (W.D. Okla. June 13, 2025)
- LL Ark Props. LLC v. David Stanley Fam. Realty, LLC, No. CIV-19-464-SLP, 2022 WL 5245205, at *3 (W.D. Okla. Aug. 11, 2022)
- Legacy Crossing, L.L.C. v. Travis Wolff & Co., 229 F. App'x 672, 682 (10th Cir. 2007)
- Calvert v. Swinford, 382 P.3d 1028, 1033 (Okla. 2016)
- Young v. Davis, 554 F.3d 1254, 1258 (10th Cir. 2009)
- In re Woodward, 549 P.2d 1207, 1209 (Okla. 1976)
- Harlow Publ'g Co. v. Patrick, 72 P.2d 511, 512 (Okla. 1937)
- Morgan v. State Farm Mut. Auto. Ins. Co., 488 P.3d 743, 745, 750, 753 (Okla. 2021)
- E. Cent. Okla. Elec. Co-op., Inc. v. Okla. Gas & Elec. Co., 505 P.2d 1324, 1328 (Okla. 1973)
- Chickasaw Tel. Co. v. Southwestern Bell Mobile Sys., Inc., No. 96-6357, 1997 WL 290951, at *4 (10th Cir. May 27, 1997)
- Express Servs., Inc. v. King, No. CIV-15-1181-R, 2017 WL 3741555, at *7 (W.D. Okla. Aug. 30, 2017)
- Thomas v. Metro. Life Ins. Co., 540 F. Supp. 2d 1212, 1231 (W.D. Okla. 2008)
- Graves v. Johnson, 359 P.3d 1151, 1155 (Okla. Civ. App. 2015)

- Horton v. Hamilton, 345 P.3d 357, 364 (Okla. 2015)
- Snow White, LLC v. State Auto Prop. & Cas. Ins. Co., No. CIV-14-1397-F, 2015 WL 13573971, at *2 (W.D. Okla. Mar. 3, 2015)
- Cosper v. Farmers Ins. Co., 309 P.3d 147, 150 (Okla. Civ. App. 2013)
- Quinlan v. Koch Oil Co., 25 F.3d 936, 942 (10th Cir. 1994)
- Siddique v. W. Heritage Ins. Co., No. CIV-14-456, 2015 WL 2451734, at *2 (E.D. Okla. May 21, 2015)
- Naylor Farms, Inc. v. Anadarko OGC Co., No. CIV-08-668-R, 2011 WL 7053790, at *4 (W.D. Okla. July 14, 2011)