

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)