

SUPREME COURT OF WYOMING

Ballinger v. Thompson

118 P.3d 429 (Wyo. 2005) · No. Nos. 04-245, 04-246 · Decided August 23, 2005

SUMMARY

The Wyoming Supreme Court affirmed dismissal of Jason Dean Ballinger’s legal malpractice claims against Marc C. Thompson and Webster & Thompson, LLC as barred by the statute of limitations. The court held that imprisonment was not a legal disability tolling the limitations period, equitable estoppel did not apply, and Ballinger had discovered or should have discovered his claim by January 2001. The court also declined to adopt the continuous representation doctrine for these circumstances.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Golden, Justice; Hill, C.J.; Golden, J.; Kite, J.; Voigt, J.; Burke, J.
JURISDICTION	Wyoming
DECIDED	August 23, 2005
DOCKET	Nos. 04-245, 04-246
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting defendants' motion to dismiss, alternatively treated as a motion for summary judgment, in a legal malpractice action based on the alleged failure to maintain insurance coverage.
STANDARD OF REVIEW	Because the district court considered materials outside the pleadings, the Rule 12(b)(6) motion was converted to a Rule 56 motion for summary judgment. The court reviewed the record in the light most favorable to the nonmoving party, giving that party the benefit of all fairly drawn favorable inferences, and affirmed if no genuine issue of material fact existed and the movant was entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential
PARTIES	Jason Dean Ballinger, individually, Jason Dean Ballinger, personal representative of the Estate of Gladys Mildred Ballinger v. Marc C. Thompson, Esq., Webster & Thompson, LLC

TOPICS

professional negligence

statutory interpretation

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PRACTICE AREAS

professional negligence

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QUESTIONS PRESENTED

1. Whether imprisonment constitutes a legal disability under Wyo. Stat. Ann. § 1-3-107(a)(iii) that extends the statute of limitations.
2. Whether equitable estoppel precludes defendants from asserting the statute of limitations.
3. When Ballinger knew or reasonably should have known of his legal-malpractice claim under Wyoming's discovery rule.
4. Whether the continuous-representation doctrine should toll the statute of limitations for Ballinger's legal-malpractice claim.

HOLDINGS

1. The phrase "legal disability other than minority" does not include imprisonment because Wyoming law did not deprive convicted felons of the legal capacity to bring civil actions.
2. Equitable estoppel did not prevent defendants from asserting the statute of limitations because Ballinger could not show that he relied in good faith on defendants' statements to delay filing after he possessed the essential facts of his claim.
3. Ballinger knew or reasonably should have known of his injury and its cause no later than January 2001, when he received notice of the potential malpractice claim and consulted independent counsel; therefore, his March 2003 action was untimely under the two-year limitations period.
4. The continuous-representation doctrine does not toll the statute of limitations in this case because Wyoming has declined to adopt the doctrine for legal-malpractice claims and the alleged negligence was a completed, uncured single act rather than a continuing course of malpractice.

KEY QUOTATIONS

"We therefore conclude that the phrase "legal disability other than minority" as used in this statute does not include imprisonment." (118 P.3d at 436)

"At that point, Ballinger had clearly "discovered" his claim." (118 P.3d at 437)

"We therefore conclude that the continuous representation doctrine does not apply in this instance to toll the statute of limitations." (118 P.3d at 439)

FACTUAL BACKGROUND

Ballinger retained Thompson to represent him individually and as personal representative and sole beneficiary of his mother's estate. Thompson assumed responsibility for obtaining and maintaining insurance on an estate-

owned home, but coverage lapsed from June 18, 1999, through July 23, 1999. During the lapse, a fight at the property resulted in the death of Scott Tannehill, and Tannehill's estate later filed a negligence-based wrongful-death action against Ballinger. Ballinger was repeatedly informed of the lapse and consulted independent counsel by January 2001, but did not file his malpractice action until March 2003.

PROCEDURAL HISTORY

Ballinger filed suit on March 31, 2003, alleging that defendants' failure to maintain insurance for estate property left him exposed to a wrongful-death claim and defense costs. Defendants moved to dismiss under W.R.C.P. 12 or, alternatively, for summary judgment under W.R.C.P. 56, asserting that the professional-services statute of limitations had expired. The district court granted the motion, and the Wyoming Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Duncan v. Afton, Inc., 991 P.2d 739, 741-42 (Wyo. 1999)
- Robinson v. Pacificorp, 10 P.3d 1133, 1135-36 (Wyo. 2000)
- Stalkup v. State Department of Environmental Quality, 838 P.2d 705, 709 (Wyo. 1992)
- Castleberry v. Phelan, 2004 WY 151, ¶ 8, 101 P.3d 460, 462 (Wyo. 2004)
- McNeel v. McNeel, 2005 WY 36, ¶ 11, 109 P.3d 510, 513 (Wyo. 2005)
- In re Walsh, 2004 WY 96, ¶¶ 3-4, 96 P.3d 1, 2 (Wyo. 2004)
- Berkin v. Marsh, 18 Mont. 152, 44 P. 528, 530 (1896)
- Cole v. Campbell, 968 S.W.2d 274, 275-76 (Tenn. 1998)
- Whitson v. Baker, 463 So. 2d 146, 148 (Ala. 1985)
- Mosgrave v. McManus, 24 N.M. 227, 173 P. 196, 197-98 (1918)
- Maddox v. Hall County, 162 Ga. App. 371, 291 S.E.2d 442 (1982)
- Ghashiyah v. Prudential Insurance Co. of America, 198 Wis. 2d 699, 543 N.W.2d 538 (Wis. Ct. App. 1995)
- Morgan v. People, 16 Ill. 2d 374, 158 N.E.2d 24, 26 (1959)
- Archuleta v. City of Rawlins, 942 P.2d 404, 406 (Wyo. 1997)
- Cabot Oil & Gas Corp. v. Followill, 2004 WY 80, ¶ 14, 93 P.3d 238, 243 (Wyo. 2004)
- Murphy v. Housel & Housel, 955 P.2d 880, 883 (Wyo. 1998)
- Connell v. Barrett, 949 P.2d 871, 874 (Wyo. 1997)
- Hiltz v. Robert W. Horn, P.C., 910 P.2d 566, 571 (Wyo. 1996)
- Metzger v. Kalke, 709 P.2d 414, 417 (Wyo. 1985)
- Echols v. Keeler, 735 P.2d 730, 731-32 (Wyo. 1987)
- Jauregui v. Memorial Hospital of Sweetwater County, 2005 WY 59, ¶ 12, 111 P.3d 914, 918 (Wyo. 2005)
- Doyle v. Kuch, 611 N.W.2d 28, 31 (Minn. Ct. App. 2000)

- Williams v. Elias, 140 Neb. 656, 1 N.W.2d 121, 124 (1941)
- Dobson v. Stahla, 2003 WY 6N, ¶ 7, 63 P.3d 209, 211 (Wyo. 2003)

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