

SUPREME COURT OF ILLINOIS

Perlstein v. Wolk

218 Ill. 2d 448 (Ill. 2006) · No. No. 98909 · Decided February 17, 2006

SUMMARY

The Illinois Supreme Court held that plaintiffs' legal malpractice action was timely notwithstanding the court's earlier determination that Public Act 89-7 was unconstitutional and void in its entirety. The court declined to apply the void ab initio doctrine strictly, concluding that equitable considerations and plaintiffs' good-faith reliance on the statute justified allowing the action to proceed. The court affirmed the appellate court's reversal of the trial court's dismissal.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Fitzgerald; Justice Freeman; Justice McMorrow; Justice Garman; Justice Karmeier; Justice Kilbride; Chief Justice Thomas
JURISDICTION	Illinois
DECIDED	February 17, 2006
DOCKET	No. 98909
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order dismissing plaintiffs' legal-malpractice complaint as untimely under the void ab initio effect of Best v. Taylor Machine Works. The appellate court reversed, and the Illinois Supreme Court granted leave to appeal.
STANDARD OF REVIEW	De novo review of the dismissal of the complaint under section 2-619(a)(5) and the legal question concerning the effect of an unconstitutional statute on the applicable limitations and repose periods.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Maurice Wolk, Ross & Hardies v. Deena Perlstein, Scott Schneider

TOPICS

- statute of limitations
- civil procedure
- statutory interpretation
- constitutional law
- probate procedure

PRACTICE AREAS

civil procedure

legal malpractice

statutory interpretation

constitutional law

probate

QUESTIONS PRESENTED

1. Whether the void ab initio doctrine required the court to treat the pre-Public Act 89-7 version of section 13-214.3 as continuously operative after Best declared Public Act 89-7 void in its entirety.
2. Whether equitable considerations may ameliorate the harsh effects of the void ab initio doctrine in a civil case where plaintiffs reasonably relied on a presumptively valid statute.
3. Whether plaintiffs filed their malpractice action within a reasonable period after Best changed the applicable limitations and repose law.

HOLDINGS

1. The void ab initio doctrine is not subject to strict application in every civil case. Although the doctrine remains applicable when constitutionally guaranteed rights require vindication, courts may consider equitable and practical factors in other circumstances to ameliorate its harsh effects.
2. When a judicial decision changes the applicable limitations or repose period and otherwise instantly bars a claim, the claimant must be afforded a reasonable period of time to file suit.
3. Plaintiffs' complaint was filed within a reasonable period following Best and was not time-barred.

KEY QUOTATIONS

“The issue is not so much a matter of applying or not applying the void ab initio doctrine, as it is determining whether a particular set of circumstances justifies a court’s exercise of its equitable powers to ameliorate the doctrine’s sometimes harsh results.” (218 Ill. 2d at 474)

“A change in a statute of repose by either legislative enactment or judicial decision yields the same result.” (218 Ill. 2d at 480)

“The past cannot always be erased by a new judicial declaration.” (218 Ill. 2d at 482)

FACTUAL BACKGROUND

Defendants allegedly negligently prepared Lawrence A. Perlstein's will on October 23, 1992, preventing a trust from distributing \$300,000 to Scott Schneider and causing other damages. Lawrence Perlstein died on September 23, 1995; his will was admitted to probate on October 16, 1995. Plaintiffs learned on January 26, 1996, that the trust would not be funded. They filed their malpractice complaint on January 8, 1998, within the two-year limitations and six-year repose periods under Public Act 89-7, but after the filing deadline that would have applied under the earlier version of section 13-214.3(d).

PROCEDURAL HISTORY

Plaintiffs filed a legal-malpractice action in the Circuit Court of Cook County on January 8, 1998. The circuit court dismissed the complaint with prejudice under the view that Best rendered the amended limitations statute void ab initio. The appellate court reversed and remanded. Plaintiffs later voluntarily dismissed and refiled the

action in Lake County, with the parties agreeing that the original filing date controlled. The Illinois Supreme Court affirmed the appellate court and remanded for further proceedings.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Affirm the appellate court's reversal of the circuit court's dismissal and remand the cause to the circuit court for further proceedings.

CASES CITED

- Best v. Taylor Machine Works, 179 Ill. 2d 367, 689 N.E.2d 1057 (1997)
- Norton v. Shelby County, 118 U.S. 425 (1886)
- People v. Gersch, 135 Ill. 2d 384, 553 N.E.2d 281 (1990)
- Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371 (1940)
- Lemon v. Kurtzman, 411 U.S. 192 (1973)
- Petersen v. Wallach, 198 Ill. 2d 439, 764 N.E.2d 19 (2002)
- Jorgensen v. Blagojevich, 211 Ill. 2d 286, 811 N.E.2d 652 (2004)
- Moore v. Jackson Park Hospital, 95 Ill. 2d 223, 447 N.E.2d 408 (1983)
- Mega v. Holy Cross Hospital, 111 Ill. 2d 416, 490 N.E.2d 665 (1986)
- M.E.H. v. L.H., 177 Ill. 2d 207, 685 N.E.2d 335 (1997)
- Guzman v. C.R. Epperson Construction, Inc., 196 Ill. 2d 391, 752 N.E.2d 1069 (2001)
- People v. Bates, 124 Ill. 2d 81, 529 N.E.2d 227 (1988)
- American Family Mutual Insurance Co. v. Savickas, 193 Ill. 2d 378, 739 N.E.2d 445 (2000)
- Board of Commissioners of the Wood Dale Public Library District v. County of Du Page, 103 Ill. 2d 422, 469 N.E.2d 1370 (1984)
- Adukia v. Finney, 315 Ill. App. 3d 766, 735 N.E.2d 174 (2000)