

SUPREME COURT OF MICHIGAN

King v. Briggs, 474 Mich. 1113

712 N.W.2d 164 (2006) · No. 129639, 129640(62) · Decided April 21, 2006

SUMMARY

The Supreme Court of Michigan denied reconsideration of its prior order denying leave to appeal in a wrongful-death medical-malpractice case. A concurring statement addressed footnote 14 of Waltz v. Wyse and explained how tolling of the medical-malpractice limitations period could result in five years plus 182 days to file a complaint, without tolling the wrongful-death saving provision itself.

CASE DETAILS

COURT	Supreme Court of Michigan
JURISDICTION	Michigan
DECIDED	April 21, 2006
DOCKET	129639, 129640(62)
DISPOSITION	other
PROCEDURAL POSTURE	The Michigan Supreme Court considered the plaintiff's motion for reconsideration of the court's prior order denying his application for leave to appeal.
PRECEDENTIAL VALUE	Published Michigan Supreme Court order; the majority disposition is precedential, while Justice Markman's separate concurrence is not a majority holding.
PARTIES	Timothy King, Personal Representative of the Estate of Andrew Baker v. Michael Briggs, D.O., Merle Hunter, M.D., Emergency Physicians Medical Group, P.C., McPherson Hospital, a/k/a Trinity Health-Michigan

TOPICS

- motion for reconsideration
- appellate procedure
- statute of limitations
- statutory interpretation
- torts

PRACTICE AREAS

- civil procedure
- medical malpractice
- wrongful death
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court should grant reconsideration of its prior order denying leave to appeal.
2. Whether the court should clarify footnote 14 of *Waltz v. Wyse* concerning the calculation of the period for filing a wrongful-death action when a notice of intent tolls the two-year limitations period.

HOLDINGS

1. The motion for reconsideration was denied because the prior order did not appear to have been entered erroneously.

KEY QUOTATIONS

“Potentially, then, under §§ 5805(5), 5852, and 5856(d), plaintiff had five years plus 182 days to commence her lawsuit following the accrual of her cause of action.” (474 Mich. 1113)

FACTUAL BACKGROUND

The underlying matter involved a wrongful-death action brought by the personal representative of Andrew Baker's estate against physicians and healthcare entities. The supplied opinion does not discuss the underlying medical facts; it concerns the timeliness of a wrongful-death complaint and the effect of a notice of intent under Michigan's medical-malpractice and wrongful-death statutes.

PROCEDURAL HISTORY

The Supreme Court had previously denied the application for leave to appeal and then denied reconsideration. The present order again denied reconsideration because the prior order did not appear to have been entered erroneously. Justice Markman concurred separately, while Justices Cavanagh and Kelly would have granted reconsideration and leave to appeal.

DISPOSITION

other

CASES CITED

- *Waltz v. Wyse*, 469 Mich. 642, 652, 677 N.W.2d 813 (2004)

OPINION

PER CURIAM.

712 N.W.2d 164 (2006) 474 Mich. 1113 Timothy KING, Personal Representative of the Estate of Andrew Baker, Plaintiff-Appellant, v. Michael BRIGGS, D.O., Merle Hunter, M.D., Emergency Physicians Medical Group, P.C., and McPherson Hospital, a/k/a Trinity Health-Michigan, Defendants-Appellees. Docket Nos. 129639, 129640(62). COA Nos. 259136, 259229. Supreme Court of Michigan.

April 21, 2006. On order of the Court, the motion for reconsideration of this Court's order of December 27, 2005 is considered, and it is DENIED, because it does not appear that the order was entered erroneously. MARKMAN, J., concurs and states as follows: Plaintiff has filed a motion for reconsideration with regard to this Court's order denying his application for leave to appeal.

Plaintiff specifically requests that this Court grant leave to clarify footnote 14 of *Waltz v. Wyse*, 469 Mich. 642, 652, 677 N.W.2d 813 (2004). In *Waltz*, this Court held that although the filing of a notice of intent in compliance with MCL 600.2912b tolls the two-year period of limitations, MCL 600.5805(6), it does not toll the additional period permitted for filing wrongful death actions under the wrongful death saving provision, MCL 600.5852, because MCL 600.5856(d) only tolls the applicable "statute of limitations" and the wrongful death saving provision is not a statute of limitations.

In footnote 14 of *Waltz*, supra at 652, 677 N.W.2d 813, we stated, "Potentially, then, under §§ 5805(5), 5852, and 5856(d), plaintiff had five years plus 182 days to commence her lawsuit following the accrual of her cause of action." (Emphasis in original). Plaintiff states that the only possible way the period for filing a complaint can be extended to "five years plus 182 days" is if the filing of the notice of intent tolls the additional period permitted for filing wrongful death actions under the wrongful death saving provision.

I respectfully disagree. A plaintiff may have "five years plus 182 days" to file a complaint if the plaintiff files a notice of intent before the expiration of the two-year limitations period. If a plaintiff files a notice of intent before the expiration of the two-year limitations period, this period may be tolled for 182 days and, if the plaintiff is issued letters of authority one year and 182 days after filing the notice of intent, the plaintiff may have until three years after the period of limitations has run to file a complaint.

Two years, plus 182 days, plus three years equals "five years plus 182 days." Therefore, a plaintiff may have "five years plus 182 days" to file a complaint, not because the additional period permitted for filing a wrongful death action under the wrongful death saving provision is tolled, but because the two-year limitations period is tolled. CAVANAGH, J., would grant reconsideration and, on reconsideration, would grant leave to appeal.

KELLY, J., would grant reconsideration and, on reconsideration, would grant leave to appeal to reconsider *Waltz v. Wyse*, 469 Mich. 642, 677 N.W.2d 813 (2004).