

SUPREME COURT OF MISSISSIPPI

Curry v. Turner

832 So. 2d 508 (Miss. 2002) · No. No. 2000-CA-01309-SCT · Decided December 12, 2002

SUMMARY

The Mississippi Supreme Court affirmed dismissal of wrongful-death claims against defendants added after the statute of limitations had expired. The court held that filing a motion for leave to amend does not toll the limitations period and that the amended claims did not relate back under Mississippi Rule of Civil Procedure 15(c) because the notice and mistake requirements were not satisfied. The court also held that the minor beneficiaries’ claims were barred because the administratrix and mother represented their interests for limitations purposes under Mississippi’s one-suit wrongful-death statute.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Pittman, C.J.; Smith, P.J.; Waller, J.; Cobb, J.; Carlson, J.; Easley, J.; McRae, P.J.; Diaz, J.; Graves, J.
JURISDICTION	Mississippi
DECIDED	December 12, 2002
DOCKET	No. 2000-CA-01309-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final judgment dismissing newly added defendants from a wrongful-death action with prejudice on statute-of-limitations grounds.
STANDARD OF REVIEW	The Supreme Court reviewed the trial court's application of the statute of limitations and Mississippi Rule of Civil Procedure 15(c) to determine whether dismissal of the amended claims was proper.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.
PARTIES	Betty Curry, Administratrix of the Estate of Everett Curry, Deceased, on Behalf of the Estate of Everett Curry and on Behalf of All Wrongful Death Beneficiaries of Everett Curry v. Trent Turner, Dent Turner, Money Pillai d/b/a Mims One Stop

TOPICS

statute of limitations

motion to amend

wrongful death

civil procedure

statutory interpretation

PRACTICE AREAS

civil procedure

wrongful death

statute of limitations

pleadings

QUESTIONS PRESENTED

1. Whether a motion for leave to amend accompanied by a proposed amended complaint, filed before expiration of the statute of limitations but granted and formally filed afterward, tolls the limitations period.
2. Whether the amended claims against the new defendants relate back under Mississippi Rule of Civil Procedure 15(c).
3. Whether the minor-savings statute, Mississippi Code section 15-1-59, preserved the wrongful-death claims of the deceased's minor children despite the limitations period having expired for the administratrix and adult beneficiary.

HOLDINGS

1. A motion for leave to amend, even when accompanied by the proposed amended complaint, does not toll the statute of limitations until the trial court rules on the motion or otherwise make an amended complaint effective before it is filed.
2. The amended claims against Money Pillai and Trent, Dent, and Ladonna Turner did not relate back to the original complaint because the new defendants did not receive the required notice and did not know or have reason to know that they would have been defendants but for a mistake concerning the proper party.
3. Mississippi Code section 15-1-59 did not preserve the minor children's claims against the new defendants where the wrongful-death action was brought by the administratrix on behalf of all beneficiaries and the wrongful-death statute requires a single action.

KEY QUOTATIONS

“The motion to amend does not “toll” the statute of limitations until the trial court rules on the motion.” (513)

“A common sense reading of the wrongful death statute indicates the statute of limitations runs against both the personal representative of the deceased and the deceased's children.” (517)

FACTUAL BACKGROUND

Everett Curry was killed while pumping gas at Mims One Stop in December 1995. His wife, acting as administratrix, timely filed a wrongful-death action against the alleged killers. Nearly three years after the death, she moved to add the convenience-store owner and family members of one alleged killer under premises-liability and negligent-entrustment theories. The amended complaint was filed after the limitations period had expired, and the new defendants had not received timely notice of the original action or been mistakenly omitted from it.

PROCEDURAL HISTORY

Curry filed a wrongful-death action against Hart Turner and Paul Stewart approximately six months after Everett Curry's death. Before the limitations period expired, she moved for leave to amend and attached a proposed amended complaint naming Money Pillai and members of Hart Turner's family. The trial court granted leave after the limitations period expired, but the amended complaint was not filed until seven months later because the court file was misplaced and notice of the amendment order was not sent. The trial court dismissed the new defendants, and the Mississippi Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Rademaker v. E.D. Flynn Exp. Co., 17 F.2d 15 (5th Cir. 1927)
- Bradley v. Armstrong Rubber Co., 46 F. Supp. 2d 583, 586-87 (S.D. Miss. 1999)
- Mayes v. AT&T Info. Sys., Inc., 867 F.2d 1172 (8th Cir. 1989)
- Potts v. Hines, 57 Miss. 735 (1880)
- Green v. Bd. of Tippah County Supervisors, 58 Miss. 337 (1880)
- Brown v. Goolsby, 34 Miss. 437 (1857)
- Estes v. Starnes, 732 So. 2d 251 (Miss. 1999)
- Womble v. Singing River Hosp., 618 So. 2d 1252 (Miss. 1993)
- Parker v. Miss. Game & Fish Comm'n, 555 So. 2d 725 (Miss. 1989)
- Brown v. Winn-Dixie Montgomery, Inc., 669 So. 2d 92, 94 (Miss. 1996)
- Schiavone v. Fortune, 477 U.S. 21, 106 S. Ct. 2379, 91 L. Ed. 2d 18 (1986)
- Thiroux v. Austin, 749 So. 2d 1040 (Miss. 1999)
- Arender v. Smith County Hosp., 431 So. 2d 491 (Miss. 1983)
- Parks v. Knight, 491 So. 2d 217 (Miss. 1986)
- Miss. State Bar Ass'n v. Moyo, 525 So. 2d 1289 (Miss. 1988)
- Hays v. Lafayette County Sch. Dist., 759 So. 2d 1144 (Miss. 1999)
- Marcum v. Hancock County Sch. Dist., 741 So. 2d 234 (Miss. 1999)
- Cole v. State, 608 So. 2d 1313 (Miss. 1992)
- Vice v. Dep't of Hum. Servs., 702 So. 2d 397 (Miss. 1997)
- Taylor v. Gen. Motors Corp., 717 So. 2d 747 (Miss. 1998)
- Turner v. State, 732 So. 2d 937 (Miss. 1999)