No. 31550 - Loretta Wright v. Howard E. Myers, III, and Lawrence Hoke

FILED
February 20, 2004
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Davis, J., dissenting, joined by Chief Justice Maynard:

No rule of law could be more widely accepted and easily understood than that a statute of limitations imposes a bright line test as to when a cause of action has been timely filed. *See, e.g., Cart v. Marcum*, 188 W. Va. 241, 245, 423 S.E.2d 644, 648 (1992) (recognizing "predictability that bright line rules like a strict statute of repose create"). Correspondingly, this Court traditionally has been reluctant to find exceptions to the filing requirements imposed by a statute of limitations and has enforced such temporal limits as they are written. *See, e.g., Humble Oil & Ref. Co. v. Lane*, 152 W. Va. 578, 583, 165 S.E.2d 379, 383 (1969) (declaring that statutes of limitation "are entitled to the same respect as other statutes, and ought not to be explained away" (internal quotations and citations omitted)). That is, until now. Despite the simplistic facts of the case *sub judice*, my brethren nonetheless have failed to grasp the fundamental importance of such statutes of repose and have essentially chiseled out an exception where none otherwise would exist. I cannot agree with this blatant disregard for our prior precedent nor with an outcome that is clearly wrong. Accordingly, I respectfully dissent from the majority's Opinion in this case.

A. The Statute of Limitations

The sole issue presented to the Court for resolution in this case is whether Ms. Wright's cause of action against Mr. Myers and Mr. Hoke was barred by the applicable statute of limitations. Without addressing this precise question, the majority has concluded that Ms. Wright should be allowed to re-present her case for consideration by the trial court based upon the supposition that the circuit clerk committed a clerical error. I submit, however, that such a remand is not necessary and this case should, instead, have been decided based upon our prior precedent establishing the law of this State as it relates to interpreting and applying statutes of limitations.

At issue in the case *sub judice* is the statute of limitations set forth in W. Va. Code § 55-2-12 (1959) (Repl. Vol. 2000) pertaining to "[p]ersonal actions not otherwise provided for." It directs that

> [e]very personal action for which no limitation is otherwise prescribed shall be brought: (a) Within two years next after the right to bring the same shall have accrued, if it be for damage to property; (b) within two years next after the right to bring the same shall have accrued if it be for damages for personal injuries; and (c) within one year next after the right to bring the same shall have accrued if it be for any other matter of such nature that, in case a party die, it could not have been brought at common law by or against his personal representative.

W. Va. Code § 55-2-12. As it pertains to Ms. Wright's cause of action, then, the statute clearly requires that her personal injury action be instituted within two years of the

underlying motor vehicle accident. *See id.* The importance of identifying the precise period of time within which Ms. Wright was required to file her cause of action is the same principle that forms the foundation of our jurisprudence in this regard. Simply stated, statutes of limitations provide certainty for litigants and promote judicial economy. *See, e.g.*, Syl. pt. 2, *Perdue v. Hess*, 199 W. Va. 299, 484 S.E.2d 182 (1997) ("The ultimate purpose of statutes of limitations is to require the institution of a cause of action within a reasonable time."); Syl. pt. 4, *Humble Oil & Ref. Co. v. Lane*, 152 W. Va. 578, 165 S.E.2d 379 (1969) ("Statutes of limitation are statutes of repose, the object of which is to compel the exercise of a right of action within a reasonable time.").

In other words,

> [s]tatutes of limitation are statutes of repose and the legislative purpose is to compel the exercise of a right of action within a reasonable time; such statutes represent a statement of public policy with regard to the privilege to litigate and are a valid and constitutional exercise of the legislative power.

Syl. pt. 1, *Stevens v. Saunders*, 159 W. Va. 179, 220 S.E.2d 887 (1975), *superseded by statute on other grounds as stated in Frantz v. Palmer*, 211 W. Va. 188, 564 S.E.2d 398 (2001). *Accord Wood v. Carpenter*, 101 U.S. 135, 139, 11 Otto 135, 139, 25 L. Ed. 807, 808 (1879) ("Statutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs. An important public policy lies at their foundation. They stimulate to activity and punish negligence."). It is for these reasons

that we have strictly enforced the temporal requirements for filing causes of action in the courts of this State. "By strictly enforcing statutes of limitations, we are both recognizing and adhering to the legislative intent underlying such provisions." *Johnson v. Nedeff*, 192 W. Va. 260, 265, 452 S.E.2d 63, 68 (1994).

Nevertheless, there is an exception to every rule, and statutes of limitations are no different in this regard except for the fact that their exceptions, which are few, are very limited both in their nature and in their scope. Correspondingly, we long have held that "[e]xceptions in statutes of limitation are strictly construed and the enumeration by the Legislature of specific exceptions by implication excludes all others." Syl. pt. 3, *Hoge v. Blair*, 105 W. Va. 29, 141 S.E. 444 (1928). *Accord Johnson v. Nedeff*, 192 W. Va. at 263, 452 S.E.2d at 66 ("[S]tatutes of limitations are favored in the law and cannot be avoided unless the party seeking to do so brings himself strictly within some exception. It has been widely held that such exceptions are strictly construed and are not enlarged by the courts upon considerations of apparent hardship." (internal quotations and citations omitted)). *See also* Syl. pt. 4, *Perdue v. Hess*, 199 W. Va. 299, 484 S.E.2d 182 (refusing to recognize excusable neglect exception to statute of limitations where such exception had not been sanctioned by the Legislature). Unfortunately, Ms. Wright has not demonstrated that the late filing of her complaint should be excused due to such an enumerated exception because no

such exception exists to justify her late filing.[1] Insofar as she failed to file her cause of action within the requisite time period, then, the circuit court correctly determined that her lawsuit was barred by the applicable statute of limitations. With the majority's contrary decision on this point, I strongly disagree.

B. Case Information Statement as Prerequisite to Filing Complaint

Perhaps even more egregious than the majority's blatant disregard for the statute of limitations applicable to Ms. Wright's cause of action, though, is its failure to appreciate the requirements a plaintiff must satisfy in order to properly file his/her complaint, namely that a civil case information statement must accompany the aforementioned complaint before the circuit clerk is permitted to accept it for filing. Rule 3(b) of the West Virginia Rules of Civil Procedure mandates that "[e]very complaint *shall* be accompanied by a completed civil case information statement[.]" (Emphasis added). Interpreting this rule, we specifically have held that

> Rule 3 of the West Virginia Rules of Civil Procedure requires, in mandatory language, that a completed civil case information statement accompany a complaint submitted to the

[1]For a brief discussion of legislatively-authorized exceptions to the statute of limitations see generally *Perdue v. Hess*, 199 W. Va. 299, 303 n.7, 484 S.E.2d 182, 186 n.7 (1997). *Cf.* Syl. pt. 1, *Cart v. Marcum*, 188 W. Va. 241, 423 S.E.2d 644 (1992) ("Generally, a cause of action accrues (i.e., the statute of limitations begins to run) when a tort occurs; under the 'discovery rule,' the statute of limitations is tolled until a claimant knows or by reasonable diligence should know of his claim."); Syl. pt. 4, *Gaither v. City Hosp., Inc.*, 199 W. Va. 706, 487 S.E.2d 901 (1997) (defining events that trigger running of statute of limitations under discovery rule).

> circuit clerk for filing. In the absence of a completed civil case information statement, the clerk is without authority to file the complaint.

Syl. pt. 5, *Cable v. Hatfield*, 202 W. Va. 638, 505 S.E.2d 701 (1998).

From the facts and record evidence presented by Ms. Wright and her counsel, it is difficult to comprehend how the majority could so blatantly disregard such a straightforward requirement and permit Ms. Wright to present additional documentation to support her contention that her complaint was, in fact, timely and properly filed. In short, counsel for Ms. Wright claims that he mailed the complaint, a memorandum to the circuit clerk, *and* the civil case information statement to the clerk on August 7, 2002, and that the clerk dated as filed the complaint and memorandum. Mysteriously, however, the clerk either did not receive or lost the original civil case information statement and requested Ms. Wright's counsel to submit a new copy thereof. Counsel claims, then, that the information statement ultimately filed on August 16, 2002, was merely a replacement copy for the one he had originally submitted with the complaint.

What the majority fails to appreciate, however, is that the date on which the circuit clerk filed Ms. Wright's complaint, be it the actual date it was received or on a later date due to clerical error, simply does not matter if the complaint was not accompanied by the civil case information statement. Both our procedural rules and our prior case law make abundantly clear the fact that a clerk is without the authority to accept a complaint for filing

without the information statement. *See* W. Va. R. Civ. P. 3(b); Syl. pt. 5, *Cable v. Hatfield*, 202 W. Va. 638, 505 S.E.2d 701. Based upon the facts before this Court, the circuit clerk could not accept Ms. Wright's complaint for filing until she had received the civil case information statement. Insofar as the clerk received this document after the statute of limitations had run, the circuit court correctly determined that Ms. Wright's cause of action was time barred and properly dismissed her lawsuit. Nonetheless, the majority apparently has determined this to be but a seemingly minor detail and has held otherwise. I do not concur in this result and cannot condone such a blatant disregard for a critical procedural requirement that is so plainly and clearly stated.

For the foregoing reasons, I respectfully dissent. I am authorized to state that Chief Justice Maynard joins me in this dissenting opinion.