

SUPREME COURT OF APPEALS OF WEST VIRGINIA

E.K. v. West Virginia Department of Health and Human Resources

E.K. · No. No. 16-0773 · Decided November 7, 2017

SUMMARY

The West Virginia Supreme Court of Appeals reversed the dismissal with prejudice of E.K.'s negligence action against the West Virginia Department of Health and Human Resources arising from alleged negligent foster-care placement and monitoring. The court held that E.K. should be allowed to amend his complaint and that factual development was necessary to determine whether the statute of limitations was tolled, including by discovery-rule principles or fraudulent concealment. The matter was remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Menis E. Ketchum; Chief Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	November 7, 2017
DOCKET	No. 16-0773
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	E.K. appealed the Circuit Court of Monongalia County's dismissal with prejudice of his negligent placement and monitoring complaint against the DHHR under West Virginia Rule of Civil Procedure 12(b)(6) on statute-of-limitations grounds.
STANDARD OF REVIEW	De novo review of a Rule 12(b)(6) dismissal; the complaint is construed in the light most favorable to the plaintiff and its allegations are taken as true.
PRECEDENTIAL VALUE	unpublished memorandum decision; nonprecedential
PARTIES	E.K. v. West Virginia Department of Health and Human Resources

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QUESTIONS PRESENTED

1. Whether the circuit court erred by dismissing E.K.'s complaint with prejudice under Rule 12(b)(6) on statute-of-limitations grounds.
2. Whether the circuit court improperly considered matters outside the pleadings without converting the motion to dismiss into a motion for summary judgment and providing the required notice and opportunity to present Rule 56 materials.
3. Whether unresolved factual questions concerning accrual, discovery, fraudulent concealment, or another tolling doctrine required factual development before deciding the statute-of-limitations defense.
4. Whether E.K. should have been granted leave to amend his complaint under Rule 15(a).

HOLDINGS

1. The circuit court erred by refusing to allow E.K. to amend his complaint; leave to amend should be granted because the amendment could permit adjudication on the merits, the DHHR did not show prejudice, and it could be given an opportunity to respond.
2. A court ruling on a Rule 12(b)(6) motion is generally limited to the pleadings; if it considers matters outside the pleadings, it must convert the motion to one for summary judgment and provide notice and a reasonable opportunity to submit Rule 56 materials.
3. The statute-of-limitations defense could not properly be resolved on the pleadings because the accrual and tolling questions presented unresolved factual issues that would benefit from discovery.
4. If E.K. can establish that the DHHR fraudulently concealed facts that prevented him from discovering or pursuing his potential cause of action, the statute of limitations may be tolled.

KEY QUOTATIONS

“leave shall be freely given when justice so requires.” (at 4)

“When ruling on a motion to dismiss made pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, a circuit court is limited to considering matters properly alleged in the pleadings” (at 5)

“Only the first step is purely a question of law; the resolution of steps two through five will generally involve questions of material fact that will need to be resolved by the trier of fact.” (at 7)

“Unless the complaint alleges facts that create an ironclad defense, a limitations argument must await factual development.” (at 8)

FACTUAL BACKGROUND

In 2011, the DHHR removed fifteen-year-old E.K. and his brothers from their home and placed them in foster care without allegedly providing the foster parent prior training. E.K. alleged that his foster mother sexually abused him regularly for several years and that the DHHR knew or should have known of the abuse through

referrals and information from his sibling and the surrounding community. E.K. reported the abuse in June 2014 and filed suit against the DHHR in February 2016, alleging negligent placement and monitoring and later asserting possible fraudulent concealment and failure-to-advise theories.

PROCEDURAL HISTORY

E.K. filed a one-count negligence complaint in February 2016. The DHHR moved to dismiss, asserting that the claim was barred by the two-year statute of limitations after E.K. reached majority. The circuit court dismissed with prejudice and declined to permit amendment after considering allegations and matters outside the complaint. The Supreme Court of Appeals reversed and remanded with instructions to allow an amended complaint.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the July 20, 2016 dismissal order and remand for further proceedings consistent with the opinion, including allowing E.K. to file an amended complaint.

CASES CITED

- Cantley v. Lincoln County Commission, 221 W. Va. 468, 655 S.E.2d 490 (2007)
- John W. Lodge Distrib. Co. v. Texaco, Inc., 161 W. Va. 603, 245 S.E.2d 157 (1978)
- Conley v. Gibson, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)
- Chapman v. Kane Transfer Co., 160 W. Va. 530, 236 S.E.2d 207 (1977)
- Rosier v. Garron, Inc., 156 W. Va. 861, 199 S.E.2d 50 (1973)
- Conrad v. ARA Szabo, 198 W. Va. 362, 480 S.E.2d 801 (1996)
- Riffle v. C.J. Hughes Construction Co., 226 W. Va. 581, 703 S.E.2d 552 (2010)
- Dunn v. Consolidation Coal Co., 180 W. Va. 681, 379 S.E.2d 485 (1989)
- Albright v. White, 202 W. Va. 292, 503 S.E.2d 860 (1998)
- Miller v. Monongalia County Board of Education, 210 W. Va. 147, 556 S.E.2d 427 (2001)
- Dunn v. Rockwell, 225 W. Va. 43, 689 S.E.2d 255 (2009)
- Gaither v. City Hospital, Inc., 199 W. Va. 706, 487 S.E.2d 901 (1997)
- Firestone v. Firestone, 76 F.3d 1205 (D.C. Cir. 1996)
- Allen v. Dairy Farmers of America, Inc., 748 F. Supp. 2d 323 (D. Vt. 2010)
- Foss v. Bear, Stearns & Co., Inc., 394 F.3d 540 (7th Cir. 2005)
- Sattler v. Bailey, 184 W. Va. 212, 400 S.E.2d 220 (1990)
- Merrill v. W. Va. Department of Health & Human Resources, 219 W. Va. 151, 632 S.E.2d 307 (2006)
- Grisham v. Philip Morris U.S.A., Inc., 151 P.3d 1151 (Cal. 2007)
- Hishon v. King & Spalding, 467 U.S. 69 (1984)

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