

SUPREME COURT OF KENTUCKY

Hardin County, Kentucky d/b/a Hardin Memorial Hospital v. Wilkerson

255 S.W.3d 923 (Ky. 2008) · No. Nos. 2005-SC-000183-DG, 2005-SC-000206-DG · Decided June 19, 2008

SUMMARY

The Supreme Court of Kentucky held that the stay provision of the Kentucky Insurance Guaranty Association Act, KRS 304.36-085, neither stays an action that has abated upon the plaintiff's death nor tolls the one-year revival period under KRS 395.278. Because the negligence action was not revived within one year after Bessie Wilkerson's death, the Court reinstated the trial court's dismissal. A dissent argued that the action remained pending during the revival period and that the insurance insolvency automatically suspended the revival period.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Noble; Chief Justice Lambert; Justice Abramson; Justice Cunningham; Justice Minton; Justice Schroder; Justice Scott
JURISDICTION	Kentucky
DECIDED	June 19, 2008
DOCKET	Nos. 2005-SC-000183-DG, 2005-SC-000206-DG
DISPOSITION	reversed
PROCEDURAL POSTURE	The Supreme Court of Kentucky granted discretionary review of a divided Court of Appeals decision holding that an insurance-insolvency stay suspended the one-year period for reviving the action. The Supreme Court reversed and reinstated the trial court's dismissal.
STANDARD OF REVIEW	Interpretation of statutes and the timeliness of revival under KRS 395.278 were reviewed de novo.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; precedential.
PARTIES	Hardin County, Kentucky d/b/a Hardin Memorial Hospital, Malinde Childress, Hope Warren, Richard Kuchowicz, Cynthia Randolph Hall, R.N. v. Bessie Wilkerson, Deceased, Charles Wilkerson, Executor of the Bessie Wilkerson Estate

TOPICS

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QUESTIONS PRESENTED

1. Whether an action abated by the death of the original plaintiff remains a pending proceeding subject to the six-month stay under KRS 304.36-085 before it is revived.
2. Whether KRS 304.36-085 suspends or tolls the one-year limitation period for reviving an action under KRS 395.278.
3. Whether the failure to revive the action within one year required dismissal.

HOLDINGS

1. An action that abates upon the death of a party is not a live, pending proceeding subject to the KRS 304.36-085 stay unless and until it is revived.
2. KRS 304.36-085 does not suspend or toll the one-year statute of limitations in KRS 395.278.
3. Because the action was not revived within one year after Wilkerson's death, dismissal under KRS 395.278 was proper.

KEY QUOTATIONS

“This Court holds that KRS 304.36-085 does not stay an action subject to revival, nor does it suspend the statute of limitations in KRS 395.278.” (at 924)

“For the KRS 304.36-085 stay provision to come into effect, there must be a live, pending action to be defended by KIGA.” (at 929)

FACTUAL BACKGROUND

Bessie Wilkerson fell and injured her hip while receiving care at Hardin Memorial Hospital. She filed a negligence action against the hospital and several employees, then died on July 16, 2002, while the action was pending. Her son was appointed executor, but the action was not revived within one year. On June 20, 2003, the defendants' insurer was declared insolvent and ordered into liquidation.

PROCEDURAL HISTORY

Bessie Wilkerson filed a negligence action after falling and injuring her hip while a patient at Hardin Memorial Hospital. She died while the action was pending, and the action was not revived in the name of her estate within one year. After the defendants' insurer was declared insolvent and ordered into liquidation, the defendants moved to dismiss under KRS 395.278. The trial court dismissed the action, the Court of Appeals reversed, and the Supreme Court granted discretionary review.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Court of Appeals was reversed, and the Hardin Circuit Court's order dismissing the action was reinstated.

CASES CITED

- Daniel v. Fourth & Market, Inc., 445 S.W.2d 699 (Ky. 1968)
- Hammons v. Tremco, Inc., 887 S.W.2d 336 (Ky. 1994)
- Kennedy v. McAfee's Ex'x, 11 Ky. (1 Litt.) 169 (1822)
- Snyder v. Snyder, 769 S.W.2d 70 (Ky. App. 1989)
- Mitchell v. Money, 602 S.W.2d 687 (Ky. App. 1980)
- White v. Haydel, 593 So. 2d 421 (La. Ct. App. 1991)
- Skrbic v. QCRC Assoc. Corp., 761 So. 2d 349 (Fla. Ct. App. 2000)
- Raikes v. Langford, 701 S.W.2d 142 (Ky. App. 1985)
- In re Baird, 63 B.R. 60 (Bankr. W.D. Ky. 1986)
- Rogers v. Corrosion Products, Inc., 42 F.3d 292 (5th Cir. 1994)
- Aslanidis v. U.S. Lines, Inc., 7 F.3d 1067 (2d Cir. 1993)
- Thomas' Adm'r v. Maysville Gas Co., 112 Ky. 569, 66 S.W. 398 (1902)
- Dollar General Stores, Ltd. v. Smith, 237 S.W.3d 162 (Ky. 2007)
- Lemmons v. Ransom, 670 S.W.2d 478 (Ky. 1984)
- Harris v. Jackson, 192 S.W.3d 297 (Ky. 2006)