

SUPREME COURT OF VIRGINIA

Fowler v. Winchester Medical Center, Inc., 266 Va. 131

580 S.E.2d 816 (2003) · No. Record No. 022260 · Decided June 6, 2003

SUMMARY

The Supreme Court of Virginia held that a wrongful-death action filed by a person who was not qualified as the decedent's personal representative in Virginia or any other state did not toll the statute of limitations. Distinguishing *McDaniel v. North Carolina Pulp Co.*, the court concluded that the plaintiff lacked standing and could not later refile as a substantially identical party. The court affirmed dismissal with prejudice.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Donald W. Lemons; All of the Justices
JURISDICTION	Virginia
DECIDED	June 6, 2003
DOCKET	Record No. 022260
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed the trial court's dismissal with prejudice of her wrongful-death medical-malpractice action after the defendants argued that she lacked standing and that the action did not toll the statute of limitations.
STANDARD OF REVIEW	De novo review of the question of law because the material facts were undisputed.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Virginia.
PARTIES	Rebecca Fowler, Administrator of the Estate of Robert Fowler v. Winchester Medical Center, Inc., Other health care providers

TOPICS

- standing
- statute of limitations
- medical malpractice
- statutory interpretation
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a wrongful-death action filed by a person who was not qualified as the decedent's personal representative in Virginia or any other state tolled the statute of limitations while the action was pending.
2. Whether Fowler could rely on the real-party-in-interest reasoning of *McDaniel v. North Carolina Pulp Co.* to qualify later and refile the action within the remaining limitations period.

HOLDINGS

1. A wrongful-death action filed by a person who lacked standing because she was not qualified as the decedent's personal representative in Virginia or any other state does not toll the statute of limitations.
2. Fowler could not obtain the benefit of the tolling statute or later refile as substantially the same party because she was not qualified as a personal representative in any state when the original action was filed.

KEY QUOTATIONS

“when Fowler filed this wrongful death suit in Virginia, she was not qualified as the decedent's personal representative in Virginia or any other state; consequently, she will never be able to file a new suit as a qualified personal representative and claim that she is “substantially the same party” as the plaintiff in the first suit.” (818)

*“Fowler concedes she does not have standing to maintain this action for wrongful death of the decedent. Her circumstances are distinguished from *McDaniel* and she cannot obtain the benefit of tolling of the statute of limitations during the pendency of the suit.” (818)*

FACTUAL BACKGROUND

Robert Fowler died intestate on December 24, 1999. Rebecca Fowler was appointed administrator of his estate in West Virginia on March 9, 2000, but that authority was terminated and the estate was closed by a final settlement order dated October 2, 2000. On December 21, 2001, she filed a Virginia wrongful-death medical-malpractice action, although she was not qualified as the decedent's personal representative in Virginia or any other state when the action was filed.

PROCEDURAL HISTORY

Rebecca Fowler filed a wrongful-death motion for judgment in the Circuit Court of the City of Winchester. The trial court denied her motion for nonsuit because a contribution cross-claim was pending and granted the defendants' motions to dismiss with prejudice. The Supreme Court of Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- McDaniel v. North Carolina Pulp Co., 198 Va. 612, 95 S.E.2d 201 (1956)
- Harbour Gate Owners' Assoc. v. Berg, 232 Va. 98, 107, 348 S.E.2d 252, 258 (1986)
- Sheets v. Castle, 263 Va. 407, 410, 559 S.E.2d 616, 618 (2002)
- Douglas v. Chesterfield County Police Dep't, 251 Va. 363, 467 S.E.2d 474 (1996)

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