

COURT OF APPEALS OF NORTH CAROLINA

Dickens v. Puryear, 45 N.C. App. 696

263 S.E.2d 856 (1980) · No. No. 7910SC721 · Decided March 18, 1980

SUMMARY

The North Carolina Court of Appeals held that the plaintiff's claim was barred by the one-year statute of limitations for assault and battery. Although the complaint labeled the claim as intentional infliction of emotional distress, the court characterized the alleged conduct as assault and battery based on the pleadings and deposition testimony. The court also held that the unpled statute-of-limitations defense could be considered on summary judgment because both parties had addressed it.

CASE DETAILS

COURT	Court of Appeals of North Carolina
WRITING FOR THE COURT	Vaughn, Judge; Morris, C.J.; Arnold, Judge
JURISDICTION	North Carolina
DECIDED	March 18, 1980
DOCKET	No. 7910SC721
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed the entry of summary judgment for defendants based on the statute of limitations.
STANDARD OF REVIEW	Whether summary judgment was properly entered because the plaintiff's claim was barred by the applicable statute of limitations.
PRECEDENTIAL VALUE	Published North Carolina Court of Appeals opinion
PARTIES	James Robert Dickens v. Earl V. Puryear, Ann Brewer Puryear

TOPICS

- statute of limitations
- assault
- battery
- summary judgment
- statutory interpretation

PRACTICE AREAS

- Tort law
- Civil procedure
- Statute of limitations

QUESTIONS PRESENTED

1. Whether an unpleaded statute-of-limitations defense may be considered on summary judgment when both parties were aware of and litigated the defense.
2. Whether the facts alleged and established by deposition constituted assault and battery, subject to the one-year limitations period in N.C. Gen. Stat. § 1-54(3), rather than intentional infliction of mental distress subject to the three-year limitations period in N.C. Gen. Stat. § 1-52(5).

HOLDINGS

1. An affirmative defense not pleaded in the answer may be heard for the first time on a motion for summary judgment when both parties are aware of the defense and have had an opportunity to address it.
2. The claim was substantively an assault-and-battery claim, not a claim for intentional infliction of mental distress, and was therefore barred by the one-year statute of limitations in N.C. Gen. Stat. § 1-54(3).

KEY QUOTATIONS

“The label plaintiff gives to an alleged wrong is not the controlling factor.” (858)

“This is intentional harmful and offensive contact and the threat of such contact for which the law provides causes of action for assault and battery.” (859)

FACTUAL BACKGROUND

Plaintiff alleged that defendants lured him to an isolated location, where Earl Puryear and four masked men threatened to kill or castrate him and ordered him to leave North Carolina. Plaintiff alleged severe emotional and physical distress and characterized the claim as intentional infliction of mental distress. His action was filed more than one year after the alleged occurrence but within three years of it. Deposition testimony described a knife, hair pulling, physical contact, threats of castration, and an immediate threat of harm.

PROCEDURAL HISTORY

Defendants obtained an extension of time to answer while a potentially relevant appellate decision was pending. Discovery occurred, and the parties litigated summary-judgment motions. Although defendants had not specifically pleaded the statute of limitations and did not identify it as a specific ground in their summary-judgment motions, the issue was fully briefed and argued before the trial court, which entered summary judgment for defendants.

DISPOSITION

affirmed

CASES CITED

- Bank v. Gillespie, 291 N.C. 303, 230 S.E.2d 375 (1976)
- Hayes v. Ricard, 244 N.C. 313, 93 S.E.2d 540 (1956)
- Maes v. Tuttoilmondo, 31 Colo. App. 248, 502 P.2d 427 (1972)

- Thomas v. Casford, 363 P.2d 856 (Okla. 1961)
- Borchert v. Bash, 97 Neb. 593, 150 N.W. 830 (1915)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/north-carolina-court-of-appeals-of-north-carolina/1980/dickens-v-puryear-45-n-c-app-696-gf97xoa0>