

SUPREME COURT OF ARKANSAS

McCoy v. Crumby

353 Ark. 251 (2003) · Decided May 22, 2003

SUMMARY

The Arkansas Supreme Court affirmed dismissal of the McCoy’s claim for underinsured-motorist benefits arising from the death of a viable fetus in a 1999 automobile accident. The court held that Aka v. Jefferson Hospital Association, Inc., which recognized a viable fetus as a person under Arkansas’s wrongful-death statute, applied only to the Aka case and to causes of action arising after June 21, 2001, when the decision became final. Because the McCoy’s cause of action arose before that date, the complaint failed to state a claim.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Robert L. Brown, Justice; Brown; Corbin; Imber
JURISDICTION	Arkansas
DECIDED	May 22, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a circuit-court order granting Southern Farm's motion to dismiss the appellants' complaint seeking underinsured-motorist benefits for the death of a viable fetus.
STANDARD OF REVIEW	The court reviewed the grant of a motion to dismiss for failure to state facts upon which relief could be granted.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Gayla McCoy, Archie McCoy, individually, Archie McCoy, as Administrator of the Estate of Houston Alexander McCoy, Kenneth Brindley, a minor v. Southern Farm Bureau Casualty Insurance Company, Inc.

TOPICS

- uninsured motorist
- insurance coverage
- wrongful death
- motions to dismiss
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Arkansas Supreme Court's decision in *Aka v. Jefferson Hospital Ass'n, Inc.*, recognizing a viable fetus as a person under the wrongful-death statute, applied retroactively to a cause of action arising before *Aka* became final.
2. Whether the appellants' complaint stated a claim for underinsured-motorist benefits based on the death of the viable fetus.
3. Whether the appellants' use of a third-party complaint against Southern Farm was procedurally proper.

HOLDINGS

1. *Aka* applies only to the *Aka* case itself and to causes of action arising after *Aka* became final on June 21, 2001; it does not apply to the appellants' cause of action arising from the September 9, 1999 accident.
2. The complaint failed to state a claim for recovery based on the death of the fetus because, under the applicable law at the time the cause of action arose, a fetus was not a person for purposes of Arkansas's wrongful-death statute.
3. A third-party complaint under Ark. R. Civ. P. 14 was not the proper procedure for asserting the appellants' claim against Southern Farm, although the court treated the appellants' request as a motion to amend the complaint to add Southern Farm as a defendant.

KEY QUOTATIONS

"This court was exceedingly clear in Aka. The Aka decision was to be applied prospectively only from the date the decision was final, which was June 21, 2001."

"The circuit court was entirely correct in dismissing appellants' complaint."

FACTUAL BACKGROUND

On September 9, 1999, Kathy Crumby's vehicle crossed the center line and collided with Gayla McCoy's vehicle. The accident injured Gayla McCoy, caused loss of consortium to Archie McCoy, and resulted in the death of Gayla McCoy's seven-month fetus, Houston Alexander McCoy. After Crumby's insurer paid its \$100,000 policy limits, the appellants sought \$25,000 in underinsured-motorist benefits from Southern Farm under Gayla McCoy's policy.

PROCEDURAL HISTORY

After Kathy Crumby's insurer paid its policy limits, the appellants filed a third-party complaint against Southern Farm seeking underinsured-motorist benefits under Gayla McCoy's policy. Southern Farm moved to dismiss under Ark. R. Civ. P. 12(b)(6), arguing that no coverage or wrongful-death claim existed for the stillborn fetus and that third-party practice was improper. The Hot Spring County Circuit Court dismissed the complaint with prejudice, and the Supreme Court of Arkansas affirmed.

DISPOSITION

affirmed

CASES CITED

- Aka v. Jefferson Hosp. Ass'n, Inc., 344 Ark. 627, 42 S.W.3d 508 (2001)
- Chatelain v. Kelley, 322 Ark. 517, 910 S.W.2d 215 (1995)
- Parish v. Pitts, 244 Ark. 1239, 429 S.W.2d 45 (1968)
- Wawak v. Stewart, 247 Ark. 1093, 449 S.W.2d 922 (1970)
- Special Sch. Dist. of Ft. Smith v. Sebastian Co., 277 Ark. 326, 641 S.W.2d 702 (1982)

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