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TO BE PUBLISHED

Supreme Court of Kentucky

2019-SC-000012-DG

TRACIE WILLIAMS

APPELLANT

V. ON REVIEW FROM COURT OF APPEALS
CASE NO. 2017-CA-001977-MR
BULLITT CIRCUIT COURT NO. 17-CI-00492

KATELIN HAWKINS, ADMINISTRATRIX
OF THE ESTATE OF CHARLOTTE
HAWKINS

APPELLEE

OPINION OF THE COURT BY JUSTICE HUGHES

AFFIRMING

Appellant Tracie Williams was injured in a two-vehicle accident with Charlotte Hawkins in March 2015. Despite public records indicating that Charlotte had died in October 2015, Williams did not discover her death until one day prior to the expiration of the statute of limitations in March 2017. Because Williams did not name Charlotte Hawkins's estate in place of Charlotte individually within the two-year limitations period, in either her original action or a second action, the trial court dismissed both complaints. The Court of Appeals unanimously affirmed. Having granted discretionary review and finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

On March 3, 2015, Tracie Williams and Charlotte Hawkins (Charlotte) were involved in an automobile accident in Bullitt County, Kentucky. On July 1, 2015, Williams's counsel wrote to Charlotte, advising her of Williams's representation and requesting she forward the letter to her insurance carrier. Jill Benningfield, a Kentucky Farm Bureau (KFB) claims adjuster, responded on July 22, 2015, and requested Williams's counsel direct all further correspondence regarding the claim to her. This communication and subsequent letters identified KFB's insured as William Hawkins, Charlotte's husband.

Charlotte passed away from unrelated causes on October 16, 2015. On November 24, 2015, administration of Charlotte's estate was dispensed with by court order in the probate division of Bullitt District Court. On February 16, 2017, Williams filed her initial complaint against Charlotte in Bullitt Circuit Court.¹ KFB, Charlotte's insurer, retained counsel to defend the claim. On March 2, 2017, one day prior to the expiration of the statute of limitations, Charlotte's retained counsel learned of her death, and promptly informed Williams's counsel via email.

In April 2017, without objection, the trial court dismissed the original complaint as a legal nullity because the court could not have jurisdiction over a

¹ That case from Bullitt Circuit Court, 17-CI-00170, is not before this Court on appeal. The initial complaint and resulting order dismissing were made part of the record in the second case (17-CI-00492). Williams appealed from the dismissal of the second case which was initiated on May 25, 2017, as discussed below.

deceased individual. Meanwhile, Williams's counsel moved the District Court to reopen Charlotte's estate, and Katelin Hawkins, Charlotte's daughter, was appointed as administratrix on May 24, 2017. On May 25, 2017, a new complaint was filed against Katelin Hawkins as the administratrix of the Estate and assigned a different case number (17-CI-00492).

The next day, Katelin Hawkins filed a motion to dismiss the complaint as untimely pursuant to the Kentucky Motor Vehicle Reparations Act (MVRA), Kentucky Revised Statute (KRS) 304.39-230(6). Williams argued that the Estate should be estopped from asserting a statute of limitations defense because KFB constructively concealed Charlotte's death. After the parties briefed the issues, the trial court found that the complaint was filed outside the two-year statute of limitations period and granted the motion to dismiss. The trial court reasoned that despite the assertion that KFB failed to disclose the death, there was no evidence that KFB knew Charlotte had died. Further, the trial court noted that Williams had almost a year and a half to search public records regarding Charlotte Hawkins and discover her death through her obituary and/or probate records.

On appeal, the Court of Appeals unanimously affirmed the trial court, rejecting Williams's arguments that (1) KFB's failure to disclose Charlotte's death estops the Estate from invoking the statute of limitations, and (2) that in the absence of an estate for Charlotte Hawkins it was impossible for Williams to sue the proper party. The Court of Appeals declined to create an equitable remedy to allow Williams's suit filed after expiration of the two-year statute of

limitations period. Williams petitioned this Court for discretionary review, which we granted. As noted, we affirm the Court of Appeals.²

ANALYSIS

On appeal, Williams argues that (1) equitable tolling should apply when the non-existence of an estate for the tortfeasor-defendant prevents a plaintiff from timely filing suit, and (2) an insurer's failure to disclose the death of its insured estops the Estate from invoking the statute of limitations. As an initial matter, we note that equitable estoppel and equitable tolling are distinguishable. Equitable estoppel precludes a defendant, because of his own wrongdoing, from using the statute of limitations as a defense. *Fluke Corp. v. LeMaster*, 306 S.W.3d 55, 62 (Ky. 2010). Equitable tolling pauses a limitations period and does not require any wrongdoing, but rather applies when a plaintiff, "despite all due diligence . . . is unable to obtain vital information bearing on the existence of his claim." *Chung v. U.S. Dept. of Justice*, 333 F.3d 273, 278 (D.C. Cir. 2003). We address each argument in turn.

I. Equitable tolling is inapplicable to this case.

Williams argues that she was not afforded the full statutory period to file her complaint and urges this Court to apply the doctrine of equitable tolling because the non-existence of an estate prevented her from timely filing suit.

² An opinion in a somewhat factually similar case, *Jackson v. Estate of Gary Day*, 2018-SC-000297-DG (Feb. 20, 2020), is being issued this same date. Like this case, it involves the filing of a complaint against a deceased defendant and the consequences of not filing an action against the defendant's estate within the limitations period.

When she first learned of Charlotte's death, there was no estate for her to sue, administration of the estate having been dispensed with in November 2015. While this is factually accurate, the situation was also avoidable.

Before turning to the substantive law of equitable tolling, we note that the Estate argues that Williams failed to make an equitable tolling argument before the trial court, and thus is barred from raising it for the first time on appeal. However, Williams's memorandum in response to the motion to dismiss references tolling of the statute of limitations period, so the issue was brought to the trial court's attention, and later both parties briefed the issue in this appeal. *Burton v. Commonwealth*, 300 S.W.3d 126, 132 (Ky. 2009). Additionally, the Court of Appeals addressed the inequity of a party having no opportunity to file suit before a statute of limitations expires.³ As noted in Williams's brief, no Kentucky caselaw directly differentiates between equitable tolling and equitable estoppel, two distinct doctrines which have been raised in this case.

"Equitable tolling pauses the running of, or tolls, a statute of limitations when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action." *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014). In the federal context, the United States Supreme Court has held that an equitable tolling inquiry "begins with the

³ We also note that the equitable tolling issue was included in Williams's motion for discretionary review, as required by Kentucky Rule of Civil Procedure (CR) 76.20(3)(d).

understanding that Congress legislates against a background of common-law adjudicatory principles” and presumes that equitable tolling applies “if tolling is consistent with the statute.” *Id.* at 10-11.

The relevant statute in this case is the MVRA, KRS 304.39-230(6). In enacting the MVRA, the legislature specifically enlarged the time period for bringing a tort action arising from a motor vehicle accident to two years from the previous one-year period under the general statute of limitations for personal injury actions. KRS 413.140(1)(a). The statute is clear in setting limitations, and generously allows an additional year during which a party can bring a suit. Moreover, the MVRA statute begins to run from the date of the injury or “the date of issuance of the last basic or added reparation payment made by any reparation obligor, whichever later occurs.” KRS 304.39-230(6). Thus, in many cases, although not this one, the limitations period actually extends more than two years past the date of the motor vehicle accident.

Williams relies on *Nanny v. Commonwealth*, 260 S.W.3d 815 (Ky. 2008), to support her argument that equitable tolling is applicable. In *Nanny*, a plaintiff tendered her complaint to the court clerk on October 17, 2003, three days before the applicable statute of limitations expired on October 20, 2003. *Id.* at 816. However, the clerk did not file the complaint and issue the summons until October 21, 2003, and the trial court eventually dismissed the case because the summons was issued and the complaint was stamped “filed” a day after the statute of limitations expired. *Id.* On appeal, this Court determined that Nanny was prevented from having the summons issued in

time due to circumstances beyond her control. *Id.* at 817. Nanny did not have the “power nor the duty to ensure that the clerk perform official duties.” *Id.* Under these circumstances, this Court recognized equitable tolling of the statute of limitations. *Id.* at 818. *Nanny* presented unique facts — inaction on the part of court personnel which rendered her action untimely despite her best efforts.

The United States Supreme Court addressed the essential elements of the doctrine of equitable tolling in a civil setting in *Menominee Indian Tribe v. United States*, 136 S. Ct. 750 (2016). In that case, an Indian tribe sought application of the principles of equitable tolling when it failed to timely present contract claims to a federal contracting officer. *Id.* at 753. The Supreme Court clarified and reiterated that to be entitled to equitable tolling, a litigant must establish: “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing,” with those circumstances being beyond the litigant’s control. *Id.* at 755-56. The Court further explained that (1) and (2) are elements that must be shown, not merely factors to be considered. *Id.* at 756. Having concluded that the tribe failed to “establish extraordinary circumstances that stood in the way of timely filing,” the Court found equitable tolling did not apply. *Id.* at 753

Thus, in order to establish that equitable tolling is warranted, Williams bears the burden of showing that: (1) she “has been pursuing [her] rights diligently, and (2) that some extraordinary circumstance stood in [her] way.” *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). As to the first requirement, we

cannot conclude that Williams pursued her rights diligently. Williams repeatedly asserts that she had no reason to suspect Charlotte was deceased.

However, it has long been the law in Kentucky that

[i]t is incumbent upon a plaintiff, when he institutes a judicial proceeding, to name the proper party defendant. It is fundamental to our jurisprudential system that a court cannot, in an in personam action acquire jurisdiction until a party defendant is brought before it. The party defendant must actually or legally exist and be legally capable of being sued.

Ratliff v. Oney, 735 S.W.2d 338, 341 (Ky. App. 1987).

Upon consideration of the motion to dismiss in the trial court, Williams's counsel stated that he had no reason to believe Charlotte was deceased and therefore had no reason to do a records request through the probate court. In fact, available public information reflects Charlotte's death sixteen months before Williams brought suit against her. A simple Google™ search of "Charlotte Hawkins Kentucky" reveals, as the first search result, Charlotte's obituary published in the *Courier Journal* on October 18, 2015. Additionally, a review of CourtNet reveals the probate case initiated by William Hawkins on November 20, 2015, to dispense with estate administration. As this Court has consistently held, the plaintiff has an affirmative obligation to locate the proper party defendant and determine their vital status. Whether the plaintiff has reason to suspect a defendant may have died is largely irrelevant because the onus to locate the defendant and determine that fact is on the plaintiff.

The main purpose of statutes of limitation is to "encourage the plaintiff to pursue his rights diligently, and when an extraordinary circumstance prevents him from bringing a timely action, the restriction imposed by the statute of

limitations does not further the statute's purpose." *CTS Corp. v. Waldburger*, 573 U.S. 1, 10 (2014). Williams argues that she has been diligent in pursuing her claim, demonstrated by ongoing correspondence between her counsel and KFB from July 2015 through February 2017, and by her prompt efforts to reopen Charlotte's estate and file suit against it. She claims that, due to circumstances beyond her control, she was not given the full statutory period in which to bring suit. However, Williams had a full two years in which to file a complaint and attempt service on Charlotte prior to her death or on her Estate after her death.⁴ If Williams had pursued her rights diligently, readily available information would have allowed her to properly substitute parties and effectuate service within the statute of limitations period.

Relatedly, Williams points to KRS 396.011(1), which governs claims against decedents' estates, and provides:

All claims against a decedent's estate which arose before the death of the decedent, excluding claims of the United States, the State of Kentucky and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within six (6) months after the appointment of the personal representative, or where no personal representative has been appointed, within two (2) years after the decedent's death.

⁴ Williams did not receive any "basic or added reparation payment" so pursuant to KRS 304.39-230(6), the two-year statute began to run on the date of the motor vehicle accident.

Williams states that her claim was timely filed under this statute because it was filed one day after the administratrix was appointed. However, the statute expressly provides “if not barred earlier by other statute of limitations” Williams’s claim is clearly barred by the MVRA statute of limitations, KRS 304.39-230(6), rendering KRS 396.011(1) inapplicable.⁵ KRS 396.011, by its plain terms, cannot extend a limitations period that has already run.

Williams is correct that Kentucky’s public policy encourages the adjudication of cases on the merits whenever possible and discourages dismissal of cases on a procedural technicality. However, this case does not involve a procedural technicality nor circumstances beyond Williams’s control. The information necessary to pursue a timely claim against Charlotte Hawkins’s estate was readily and publicly available and no extraordinary circumstances exist to justify equitable tolling.

II. Equitable estoppel is inapplicable.

Williams next argues that an insurer’s failure to disclose its insured’s death estops that insured’s estate from invoking the statute of limitations. “[E]stoppel may arise to prevent a party from relying on a statute of limitations

⁵ Williams also cites KRS 413.190, which tolls the statute of limitations against a resident defendant who is absent from the state or who otherwise “obstructs the prosecution of the action.” Williams suggests a parallel between an absent resident and a deceased person. This suggested parallel is unsupported by caselaw and there is no suggestion that the legislature intended for KRS 413.190 to apply to deceased individuals. Additionally, KRS 395.278, the revivor statute, applies when an appropriate defendant has already been served before their death, thereby satisfying the statute of limitations. Here, Charlotte was deceased before the initial complaint was filed and thus never a party to the action, precluding the trial court from acquiring jurisdiction. The revivor statute is thus inapplicable.

by virtue of a false representation or fraudulent concealment.” *Munday v. Mayfair Diagnostic Lab.*, 831 S.W.2d 912, 914 (Ky. 1992).

Under Kentucky law, equitable estoppel requires both a material misrepresentation by one party and reliance by the other party:

The essential elements of equitable estoppel are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention, or at least the expectation, that such conduct shall be acted upon by, or influence, the other party or other persons; and (3) knowledge, actual or constructive, of the real facts. And, broadly speaking, as related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and (3) action or inaction based thereon of such a character as to change the position or status of the party claiming the estoppel, to his injury, detriment, or prejudice.

Fluke Corp., 306 S.W.3d at 62 (citations omitted). Nothing in the record suggests that KFB knew of Charlotte’s death. Without evidence that KFB had knowledge of the death, there is certainly no evidence that KFB concealed a material fact or that it intended to induce Williams’s action or inaction in reliance thereon. Further, in the absence of any evidence of reliance on the part of Williams or her counsel, estoppel cannot apply.

“In order to prevail on a theory of estoppel, there must be proof not only of an intent to induce inaction on the party to be estopped, but also of reasonable reliance by the party claiming the estoppel.” *Gailor v. Alsabi*, 990

S.W.2d 597, 604 (Ky. 1999). Here, the record reflects that the Estate's counsel promptly notified Williams's counsel the same day he learned of Charlotte's death. During the hearing on the motion to dismiss, the Estate's counsel explained that he was retained by KFB to represent Charlotte on February 27, 2017. He informed the court that when assigned new cases, his paralegal routinely sets up a case file and performs basic searches on the parties. In setting up the file for this case on March 2, 2017, his paralegal performed a CourtNet search and discovered the probate case initiated in November 2015. After consulting *Harris v. Jackson*, 192 S.W.3d 297 (Ky. 2006), to determine his disclosure obligations, the Estate's counsel emailed Williams's counsel that same day. With these facts, we cannot say that the Estate's counsel intended to induce Williams's action or inaction, meaning there can be no estoppel.

Williams also argues that insurers should have a duty to disclose the death of their insureds. As Williams points out in her brief, "there is no affirmative representation in the record as to when KFB learned of Hawkins's death." However, the Estate's counsel informed the trial court that Benningfield, the KFB claims adjuster assigned to the case, did not know about Charlotte's death until he told her. Williams argues that KFB made statements, amounting to partial disclosures, that gave the impression that Charlotte was alive. She points to a November 2016 letter in which Benningfield stated "I do not have my insured's permission to release information relating to his insurance policy I can confirm that our insured carries more than the state minimum limits." In most of the

correspondence between Benningfield and Williams's counsel, both refer to William Hawkins as the insured. Benningfield's statements do not amount to representing that Charlotte was alive.

Additionally, Williams argues that William Hawkins, Charlotte's husband, had an obligation to disclose Charlotte's death to KFB because it is a material fact. *Home Ins. Co. v. Allen*, 19 S.W. 743, 744 (Ky. 1892). It is irrelevant, however, whether William Hawkins informed KFB of Charlotte's death because, as established in *Gailor* and reiterated in *Harris*, Benningfield, as a layperson and claims adjuster, had no duty to disclose Charlotte's death to Williams.

This Court has adopted reasoning, albeit in a defective product case, that we find relevant in the present scenario:

Despite our sympathy for those injured by products through no fault of their own, such injured parties have the duty to act diligently to investigate apparent possible causes of their injuries in order to pursue claims within the statute of limitations. Given this duty, the statute of limitations will begin to run immediately because delaying the accrual of the cause of action or tolling the running of the statute of limitations by operation of the discovery rule or the equitable estoppel doctrine is reserved for truly exceptional circumstances, such as where the injury itself is not immediately discoverable or the product's potential role in causing an accident is actively obscured by the defendant's concealment or false representations.

Fluke Corp., 306 S.W.3d at 67. Williams was allegedly injured through no fault of her own when Charlotte collided with her vehicle. However, as the injured party seeking recovery, Williams had the duty to act diligently in pursuit of her claim. Applying equitable estoppel to avoid running of the statute of

limitations is only warranted in extraordinary circumstances involving false representations or concealment, which did not occur here.

As this Court's predecessor stated decades ago, "one may not omit to avail himself of readily accessible sources of information concerning particular facts, and thereafter plead as an estoppel the silence of another who has been guilty of no act calculated to induce the party claiming ignorance to refrain from investigating." *Lingar v. Harlan Fuel Co.*, 182 S.W.2d 657, 659 (Ky. 1944). Here, readily available public information documented Charlotte's death approximately seven months after the motor vehicle accident. Williams's reliance on KFB to investigate Charlotte's vital status and then inform her is misplaced. Absent facts justifying equitable estoppel and thus a departure from the bright-line statute, the trial court's dismissal must stand.

III. The principles established in *Gailor* are controlling and are not unjust when applied.

As in a similar case also decided today, *Jackson v. Estate of Day*, Williams asks this Court to reject or modify *Gailor*, 990 S.W.2d 597, insisting that it regularly leads to unjust results. *Gailor* was somewhat factually similar to the case before us. In that case, Alsabi and Whalen were involved in a motor vehicle accident in which Alsabi was injured and subsequently incurred medical expenses. *Id.* at 599. Alsabi filed suit against Whalen on February 3, 1994, one day prior to the expiration of the statute of limitations. *Id.* at 600. A summons was returned noting that Whalen was deceased, and it was later discovered that Whalen had died almost two years earlier on February 5, 1992.

Id. Alsabi's attorney stated that he did not learn of Whalen's death until after the statute of limitations expired. *Id.* A public administrator was appointed for Whalen's estate on November 17, 1994, and Alsabi amended the complaint on January 19, 1995, substituting the estate in place of Whalen and properly serving the public administrator. *Id.* Thereafter, the trial court concluded that Alsabi's action was barred by the statute of limitations and granted summary judgment in favor of the estate's administrator. *Id.*

On appeal to this Court, Alsabi's primary argument was that the amended complaint related back to the date the original complaint was filed pursuant to CR 15.03, and was thus not barred by the statute of limitations. When a complaint is amended to change a party defendant, CR 15.03 allows the amendment to relate back to the date of the original complaint if the party being brought in by amendment has notice of the proceeding and knew or should have known that, but for the mistake in naming, the action would have been brought against him. This Court held that because the original, timely complaint did not name a defendant over whom the court could acquire jurisdiction, the complaint was a nullity and the amended complaint could not relate back. *Gailor*, 990 S.W.2d at 600.

Although Williams's case does not implicate CR 15.03, she asks this Court to determine that *Gailor's* discussion of estoppel is not authoritative. Williams additionally argues that *Gailor* leads to harsh results that allows for dismissal of cases based on technicalities rather than merit. While we

conclude that this case is factually distinguishable from *Gailor*, we reiterate its holding.

As in *Gailor*, Williams did not sue a proper defendant within the two-year statute of limitations period. Here, Charlotte passed away sixteen months before the complaint was filed against her. While it is unfortunate that all parties learned of Charlotte's death one day prior to expiration of the limitations period, the plaintiff has an affirmative obligation to locate the correct party defendants and determine their vital status in a timely manner. In this case, Charlotte Hawkins's status could have been easily determined by a simple internet search. Although the result may seem unfair, it could have been avoided with due diligence, something Kentucky law has always required in cases such as this.

CONCLUSION

The main purpose of statutes of limitations is to "encourage the plaintiff to pursue his rights diligently, and when an extraordinary circumstance prevents him from bringing a timely action, the restriction imposed by the statute of limitations does not further the statute's purpose." *CTS Corp.*, 573 U.S. at 10. Here, had Williams pursued her claim diligently, readily available information regarding Charlotte Hawkins's death would have allowed her to properly substitute parties and effectuate service within the statute of limitations period. No extraordinary circumstance justifies deviating from the

routine application of the statute of limitations. Accordingly, we affirm the Court of Appeals.

Minton, C.J.; Keller, VanMeter, and Wright, JJ., concur. Lambert, J., dissents without separate opinion. Nickell, J., not sitting.

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