

SUPREME COURT OF THE STATE OF WASHINGTON

Deggs v. Asbestos Corporation Limited

No. 91969-1 · No. 91969-1 · Decided October 6, 2016

SUMMARY

The Washington Supreme Court considered whether a personal representative could bring a wrongful death action when the decedent's underlying personal injury cause of action was time-barred before death. The court declined to overrule precedent holding that the decedent must have had a subsisting cause of action at the time of death, concluding that the petitioner had not shown the precedent to be harmful or that its legal underpinnings had disappeared. The court affirmed dismissal of the wrongful death action.

CASE DETAILS

COURT	Supreme Court of the State of Washington
WRITING FOR THE COURT	Gonzalez, J.
JURISDICTION	Washington
DECIDED	October 6, 2016
DOCKET	91969-1
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of a Court of Appeals decision affirming dismissal of a wrongful death action as time barred.
STANDARD OF REVIEW	The court reviewed the legal issue concerning the availability and timeliness of a wrongful death action de novo.
PRECEDENTIAL VALUE	Published, precedential Washington Supreme Court en banc opinion.
PARTIES	Judy R. Deggs, as Personal Representative for the Estate of Ray Sundberg v. Asbestos Corporation Limited, AstenJohnson, Inc., CBS Corporation, Ingersoll-Rand Company

TOPICS

- wrongful death
- statute of limitations
- statutory interpretation
- civil procedure

PRACTICE AREAS

- wrongful death
- torts
- statutory interpretation
- civil procedure

QUESTIONS PRESENTED

1. Whether a personal representative may maintain a wrongful death action when the statute of limitations on the decedent's underlying personal injury claim expired before the decedent's death.
2. Whether the Washington Supreme Court should overrule or abandon *Calhoun v. Washington Veneer Co.* and *Grant v. Fisher Flouring Mills Co.* to the extent those decisions bar a wrongful death action under those circumstances.

HOLDINGS

1. Under *Calhoun* and *Grant*, a wrongful death action is unavailable when the statute of limitations on the decedent's underlying personal injury claim expired during the decedent's lifetime, because there was no subsisting cause of action in the decedent at the time of death.
2. The court declined to abandon *Calhoun* and *Grant* because *Deggs* failed to show that the precedent was harmful or that its legal underpinnings had been sufficiently undermined or had disappeared.

KEY QUOTATIONS

"A wrongful death "action accrues at the time of death" so long as there is "a subsisting cause of action in the deceased" at the time of death, subject to exceptions not present here." (21-22)

"While we recognize that our cases adopting the limitation from Lord Campbell's Act's may have been incorrect, the petitioner has not shown that they are harmful." (2)

FACTUAL BACKGROUND

Ray Sundberg was exposed to asbestos during decades of work in dockyards and lumber yards and was diagnosed with asbestos-related diseases between 1998 and 2000. He filed a personal injury action in 1999 against numerous defendants, obtaining a jury verdict in 2001 against the remaining defendant. Sundberg died of asbestos-related disease nine years later, and his daughter, acting as personal representative, filed a wrongful death action against defendants who had generally not been named in the earlier personal injury suit. The trial court dismissed the wrongful death action because Sundberg's underlying personal injury cause of action had expired before his death.

PROCEDURAL HISTORY

The trial court dismissed *Deggs*'s wrongful death action after concluding that the statute of limitations on Sundberg's underlying asbestos personal injury claims had expired before his death. The Court of Appeals affirmed, and the Washington Supreme Court granted review. The Supreme Court affirmed the courts below in an en banc decision.

DISPOSITION

affirmed

CASES CITED

- White v. Johns-Manville Corp., 103 Wash. 2d 344, 352-53, 358, 693 P.2d 687 (1985)
- Deggs v. Asbestos Corp. Ltd., 188 Wash. App. 495, 500, 514-15, 354 P.3d 1
- Grant v. Fisher Flouring Mills Co., 181 Wash. 576, 580-82, 44 P.2d 193 (1935)
- Calhoun v. Wash. Veneer Co., 170 Wash. 152, 159-60, 15 P.2d 943 (1932)
- Johnson v. Ottomeier, 45 Wash. 2d 419, 422-25, 275 P.2d 723 (1954)
- Atchison v. Great W. Malting Co., 161 Wash. 2d 372, 379, 166 P.3d 662 (2007)
- In re Rights to Waters of Stranger Creek, 77 Wash. 2d 649, 653, 466 P.2d 508 (1970)
- W.G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters, 180 Wash. 2d 54, 66, 322 P.3d 1207 (2014)
- Brodie v. Wash. Water Power Co., 92 Wash. 574, 576, 159 P. 791 (1916)
- Johnson v. Ottomeier, 45 Wash. 2d 419, 423-24, 275 P.2d 723 (1954)
- Freehe v. Freehe, 81 Wash. 2d 183, 186, 500 P.2d 771 (1972)
- 1000 Friends of Wash. v. McFarland, 159 Wash. 2d 165, 181, 149 P.3d 616 (2007)

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