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IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

**RUSSELL STUYVESANT, Administrator
of the estate of TIMOTHY DAFT,**

Plaintiff,

v.

CIVIL ACTION NO.: 07-C-184

THE PRESTON COUNTY COMMISSION,

Defendant.

ORDER AND FINDINGS OF FACT AND CONCLUSIONS OF LAW

On October 11, 2007, came Boyd L. Warner, attorney for Defendant, Preston County Commission, and S. Sean Murphy, counsel for Russell Stuyvesant, Administrator of the Estate of Timothy Daft, pursuant to a Notice of Hearing scheduled in this matter on a Motion to Dismiss filed by the Defendant, Preston County Commission. Thereupon, the Court heard arguments for and against said Motion and considered the support of the Motion to Dismiss, the Plaintiff's Response to Defendant's Motion to Dismiss and the Defendant's Reply to Plaintiff's Response to Defendant's Motion to Dismiss. Thereupon, the Court, after considering the Briefs and the arguments of counsel, makes the following Findings of Facts and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. It is undisputed that on August 3, 2005, Timothy Daft was found hanging in a jail cell inside the Preston County Jail and that he died on August 3 or 4, 2005.
2. At the time of his death, Timothy Daft was incarcerated in the Preston County Jail as an inmate.
3. The heirs of Timothy Daft and the Administrator knew or should have known that the Preston County Jail was funded by the Preston County Commission and operated by the Sheriff of Preston County, West Virginia.

4. It is undisputed that the cause of death was hanging.

5. The suit in this action was not filed until August 20, 2007, more than two years following the incident.

6. West Virginia Code, Chapter 55, Article 7, Section 6, requires that an action for wrongful death be filed within two years after the date of death.

7. This action was not filed within the mandatory time limitation.

8. In the case of *Bradshaw v. Soulsby*, 210 W. Va. 682 (2001), the West Virginia Supreme Court held that:

“In a wrongful death action, under the discovery rule, the statute of limitation 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.”

The Plaintiff contends that the Defendant was negligent in allowing the hanging death of Timothy Daft.

9. The identity of the person or entity who owed the decedent a duty to act was the Preston County Commission or the Sheriff of Preston County who was in charge of the jail.

10. The Sheriff of Preston County, as the Administrator of the jail, was clearly known by the parties or should have been known by the parties to have been the person in charge of the jail and if there was negligence in the causing of the death of Timothy Daft then the Plaintiff knew or should have known the proper party against whom suit should be brought.

11. The Plaintiff's allegation that he was unaware of medical treatment received by the decedent, Timothy Daft, for unrelated injuries sustained on August 2, 2005, which did not alter the fact that the decedent died on August 4, 2005, as a result of hanging.

12. All the information that was necessary for the institution of suit was known by August 4, 2005, and the rule upon which the Plaintiff relies for the extending of the statute of limitations is not applicable under the facts of this case.

WHEREFORE, the Court finds that the statute of limitations for a wrongful death action is two years and the suit was not filed within the two-year statute of limitations. There is not a factual basis for allowing the extension of the statute of limitations and the Motion of the Defendant to dismiss for failure of the Plaintiff to file his action within the two-year statute of limitations is granted, to which ruling of the Court, the Plaintiff objects and excepts.

The Clerk of this Court is hereby directed to mail certified copies of this Order to counsel of record as follows: *2 copies*
S/D 11/2/07

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Counsel for Defendant, Preston County Commission

ENTER: November 2, 2007

Lawrence S. Miller, Jr.

Judge Lawrence S. Miller, Jr.

PREPARED BY:

Boyd L. Warner

Boyd L. Warner (WV State Bar ID #3932)

Entered 11/2/07
Betsy Castle Clerk
By [Signature] Deputy

A TRUE COPY:

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ATTEST: *[Signature]* S/BETSY CASTLE
CLERK OF THE CIRCUIT COURT
By *[Signature]* Deputy