

SUPREME COURT OF TEXAS

Gail Ashley v. Doris D. Hawkins

293 S.W.3d 175 (Tex. 2009) · No. No. 07-0572 · Decided June 26, 2009

SUMMARY

The Supreme Court of Texas held that Texas Civil Practice and Remedies Code section 16.063 does not toll the limitations period when an absent defendant remains amenable to service under the general long-arm statute and has sufficient contacts with Texas for personal jurisdiction. The Court overruled Vaughn v. Deitz and concluded that the plaintiff failed as a matter of law to exercise due diligence in serving the defendant after filing suit. The Court reversed the court of appeals and reinstated the trial court’s summary judgment for the defendant.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Paul W. Green
JURISDICTION	Texas
DECIDED	June 26, 2009
DOCKET	No. 07-0572
DISPOSITION	reversed
PROCEDURAL POSTURE	Ashley sought summary judgment based on Hawkins's failure to timely and diligently serve her in a personal-injury action. The trial court granted summary judgment for Ashley, the court of appeals reversed, and the Texas Supreme Court reversed the court of appeals and reinstated the trial court's judgment.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether the movant established entitlement to judgment as a matter of law and whether the nonmovant raised a genuine issue of material fact. Whether the plaintiff's explanation demonstrates lack of diligence as a matter of law may be decided on summary judgment when service lapses are unexplained or patently unreasonable.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Texas
PARTIES	Gail Ashley v. Doris D. Hawkins

TOPICS

statute of limitations

service of process

personal jurisdiction

summary judgment

civil procedure

PRACTICE AREAS

civil procedure

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statute of limitations

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QUESTIONS PRESENTED

1. Whether Texas Civil Practice and Remedies Code section 16.063 tolls the limitations period when an out-of-state defendant is amenable to service under Texas's general long-arm statute and has sufficient contacts with Texas for personal jurisdiction.
2. Whether Hawkins exercised due diligence in attempting to serve Ashley after filing suit within the limitations period.

HOLDINGS

1. A defendant is considered present in Texas for purposes of section 16.063 when the defendant is amenable to service under the general long-arm statute and has contacts with Texas sufficient to support personal jurisdiction. Accordingly, section 16.063 did not toll the limitations period for Ashley.
2. Hawkins failed to raise a fact issue on due diligence because the nearly eight-month gap between service attempts was unexplained and other available methods of service were not pursued. Summary judgment for Ashley was therefore proper.

KEY QUOTATIONS

“Therefore, we overrule Deitz and hold, as we did in Kerlin, that a defendant is “present” in Texas, for purposes of the tolling statute, if he or she is amenable to service under the general longarm statute, as long as the defendant has “contacts with the state sufficient to afford personal jurisdiction.”” (293 S.W.3d at 179)

“We agree with the trial court and hold that, as a matter of law, Hawkins’ responses do not create a fact issue as to diligence, as this eight-month gap in time is left unexplained.” (293 S.W.3d at 181)

“A flurry of ineffective activity does not constitute due diligence if easily available and more effective alternatives are ignored.” (293 S.W.3d at 182)

FACTUAL BACKGROUND

Gail Ashley and Doris Hawkins were involved in a motor-vehicle collision in Montgomery County, Texas, on May 31, 2003. Ashley later moved to California without leaving a forwarding address. Hawkins filed suit approximately sixty days before the two-year limitations period expired, but Ashley was not served until May 10, 2006. Between July 27, 2005, and March 17, 2006, Hawkins made no service attempt, despite the availability of substituted-service methods, and the Texas Supreme Court held that the unexplained delay showed lack of diligence as a matter of law.

PROCEDURAL HISTORY

Hawkins sued Ashley on April 1, 2005, alleging injuries from a May 31, 2003 motor-vehicle collision. Ashley was not served until May 10, 2006. The trial court granted Ashley summary judgment on the limitations affirmative defense, but the court of appeals held that section 16.063 tolled limitations while Ashley was outside Texas. The Texas Supreme Court reversed and reinstated the trial court's summary judgment.

DISPOSITION

reversed

CASES CITED

- Kerlin v. Saucedo, 263 S.W.3d 920, 927 (Tex. 2008)
- Vaughn v. Deitz, 430 S.W.2d 487, 490 (Tex. 1968)
- Southwestern Bell Telephone Co., L.P. v. Mitchell, 276 S.W.3d 443, 447 (Tex. 2008)
- Retamco Operating, Inc. v. Republic Drilling Co., 278 S.W.3d 333, 337 (Tex. 2009)
- Moki Mac River Expeditions v. Drugg, 221 S.W.3d 569, 575 (Tex. 2007)
- Gant v. DeLeon, 786 S.W.2d 259, 260 (Tex. 1990) (per curiam)
- Zale Corp. v. Rosenbaum, 520 S.W.2d 889, 890 (Tex. 1975) (per curiam)
- Proulx v. Wells, 235 S.W.3d 213, 216-17 (Tex. 2007) (per curiam)
- Murray v. San Jacinto Agency, Inc., 800 S.W.2d 826, 830 (Tex. 1990)
- Parmer v. DeJulian, No. 12-07-00479-CV, 2008 WL 4225994, at *6 (Tex. App.—Tyler Sept. 17, 2008, no pet.) (mem. op.)
- Hodge v. Smith, 856 S.W.2d 212, 215-17 (Tex. App.—Houston [1st Dist.] 1993, writ denied)
- Wood v. Brown, 819 S.W.2d 799, 800 (Tex. 1991) (per curiam)
- Carter v. MacFadyen, 93 S.W.3d 307, 314-15 (Tex. App.—Houston [14th Dist.] 2002, pet. denied)
- Bendix Autolite Corp. v. Midwesco Enterprises, Inc., 486 U.S. 888, 892-94 (1988)
- Key Western Life Insurance Co. v. State Board of Insurance, 350 S.W.2d 839, 849 (Tex. 1961)