

SUPREME COURT OF WISCONSIN

Martin G. Wenke and Dakota M. Wenke, a minor, by his Guardian
ad Litem, Lynn R. Laufenberg v. Gehl Company

Wenke, 274 Wis. 2d 220 (Wis. 2004) · No. No. 01-2649 · Decided July 7, 2004

SUMMARY

The Supreme Court of Wisconsin held that Wisconsin's borrowing statute, Wis. Stat. § 893.07, applies equally to foreign statutes of limitation and statutes of repose. The court concluded that the statute's reference to a foreign "period of limitation" was ambiguous and that the prior court of appeals decision in *Leverence v. United States Fidelity & Guaranty* was objectively wrong on that issue. Because Iowa's 15-year product-liability statute of repose barred the claim, the court affirmed dismissal of the action.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	David T. Prosser; Shirley S. Abrahamson; Ann Walsh Bradley; N. Patrick Crooks; Diane S. Sykes; Jon P. Wilcox
JURISDICTION	Wisconsin
DECIDED	July 7, 2004
DOCKET	No. 01-2649
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs sought review of a published court of appeals decision affirming dismissal of their products-liability and negligence action on summary judgment. The Wisconsin Supreme Court granted review and affirmed.
STANDARD OF REVIEW	De novo review of the construction of Wis. Stat. § 893.07; summary judgment is appropriate when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; binding precedent in Wisconsin.
PARTIES	Martin G. Wenke, Dakota M. Wenke, a minor, by his Guardian ad Litem, Lynn R. Laufenberg v. Gehl Company

TOPICS

products liability

statutory interpretation

civil procedure

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standard of review

PRACTICE AREAS

products liability

negligence

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conflict of laws

civil procedure

QUESTIONS PRESENTED

1. Whether Wis. Stat. § 893.07's reference to a foreign 'period of limitation' includes a foreign statute of repose.
2. Whether the portion of *Leverence v. United States Fidelity & Guaranty* excluding foreign statutes of repose from § 893.07 remained valid after *Landis and Aicher*.
3. Whether the court's interpretation of § 893.07 should apply prospectively rather than retroactively.

HOLDINGS

1. The phrase 'foreign period of limitation' in Wis. Stat. § 893.07 includes both foreign statutes of limitation and foreign statutes of repose. Wisconsin courts must apply the applicable foreign limitation period when it is shorter than the applicable Wisconsin period.
2. The portion of *Leverence* holding that § 893.07 unambiguously excludes foreign statutes of repose was objectively wrong and is overruled.
3. The interpretation including foreign statutes of repose within § 893.07 applies retroactively to *Wenke's* claim.

KEY QUOTATIONS

“In Wisconsin, the relevant distinction between the concepts of statutes of limitation and statutes of repose is in how the limitation period is computed; they are not different in ultimate effect.” (274 Wis. 2d at 262-263)

“Wisconsin Stat. § 893.07(1) directs Wisconsin courts hearing a foreign cause of action to apply 'the foreign period of limitation which applies' if that period is shorter than the applicable Wisconsin limitations period.” (274 Wis. 2d at 270-271)

FACTUAL BACKGROUND

Martin Wenke, an Iowa resident, severely injured his right arm in Iowa on September 12, 1997, while removing hay from a Gehl RB1450 baler. Gehl, a Wisconsin corporation, had sold the baler to another Iowa resident in May 1981, and Wenke later acquired it. Wenke and his minor son filed a Wisconsin products-liability and negligence action in August 1999, although Iowa's fifteen-year products-liability statute of repose barred the claim in Iowa.

PROCEDURAL HISTORY

Wenke and his son filed suit in Washington County Circuit Court. The circuit court initially denied Gehl's summary-judgment motion based on *Leverence*, but later dismissed the action after reconsideration in light of

Landis. The court of appeals affirmed, and the supreme court affirmed the court of appeals.

DISPOSITION

affirmed

CASES CITED

- Landis v. Physicians Insurance Co., 2001 WI 86, 245 Wis. 2d 1, 628 N.W.2d 893
- Leverage v. United States Fidelity & Guaranty, 158 Wis. 2d 64, 462 N.W.2d 218 (Ct. App. 1990)
- Aicher v. Wisconsin Patients Compensation Fund, 2000 WI 98, 237 Wis. 2d 99, 613 N.W.2d 849
- Guertin v. Harbour Assurance Co. of Bermuda, 141 Wis. 2d 622, 415 N.W.2d 831 (1987)
- Scott v. First State Insurance Co., 155 Wis. 2d 608, 456 N.W.2d 152 (1990)
- Beard v. J.I. Case Co., 823 F.2d 1095 (7th Cir. 1987)
- Wenke v. Gehl Co., 2003 WI App 189, 267 Wis. 2d 221, 669 N.W.2d 789
- State v. Douangmala, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1
- Browne v. WERC, 169 Wis. 2d 79, 485 N.W.2d 376 (1992)
- Kurtz v. City of Waukesha, 91 Wis. 2d 103, 280 N.W.2d 757 (1979)
- Chevron Oil Co. v. Huson, 404 U.S. 97 (1971)
- Estate of Makos v. Wisconsin Masons Health Care Fund, 211 Wis. 2d 41, 564 N.W.2d 662 (1997)