

NO. 073790

IN THE SUPREME COURT OF APPEALS  
OF  
WEST VIRGINIA

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CHARLESTON, WEST VIRGINIA

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RUSSELL STUYVESANT, Administrator  
of the Estate of TIMOTHY DAFT,  
Plaintiff Below- Petitioner,

v.

*Circuit Court of Preston County,  
Circuit Court Case No. 07-C-184*

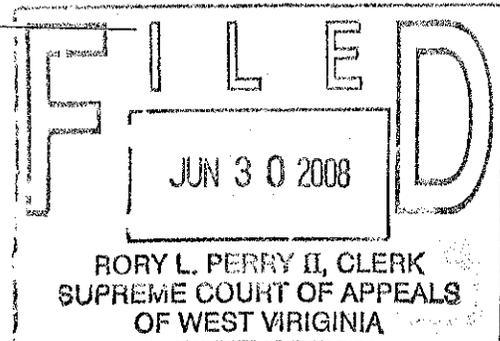
THE PRESTON COUNTY COMMISSION,  
Defendant Below-Respondent.

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BRIEF OF APPELLANT

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**BRIEF OF APPELLANT, RUSSELL STUYVESANT**

**TO THE HONORABLE JUSTICES OF THE  
SUPREME COURT OF APPEALS OF WEST VIRGINIA:**

The Petitioner, Russell Stuyvesant, administrator of the estate of Timothy Daft, by and through his counsel, S. Sean Murphy, states the following as his *Petition for Appeal*:

**KIND OF PROCEEDING AND NATURE OF RULINGS BELOW**

On August 20, 2007, Mr. Stuyvesant, the petitioner, filed his *Complaint* in the Preston County Circuit Court. The *Complaint* set forth a cause of action for wrongful death and negligence against the Preston County Commission, by and through the actions and omissions of Preston County Sheriff's Department employees. (See *Complaint*.)

On September 5, 2007, the Preston County Commission filed its *Motion to Dismiss Defendant Preston County Commission*. The Preston County Commission argued that the *Complaint* was untimely filed pursuant to W.Va. Code §55-7-6 which sets forth a two year statute of limitations for wrongful death actions. (See *Motion to Dismiss Defendant Preston County Commission*.)

On October 4, 2007, the petitioner filed his *Plaintiff's Response to Defendant's Motion to Dismiss*. The petitioner, relying upon Bradshaw v. Soulsby, 210 W.Va. 682, 687, 558 S.E.2d 681, 688 (2001), argued that the discovery rule applied to the *Complaint's* allegations and that therefore the *Complaint* was timely filed. The petitioner asserted that he

did not discover the existence of a potential wrongful death cause of action until after the Daft family received, by mail, a Mountaineer Family Care Center invoice dated September 13, 2005. The petitioner asserted that he had no reason to doubt the Preston County Sheriff's explanation of Timothy Daft's death as a suicide until the Daft family received conflicting explanations and reactions to the Mountaineer Family Care Center invoice. Therefore, the petitioner argued that the statute of limitations did not begin to run until on or after September 13, 2005. (See *Plaintiff's Response to Defendant's Motion to Dismiss* and attachments thereto.)

On October 10, 2007, the Preston County Commission filed its *Defendant's Reply to Plaintiff's Response to Defendant's Motion to Dismiss*. The Preston County Commission argued that no causal connection existed between the Mountaineer Family Care Center invoice and injuries discussed in the *Plaintiff's Response to Defendant's Motion to Dismiss* and the hanging death of Timothy Daft. (See *Defendant's Reply to Plaintiff's Response to Defendant's Motion to Dismiss*.)

On October 11, 2007, the parties, by and through their counsel, appeared before Judge Lawrance Miller in the Preston County Circuit Court to conduct a hearing regarding the Preston County Commission's *Motion to Dismiss*. After hearing the arguments of both sides and considering the written briefs and memoranda, the Circuit Court granted the Preston County Commission's *Motion to Dismiss*.

On November 2, 2007, the Circuit Court entered an *Order and Findings of Fact and Conclusions of Law*. (See 11/2/07 Order.) In the *Order*, the Circuit Court granted the *Motion to Dismiss*, found that the statute of limitations for a wrongful death action was two years, found that the suit was not filed within the two-year statute of limitation, and found that there was not a factual basis for allowing the extension of the statute of limitations. Thereafter, the petitioner filed this *Petition for Appeal*.

\* \* \*

**STATEMENT OF THE CASE**

The petitioner, Russell Stuyvesant, a resident of St. Petersburg, Florida, is the brother of Timothy Daft and was appointed and qualified as administrator of the estate of Timothy Daft on August 17, 2007 by the Clerk of the County Commission of Preston County. At all times relevant to this case Mr. Stuyvesant was a resident of St. Petersburg, Florida.

On August 3, 2005, twenty-two year old Timothy Daft, an inmate of the Preston County Jail, was found hanging by a pillowcase in a jail cell inside the Preston County Jail. Timothy Daft died on August 4, 2005. The Preston County Sheriff's department told Timothy Daft's family and friends that Mr. Daft committed suicide.

On or about August 5, 2005, Russell Stuyvesant was informed by his mother, Virginia Daft, that Timothy Daft hung himself in the

Preston County Jail. The following day Mr. Stuyvesant drove from his residence in Florida to Preston County, West Virginia to attend his brother's funeral.

Timothy Daft's funeral was held August 9, 2005. The morning of the funeral Mr. Stuyvesant went to the Preston County Sheriff's Office to discuss his brother's death with Sheriff Ron Crites. Sheriff Ron Crites assured Mr. Stuyvesant that Timothy Daft committed suicide. Mr. Stuyvesant had no reason to doubt the Sheriff's word and at that time possessed no information which would have led him to believe his brother's death was the result of anything other than a suicide.

On or about September 15, 2005, Virginia Daft received, by mail, an invoice from Mountaineer Family Care Center dated September 13, 2005. The invoice contained charges for treatment Timothy Daft received on August 2, 2005, the day before his hanging. Before she received the Mountaineer Family Care Center invoice, Ms. Daft was unaware that prior to his hanging Timothy Daft received medical treatment for injuries he sustained while an inmate of the Preston County Jail.

Thereafter, Ms. Daft and family friend Ethel Frederick contacted Mountaineer Family Care Center. The Mountaineer Family Care Center informed them that the charges on the invoice were for the removal of stitches to Timothy Daft's head, hand and neck. Timothy Daft received

the stitches a week earlier after being injured in the Preston County Jail.

Ms. Daft and Ms. Frederick then spoke with Sheriff Crites about the Mountaineer Family Care Center invoice. Sheriff Crites became upset that Ms. Daft received the invoice and insisted that she bring the invoice to him immediately for handling by the Sheriff's Department. Ms. Frederick reported that Sheriff Crites became hostile with her and insisted that she bring the invoice to him immediately for handling by the Sheriff's Department. Ms. Frederick also reported that Sheriff Crites informed her that Timothy Daft received the earlier injuries as a result of a fall in the shower and that Virginia Daft was not supposed to have received the invoice.

During the summer of 2007, Ms. Daft informed Mr. Stuyvesant that she received the Mountaineer Family Care Center invoice. Ms. Daft informed Mr. Stuyvesant that by contacting Mountaineer Family Care Center she and Ms. Frederick discovered that the invoice was for the removal of stitches from Timothy Daft's hands and face. Ms. Daft then informed Mr. Stuyvesant that she and Ms. Frederick also spoke with Sheriff Crites about the Mountaineer Family Care Center invoice. Ms. Daft related to Mr. Stuyvesant the Sheriff's reactions regarding the invoice and what Sheriff Crites stated to her about the invoice; specifically, that the bill was for an injury Timothy Daft sustained from falling in the shower, that the bill was mailed to her by mistake, that

she should have never seen the bill, and that she should mail him the bill.

After receiving information from his family about the invoice and about the reactions of the Sheriff, especially the fact that the Sheriff's office apparently never meant for the family to discover that Timothy Daft suffered serious injuries inside the jail before the hanging, Mr. Stuyvesant began to doubt the Sheriff's assurances that Timothy Daft committed suicide. Until the discovery of the invoice and subsequent events, the petitioner had no reason to think that the Sheriff had misrepresented or concealed information about Timothy Daft's incarceration in the Preston County Jail and subsequent death.

**ASSIGNMENTS OF ERROR RELIED UPON APPEAL AND THE  
MANNER IN WHICH THEY DECIDED IN THE LOWER TRIBUNAL**

- I. The Circuit Court erred by finding that the petitioner's *Complaint* was untimely filed and by finding that there was not a factual basis for extending the statute of limitations.

**POINTS AND AUTHORITIES RELIED UPON**

| <i>Case Name and Citation</i>  | <i>Pages cited</i>              |
|--|---------------------------------|
| <u>Bradshaw v. Soulsby</u> , 210 W.Va. 682, 558 S.E.2d 681 (2001)      | 9,10,<br>11,12,<br>13,14,<br>16 |
| <u>Miller v. Romero</u> , 186 W.Va. 523, 413 S.E.2d 178 (1991)         | 10,11,<br>15,16                 |
| <u>Gaither v. City Hospital</u> , 199 W.Va. 706, 487 S.E.2d 901 (1977) | 11,16                           |

\* \* \*

## ARGUMENT AND DISCUSSION OF LAW

I. **The Circuit Court erred by finding that the petitioner's Complaint was untimely filed and by finding that there was not a factual basis for extending the statute of limitations.**

In the *Order* granting the *Motion to Dismiss Defendant Preston County Commission* the Preston County Circuit Court found that the petitioner's *Complaint* was not filed within the two-year statute of limitation for wrongful death actions and found no factual basis for extending the statute. The petitioner asserts that the Circuit Court's ruling was incorrect and asserts that the limitations period did not begin to run until Timothy Daft's family received the Mountaineer Family Care invoice dated September 13, 2005.

A. **Application of the Supreme Court of Appeals of West Virginia's holdings in Bradshaw v. Soulsby, 210 W.Va. 682, 683, 558 S.E.2d 681, 684 (2001) to the facts of this action should result in the tolling of the statute of limitations.**

In Bradshaw v. Soulsby, a widow, (hereinafter referred to as "Mrs. Bradshaw"), sued her husband's physicians for wrongful death. Mr. Bradshaw died on October 17, 1997. An autopsy performed October 20, 1997 revealed the cause of death to be an overdose of medicine the defendant physicians prescribed to Mr. Bradshaw. Mrs. Bradshaw filed a wrongful death action against the physicians on October 20, 1999, two years and three days after Mr. Bradshaw's death.

The physicians moved to dismiss the action as untimely. Mrs. Bradshaw argued that she did not discover a potential wrongful death

action until after the October 20, 1997 autopsy when she discovered her husband died from an overdose of medication prescribed to him by the defendant physicians. She argued that under the discovery rule the limitations period did not begin until October 20, 1997, the date she learned the results of the autopsy. Mrs. Bradshaw argued that a plaintiff does not have the ability or an obligation to file a wrongful death action until he or she knows, or by reasonable diligence should know, that the death was caused by a particular individual's wrongful act. The circuit court granted the physicians' motion to dismiss. Mrs. Bradshaw appealed. See Bradshaw v. Soulsby, 210 W.Va. 682, 684-685, 558 S.E.2d 681, 685-686 (2001).

Based on the facts of Bradshaw, the Supreme Court of Appeals of West Virginia Court held that the statute of limitations in that case began to run on October 20, 1997, the date Mrs. Bradshaw learned the results of the autopsy and first discovered that her husband's death might have been caused from a wrongful act, rather than October 17, 1997, the date of her husband's death. See Id. at pp. 690, 689.

Bradshaw v. Soulsby overruled an earlier case, Miller v. Romero, 186 W.Va. 523, 413 S.E.2d 178 (1991), to the extent its holdings conflicted with Bradshaw's holdings. Miller v. Romero held that the discovery rule did not apply to wrongful death actions *unless* there was evidence of fraud, misrepresentation or concealment of material facts surrounding the death: "The two year period which limits the time in

which a decedent's representative can file suit is extended only when evidence of fraud, misrepresentation, or concealment of material facts surrounding the death is presented." Syl. Pt. 2, Miller v. Romero, 186 W.Va. 523, 524, 413 S.E.2d 178, 179 (1991).

In Bradshaw, the Supreme Court of Appeals of West Virginia held that the discovery rule, as set forth in Gaither v. City Hospital, 199 W.Va. 706, 487 S.E.2d 901 (1977), may be applied to toll the statute of limitation in wrongful death actions. Syl. Pt. 7, Bradshaw v. Soulsby, 210 W.Va. 682, 558 S.E.2d 681 (2001). In Syllabus Point 4 of Gaither v. City Hospital, Inc., 199 W.Va. 706, 487 S.E. 2d 901 (1977) the Court explained the elements necessary for the application of the discovery rule:

In tort actions, unless there is a clear statutory prohibition to its application, under the discovery rule the statute of limitations begins to run when the plaintiff knows, or by the exercise of reasonable diligence, should know (1) that the plaintiff has been injured, (2) the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty, and (3) that the conduct of that entity has a causal relation to the injury.

Syl. Pt. 4, Bradshaw v. Soulsby, 210 W.Va. 682, 683, 685, 558 S.E.2d 681, 684, 686 (2001), quoting Syl. Pt. 4, Gaither v. City Hospital, Inc., 199 W.Va. 706, 487 S.E. 2d 901 (1977).

Under the discovery rule, as it has been defined by the Supreme Court of Appeals of West Virginia, a statute of limitation is tolled and does not run until a claimant knows, or by reasonable diligence should know, of his claim. See Syl. Pt. 2, Bradshaw v. Soulsby, 210 W.Va. 682, 686,

558 S.E.2d 681, 685 (2001). The Bradshaw Court explained how the discovery rule should be applied to West Virginia wrongful death actions:

In a wrongful death action, under the discovery rule, the statute of limitation contained in *W.Va. Code* 55-7-6(d) [1992] begins to run when the decedent's representative knows or by the exercise of reasonable diligence should know (1) that the decedent has died; (2) that the death was the result of a wrongful act, neglect, or default; (3) the identity of the person or entity who owed the decedent a duty to act with due care and who may have engaged in conduct that breached that duty; and (4) that the wrongful act, neglect or default of that person or entity has a causal relation to the decedent's death.

Syl. Pt. 8, Bradshaw v. Soulsby, 210 W.Va. 682, 558 S.E.2d 681 (2001).

**B. The statute of limitations in the present case did not begin to run until after September 13, 2005; therefore, the petitioner's complaint was timely filed.**

Timothy Daft was hanged August 3, 2005. He died on August 4, 2005. The petitioner filed his *Complaint* on August 20, 2007. In its *Motion to Dismiss*, the Preston County Commission argued that the *Complaint*, filed more than two years after the date of Timothy Daft's death, was untimely pursuant to *W.Va. Code* §55-7-6. In his *Plaintiff's Response to Defendant's Motion to Dismiss*, the petitioner, relying upon Bradshaw v. Soulsby, 210 W.Va. 682, 687, 558 S.E.2d 681, 688 (2001), argued that the statute of limitations did not begin to run until on or after September 13, 2005, the date of the Mountaineer Family Care Center invoice that the Daft family received weeks *after* Mr. Daft's

death. In its *Defendant's Reply to Plaintiff's Response to Defendant's Motion to Dismiss*, the Preston County Commission argued that no causal connection existed between the Mountaineer Family Care Center invoice and injuries discussed in the petitioner's *Plaintiff's Response to Defendant's Motion to Dismiss* response and the hanging death of Timothy Daft. A hearing regarding the *Motion to Dismiss* was held October 11, 2007.

Following the hearing, the Circuit Court granted the *Motion to Dismiss*. In the *Order granting the Motion to Dismiss Defendant Preston County Commission* the Preston County Circuit Court found that *Complaint* was not filed within the two year statute of limitation for wrongful death actions and found no factual basis for extending the statute. The Court found that all the information necessary for filing suit was known to the plaintiff by August 4, 2005, the date of Mr. Daft's death. The Court rejected Mr. Stuyvesant's argument that the limitations period did not begin to run until Timothy Daft's family received the September 13, 2005 Mountaineer Family Care invoice concerning injuries Mr. Daft received prior to his hanging.

During the October 11, 2007 hearing, the Preston County Commission argued that it was only through the late discovery of the *cause* of death, (i.e. that the decedent's hanging was the *cause* of his death), that the statute of limitations may be extended via the discovery rule. The petitioner, relying on the reasoning set forth in Bradshaw,

asserts that the late discovery of a *wrongful act, neglect, default or omission*, (i.e. that a *wrongful act, neglect, default or omission* caused or contributed to the decedent's death by hanging), extends the statute of limitations under the discovery rule. (See Syl. Pt. 8, Bradshaw v. Soulsby, 210 W.Va. 682, 558 S.E.2d 681 (2001).)

Obviously, the petitioner knew that Mr. Daft died after he was found hanged. However, the petitioner did not discover the possibility of wrongful acts and/or omissions by the Preston County Sheriff's Department until after September 13, 2005. The petitioner did not discover the existence of a potential wrongful death cause of action until after receiving, by mail, a Mountaineer Family Care Center invoice dated September 13, 2005.

Until Timothy Daft's family received the Mountaineer Family Care Center invoice and experienced the reactions of the Preston County Sheriff to the same, the Daft family had no reason to doubt the Sheriff's assertion that Mr. Daft committed suicide. Before receiving the invoice, no one in the Daft family was aware or had been informed that Mr. Daft had been injured in the Preston County Jail prior to his death. The family had no reason not to trust the Sheriff until after they discovered that the Sheriff's department had attempted to prevent the family from learning of Mr. Daft's injuries prior to his hanging.

The Sheriff, whom the Daft family trusted, assured them that Mr. Daft's death was suicide. The Daft family was reasonable in trusting

the Sheriff; if a citizen cannot trust the head of his county's law enforcement, than who can he trust? The Daft family had no reason to doubt the Sheriff until after September 13, 2005 when they discovered that the Sheriff had tried to conceal from the family Mr. Daft's injuries prior to his hanging. That, coupled with the troubling reactions of the Sheriff to the news that the family received an invoice for Mr. Daft's medical treatment, led the family to doubt the truthfulness of the Sheriff's assertion that Mr. Daft committed suicide. Thus, it was not until after September 13, 2005 that the petitioner had any reason to believe that any *wrongful act, neglect, default or omission* caused or contributed to Mr. Daft's death by hanging.

The petitioner further asserts that even under the holding of Miller v. Romero the statute of limitations in the present case did not begin to run until after the family received the September 13, 2005 invoice. Miller v. Romero held that in wrongful death actions the discovery rule did not apply unless there was evidence of fraud, misrepresentation or concealment of material facts surrounding the death. See Syl. Pt. 2, Miller v. Romero, 186 W.Va. 523, 524, 413 S.E.2d 178, 179 (1991). In the present case, at the time of Mr. Daft's death the Daft family was unaware that Mr. Daft suffered injuries prior to the hanging while he was incarcerated in the Preston County Jail. The Preston County Sheriff's department concealed these facts from the Daft family. The Sheriff's Department never informed the family of Mr.

Daft's prior injuries and never intended that the family receive the invoice for his medical care. The only reason the family discovered that Mr. Daft had been injured was because they mistakenly received an invoice for his medical care. Thus, even under the holding of Miller v. Romero, the statute of limitations in this case did not begin to run until after September 13, 2005.

For these reasons, and considering the reasoning of Bradshaw v. Soulsby, 210 W.Va. 682, 558 S.E.2d 681(2001), Miller v. Romero, 186 W.Va. 523, 413 S.E.2d 178 (1991) and Gaither v. City Hospital, Inc., 199 W.Va. 706, 487 S.E. 2d 901 (1977), the two-year statute of limitations in the present case did not begin to run until after September 13, 2005. Therefore, the Circuit Court erred by finding that the *Complaint* was untimely filed, by finding that there was not a factual basis for extending the statute of limitations, and by granting the Preston County Commission's *Motion to Dismiss*.

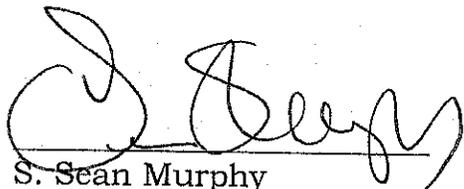
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**PRAYER FOR RELIEF**

The Appellant prays that this Court reverse and vacate the  
aforementioned decisions of the Preston County Circuit Court and  
remand the case with necessary and appropriate instructions.

\* \* \*

Russell Stuyvesant,  
*By Counsel.*

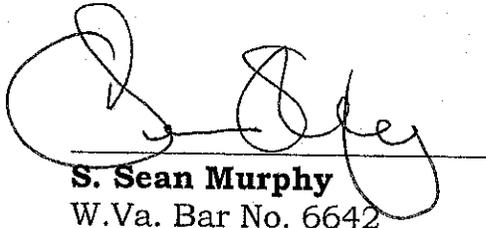


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**CERTIFICATE OF SERVICE**

I hereby certify that, on **June 27, 2008** I served a true copy of the foregoing "*Petition for Appeal*" and "*Docketing Statement*" via U.S. Mail, postage pre-paid, in envelopes addressed as follows:

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