

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Dennis R. Richards, Jr. v. Andrew Walker, individually and in his capacity as Chief of Police of the Town of Grantsville Police Department, and Town of Grantsville

Dennis R. Richards, Jr. v. Andrew Walker, 813 S.E.2d 923 (W. Va. 2018) · No. 17-0591 · Decided May 9, 2018

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed dismissal of Dennis R. Richards, Jr.'s claims against a police chief and the Town of Grantsville as barred by the applicable statutes of limitations. The court held that the malicious prosecution, intentional infliction of emotional distress, and negligent employment claims accrued before the 2016 administrative reversal of Richards's driver's-license revocation and were not saved by the continuing-tort doctrine. The opinion applies the five-step statute-of-limitations analysis from *Dunn v. Rockwell*.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                        |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Justice Ketchum                                                                                                                                                                                                                                        |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                          |
| DECIDED               | May 9, 2018                                                                                                                                                                                                                                            |
| DOCKET                | 17-0591                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Petitioner appealed the Circuit Court of Calhoun County's Rule 12(b)(6) dismissal of claims for malicious prosecution, outrageous conduct or intentional infliction of emotional distress, and negligent employment on statute-of-limitations grounds. |
| STANDARD OF REVIEW    | De novo review of a Rule 12(b)(6) dismissal; the complaint is construed in the light most favorable to the plaintiff, but the reviewing court is not bound by a party's statutory interpretations or legal conclusions.                                |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                         |

## PARTIES

Dennis R. Richards, Jr. v. Andrew Walker, individually and in his capacity as Chief of Police of the Town of Grantsville Police Department, Town of Grantsville

## TOPICS

statute of limitations

motions to dismiss

malicious prosecution

intentional infliction of emotional distress

negligent hiring

## PRACTICE AREAS

torts

civil procedure

appellate procedure

municipal law

administrative law

## QUESTIONS PRESENTED

1. Whether Richards's malicious prosecution claim was barred by the one-year statute of limitations.
2. Whether Richards's intentional infliction of emotional distress claim accrued when he received the DMV revocation order or was tolled under the continuing-tort doctrine until the administrative revocation was reversed.
3. Whether Richards's negligent employment claim against the Town of Grantsville was barred by the applicable two-year statute of limitations.
4. Whether the circuit court properly dismissed the claims under West Virginia Rule of Civil Procedure 12(b)(6).

## HOLDINGS

1. The malicious prosecution claim was subject to West Virginia's one-year statute of limitations and accrued no later than June 2012, when Richards received the DMV revocation order; filing suit in November 2016 was untimely.
2. Walker's failure to appear at the DMV administrative hearings did not constitute a continuing tort that tolled the statute of limitations for Richards's intentional infliction of emotional distress claim.
3. Richards's intentional infliction of emotional distress claim was governed by a two-year statute of limitations and was barred because it accrued no later than June 2012.
4. The negligent employment claim against the Town of Grantsville was barred by the two-year statute of limitations.
5. The circuit court properly dismissed the appealed claims under Rule 12(b)(6) because the complaint established that the claims were barred by the statutes of limitations.

## KEY QUOTATIONS

*"A five-step analysis should be applied to determine whether a cause of action is time-barred."* (syllabus point 5)

*“the continuing consequential damages of that single act are insufficient to constitute a continuous tort and thereby toll the statute of limitations.” (16)*

## FACTUAL BACKGROUND

On December 9, 2011, Chief Walker stopped Richards for a defective light, administered field sobriety tests, and arrested him for driving under the influence after reporting a preliminary breath-test result. Richards later pleaded no contest to reckless driving in the criminal case. Walker submitted a DUI Information Sheet to the DMV, which revoked Richards's driving privileges; the revocation was ultimately reversed in March 2016 after the hearing examiner found the report untimely and Walker failed to appear at scheduled hearings. Richards then sued Walker and the Town of Grantsville, alleging malicious prosecution, intentional infliction of emotional distress, and negligent employment.

## PROCEDURAL HISTORY

Richards's driving privileges were revoked after Chief Andrew Walker reported an alleged DUI investigation to the West Virginia Division of Motor Vehicles. The Office of Administrative Hearings later reversed the revocation. Richards filed suit in November 2016, but the circuit court dismissed all appealed claims as untimely. The Supreme Court of Appeals of West Virginia affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Dunn v. Rockwell, 225 W. Va. 43, 689 S.E.2d 255 (2009)
- Gaither v. City Hosp., Inc., 199 W. Va. 706, 487 S.E.2d 901 (1997)
- Snodgrass v. Sisson's Mobile Home Sales, Inc., 161 W. Va. 588, 244 S.E.2d 321 (1978)
- Lyons v. Davy-Pocahontas Coal Co., 75 W. Va. 739, 84 S.E. 744 (1915)
- Preiser v. MacQueen, 177 W. Va. 273, 352 S.E.2d 22 (1985)
- In re Burks, 206 W. Va. 429, 525 S.E.2d 310 (1999)
- Carpenter v. Cicchirillo, 222 W. Va. 66, 662 S.E.2d 508 (2008)
- Beasley v. Mayflower Vehicle Sys., Inc., No. 13-0978, 2014 WL 2681689 (W. Va. June 13, 2014)
- Travis v. Alcon Labs., Inc., 202 W. Va. 369, 504 S.E.2d 419 (1998)
- Whitehair v. Highland Memory Gardens, Inc., 174 W. Va. 458, 327 S.E.2d 438 (1985)
- Harless v. First Nat'l Bank in Fairmont, 169 W. Va. 673, 289 S.E.2d 692 (1982)
- Evans v. United Bank, Inc., 235 W. Va. 619, 775 S.E.2d 500 (2015)
- Courtney v. Courtney, 190 W. Va. 126, 437 S.E.2d 436 (1993)
- McCammon v. Oldaker, 205 W. Va. 24, 516 S.E.2d 38 (1999)
- Bramer v. Dotson, 190 W. Va. 200, 437 S.E.2d 773 (1993)
- Retherford v. AT&T Commc'ns, 844 P.2d 949 (Utah 1992)

- Trafalgar House Constr., Inc. v. ZMM, Inc., 211 W. Va. 578, 567 S.E.2d 294 (2002)
- Roberts v. W. Va. Am. Water Co., 221 W. Va. 373, 655 S.E.2d 119 (2007)
- Taylor v. Culloden Pub. Serv. Dist., 214 W. Va. 639, 591 S.E.2d 197 (2003)
- State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc., 194 W. Va. 770, 461 S.E.2d 516 (1995)
- State ex rel. Perdue v. Nationwide Life Ins. Co., 236 W. Va. 1, 777 S.E.2d 11 (2015)
- State ex rel. Universal Underwriters Ins. Co. v. Wilson, 239 W. Va. 338, 801 S.E.2d 216 (2017)
- McCormick v. W. Va. Dep't Pub. Safety, 202 W. Va. 189, 503 S.E.2d 502 (1998)
- Woods v. Town of Danville, 712 F. Supp. 2d 502 (S.D. W. Va. 2010)

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