

SUPREME COURT OF MICHIGAN

Mazumder v. University of Michigan Regents

743 N.W.2d 889 (Mich. 2008) · No. 130836 · Decided February 1, 2008

OPINION

PER CURIAM.

743 N.W.2d 889 (2008) Monika MAZUMDER, Personal Representative of the Estate of Deepika S. Mazumder, Deceased, Plaintiff-Appellee, v. UNIVERSITY OF MICHIGAN REGENTS, Robert A. Koepke, Ph.D., Rajiv Tandon, M.D., Satoshi Minoshima, M.D., Washtenaw County Community Mental Health, Joseph Yaroche, M.D., Moonson R. Elliott Eninsche, B.A., R.S.W., C.S.M., and Richard Pfoutz, M.S.W., C.S.W., Defendants, and Mohamed Aziz, M.D., and Stephan F. Taylor, M.D., Defendants-Appellants, and Srinibas Mahapatra, M.D., Defendant.

Docket No. 130836. COA No. 261331. Supreme Court of Michigan. February 1, 2008. By order of April 4, 2007, the application for leave to appeal the February 23, 2006 judgment of the Court of Appeals was held in `abeyance pending the decision in Mullins v. St. Joseph Mercy Hosp. (Docket No. 131879).

On order of the Court, the case having been decided on November 28, 2007, 480 Mich. 948, 741 N.W.2d 300 (2007), the application is again considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals because the court erred in invoking the doctrine of equitable tolling under these circumstances.

Devillers v. Auto Club Ins. Ass'n, 473 Mich. 562, 586-587 n. 65, 702 N.W.2d 539 (2005). However, because the plaintiff falls within the class of plaintiffs entitled to relief identified in our order in Mullins, supra, we REINSTATE the order of the Washtenaw Circuit Court denying the defendants' motion for summary disposition and REMAND this case to that court for further proceedings not inconsistent with this order and the order in Mullins.

The motion to consolidate is DENIED as moot. MICHAEL F. CAVANAGH and WEAVER, JJ., concur in the result. MARILYN J. KELLY, J., concurs and states as follows: The issue in this case is whether our decision in Waltz v. Wyse[1] bars plaintiff's claim.

The Court of Appeals invoked the doctrine of equitable tolling to find that plaintiff's claim was not barred by Waltz.[2] We affirm that decision, but for a different reason. Plaintiff is within the class of plaintiffs who are entitled to relief under our unanimous order in Mullins v. St. *890 Joseph Mercy Hosp.[3] For that reason, it is unnecessary for us invoke the doctrine of equitable tolling to find that plaintiff's claim is not barred by Waltz.

I write to point out that, given the state of the law when the Court of Appeals reached its decision, resort to the doctrine of equitable tolling was highly appropriate. As the Court of Appeals correctly recognized, the doctrine should be invoked "to ensure fundamental practicality and fairness and to prevent the unjust technical forfeiture of a cause of action." [4] The Court of Appeals persuasively concluded that circumstances justifying its application existed in this case.

NOTES [1] *Waltz v. Wyse*, 469 Mich. 642, 677 N.W.2d 813 (2004). [2] *Mazumder v. University of Michigan Bd. of Regents*, 270 Mich.App. 42, 62, 715 N.W.2d 96 (2006) (citations omitted). [3] 480 Mich. 948, 741 N.W.2d 300 (2007).

[4] *Mazumder*, 270 Mich.App. at 61, 715 N.W.2d 96 (citations omitted).