

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Gregory S. Moore, O.D. v. Lawrence M. Minardi, M.D., individually,
and Minardi Eye Center, Inc., a West Virginia Corporation

Gregory S. Moore, O.D. v. Lawrence M. Minardi, M.D., individually, and Minardi Eye Center, Inc., No. 22-0187 (W. Va. Apr. 5, 2023) (memorandum decision) · No. No. 22-0187 · Decided April 5, 2023

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment for Lawrence M. Minardi, M.D., and Minardi Eye Center, Inc., holding that Gregory S. Moore, O.D.’s tortious-interference claims were barred by the two-year statute of limitations. The court concluded that any actionable conduct occurred by the end of 2013, rejected the continuing-tort theory, and found no basis for fraudulent concealment or other tolling.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	April 5, 2023
DOCKET	No. 22-0187
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed an order granting defendants summary judgment on the ground that his tortious-interference claims were barred by the statute of limitations.
STANDARD OF REVIEW	Summary judgment is reviewed de novo.
PRECEDENTIAL VALUE	Memorandum decision; likely nonprecedential under West Virginia appellate practice.
PARTIES	Gregory S. Moore, O.D. v. Lawrence M. Minardi, M.D., individually, Minardi Eye Center, Inc.

TOPICS

- intentional interference with expectancy
- statute of limitations
- summary judgment
- appellate procedure

PRACTICE AREAS

torts

civil procedure

health law

QUESTIONS PRESENTED

1. Whether the circuit court properly granted summary judgment on the ground that Dr. Moore's tortious-interference claims were barred by the two-year statute of limitations.
2. Whether Dr. Minardi's 2015 screening certificate and 2015 letter constituted continuing tortious conduct sufficient to extend or restart the limitations period.
3. Whether any discovery-rule, fraudulent-concealment, or other tolling doctrine avoided the limitations bar.

HOLDINGS

1. Dr. Moore's tortious-interference claims were time-barred because the alleged elements of the claims occurred, if at all, before January 2014, and he knew or should have known no later than the end of 2013 that the limitations period had begun to run.
2. The alleged 2015 conduct did not establish a continuing tort because the 2015 screening certificate was not followed by litigation and the 2015 letter did not contain new allegations against Dr. Moore that had not been made before the end of 2013.
3. The circuit court did not err in granting respondents' motion for summary judgment.

KEY QUOTATIONS

"A five-step analysis controls the question of whether Dr. Moore's tortious interference claim against Dr. Minardi is time barred:" (at 2)

"the concept of a continuing tort requires the showing of repetitious, wrongful conduct . . . [m]oreover a wrongful act with consequential damages is not a continuing tort." (at 4)

FACTUAL BACKGROUND

Dr. Moore owned and managed West Virginia Laser Eye Center, LLC, a business formed to associate with and manage ophthalmologists performing LASIK and cataract surgeries. Dr. Minardi submitted complaints to the West Virginia Board of Medicine against Dr. Moore and ophthalmologists associated with WVLEC before 2013, and authored screening certificates of merit in 2013 and 2015. Dr. Moore primarily alleged that Dr. Minardi's conduct caused ophthalmologist Darrell Reisner to end his affiliation with WVLEC in 2013, although Reisner testified that other factors also contributed to his decision. Dr. Moore filed suit on December 6, 2016.

PROCEDURAL HISTORY

Dr. Moore filed suit in the Circuit Court of Kanawha County on December 6, 2016, alleging that Dr. Minardi and Minardi Eye Center tortiously interfered with his business relationships, business expectancies, and pursuit of his occupation. The circuit court determined that the two-year statute of limitations under West Virginia Code

§ 55-2-12 applied and granted respondents summary judgment. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Goodman v. Auton, 880 S.E.2d 57 (W. Va. 2022)
- Gaither v. City Hosp., Inc., 199 W. Va. 706, 487 S.E.2d 901 (1997)
- Dunn v. Rockwell, 225 W. Va. 43, 689 S.E.2d 255 (2010)
- Torbett v. Wheeling Dollar Savings & Trust Co., 173 W. Va. 210, 314 S.E.2d 166 (1983)
- Garrison v. Herbert J. Thomas Memorial Hosp. Ass'n, 190 W. Va. 214, 438 S.E.2d 6 (1993)
- Graham v. Beverage, 211 W. Va. 466, 566 S.E.2d 603 (2002)
- Ricottilli v. Summersville Mem. Hosp., 188 W. Va. 674, 425 S.E.2d 629 (1992)
- Reilley v. Bd. of Educ. of Cnty. of Marshall, 246 W. Va. 531, 874 S.E.2d 333 (2022)