

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**April Reynolds and Jamie Collins,
Plaintiffs Below, Petitioners**

vs) No. 101554 (Mingo County 10-C-19)

**The Moore Group, Inc., and
Superior Ford Sales, Inc.,
Defendants Below, Respondents**

FILED

June 24, 2011

**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

MEMORANDUM DECISION

Petitioners April Reynolds and Jamie Collins, plaintiffs below, appeal the circuit court's final order granting defendants' motion to dismiss their civil action. Respondents, defendants below, the Moore Group, Inc. and Superior Ford Sales, Inc., filed a response brief.

This matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court's order entered in this appeal on March 3, 2011. This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On October 7, 2005, petitioners purchased a used, model year 2004, Ford truck from respondents. Petitioners assert that they later learned the truck had been severely damaged in a collision before they purchased it. On January 9, 2007, petitioners, by counsel, sent a letter to respondents asserting that they had learned about the collision, that respondents had concealed defects in the vehicle when they purchased it, and that petitioners intended to exercise all available legal remedies.

On January 21, 2010, petitioners filed suit asserting that respondents had “actively concealed and misrepresented the true nature of the vehicle’s condition.” Their Complaint went on to assert the following:

That as a direct and proximate cause of the negligent, willful, wanton and fraudulent misrepresentations expressly made and warranted by the Defendants, each one and all of them, in actively concealing and deliberately misrepresenting the previous significant damage to the Ford motor vehicle purchased by the Plaintiffs, the Plaintiffs have suffered certain specific compensatory damages which include, but are not limited to the purchase of a damaged and defective motor vehicle, elevated costs in maintaining said vehicle, significant costs relative to obtaining alternative transportation, and Plaintiff Jamie Collins [was] forced to miss work due [to] the unreliable nature and defective condition [of the] transportation.

[] That the Plaintiffs have suffered certain putative damages, which include, but are not limited to, emotional pain and suffering, mental anguish, loss of earning capacity, loss of the enjoyment of life and emotional distress, loss of consortium.

The Complaint sought compensatory damages for the cost of purchasing the vehicle; general damages for past, present and future mental anguish, inconvenience, loss of earning capacity, loss of enjoyment of life, and emotional distress; punitive damages; interest; costs; attorney’s fees; and other relief as the court deemed proper.

Respondents filed a motion to dismiss pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure asserting that this suit should have been filed within the two-year statute of limitations period of West Virginia Code § 55-2-12. By order of May 21, 2010, the circuit court concluded that the suit was untimely filed and granted the respondents’ motion to dismiss with prejudice. The circuit court relied upon the Syllabus of *Taylor v. Ford Motor Company* to conclude that a two-year limitations period applied because the plaintiffs asserted a variety of personal injuries, including emotional distress.

Where a person suffers personal injuries as a result of a defective product and seeks to recover damages for these personal injuries based on a breach of express or implied warranties, the applicable statute of limitations is the two-year provision contained in W.Va. Code, 55-2-12 (1959), rather than the four-year provision contained in our Uniform Commercial Code, W.Va. Code, 46-2-725.

Syl., *Taylor v. Ford Motor Company*, 185 W.Va. 518, 408 S.E.2d 270 (1991). The circuit court found that petitioners were aware of their claims when they wrote the letter, but suit was not filed until three years later.

“‘Appellate review of a circuit court’s order granting a motion to dismiss a complaint is *de novo*.’ Syllabus point 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995).” Syl. Pt. 1, *Albright v. White*, 202 W. Va. 292, 503 S.E.2d 860 (1998). For purposes of a motion to dismiss, the complaint is construed in the light most favorable to plaintiff, and its allegations are to be taken as true. *John W. Lodge Distributing Co., Inc. v. Texaco, Inc.*, 161 W. Va. 603, 605, 245 S.E.2d 157, 158 (1978).

In this appeal, petitioners argue that the four-year limitations period of West Virginia Code § 46-2-725 should apply to their case because their Complaint makes contract claims. They assert that respondents breached both implied and express warranties for this truck. However, after reviewing the language of the Complaint and the arguments of the parties, we conclude that the lawsuit was untimely filed and properly dismissed. The petitioners assert damages for personal injuries, and our holding in *Taylor* provides that the general tort statute of limitations applies to such claims.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: June 24, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh