

RENDERED: May 6, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2004-CA-001523-MR

DAN DUFFY, INDIVIDUALLY;
DAN DUFFY, AS LIMITED
GUARDIAN AND LIMITED
CONSERVATOR FOR LOUISE
WILLIAMS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 04-CI-01973

KINDRED HEALTHCARE, INC.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; GUIDUGLI, JUDGE; MILLER, SENIOR
JUDGE.¹

MILLER, SENIOR JUDGE: Dan Duffy, as limited guardian and
limited conservator for Louise Williams, appeals from an order
of the Fayette Circuit Court which, among other things,

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the
Chief Justice pursuant to Section 110.(5)(b) of the Kentucky Constitution and
KRS 21.580.

dismissed a personal injury action brought by Duffy on behalf of Williams. Because the action is barred by the applicable statute of limitations, we affirm.

Louise Williams is the mother of Dan Duffy. Upon application by Duffy, on January 13, 2003, the Fayette District Court appointed the Cabinet for Families and Children as limited guardian and limited conservator for Williams. Rita Baker was assigned to perform this duty on behalf of the Cabinet. Shortly thereafter, on February 21, 2003, Williams was admitted as a resident at Winchester Centre for Health and Rehabilitation, which is operated by Kindred Healthcare, Inc.

On April 16, 2003, Williams was found lying on the floor in the hallway outside of her room at Winchester Center, apparently having suffered a fall. Rita Baker was notified of the situation, and Williams was transported by ambulance to the Clark Regional Medical Center. As a result of the fall Williams suffered an injury to her right hip.

Five days after Williams' fall, on April 21, 2003, Duffy filed another petition for guardianship in Fayette Circuit Court seeking to have himself appointed as Williams limited guardian and limited conservator. Kentucky Revised Statutes (KRS) 387.590. On August 21, 2003, Duffy was appointed to replace Baker as limited guardian and limited conservator.

On May 7, 2004, Duffy filed a pro se complaint on behalf of himself and Williams. As relevant to this appeal, the complaint alleged a claim for personal injury as a result of the April 16, 2003, incident.²

On May 27, 2004, Kindred Healthcare filed a motion to dismiss pursuant to Ky. R. Civ. P. (CR) 12.02(f). A hearing on the motion was held on June 11, 2004, at which time the trial court indicated it would grant the appellee's motion to dismiss. On June 16, 2004, the circuit court entered an order which, among other things, dismissed the personal injury claim as barred by the one-year statute of limitations for personal injury claims as contained in KRS 413.140(1)(a).

Prior to the entry of the June 16 order, based upon the results of the June 11 hearing, on June 14, 2004, Duffy filed a motion "To Reconsider and Reopen." With regard to the personal injury claim, the motion alleged that the statute of limitations was tolled by KRS 413.280 on the basis that Williams was suffering from multiple disabilities at the time her cause of action accrued, namely, blindness and ambulation. On July 8, 2004, the trial court entered an order denying the motion. This appeal followed.

² On his own behalf, Duffy alleged counts relating to defamation and a "false report to 911" by the nursing home. Duffy has not appealed the dismissal of these claims.

Duffy's pro se brief is somewhat disjointed; however, we are able to extract from the brief two principal arguments: First, that the one-year statute of limitations contained in KRS 413.140(1)(a) was tolled by the "discovery rule"; and second, that the limitations period was tolled pursuant to KRS 413.280.

KRS 413.140(1)(a) provides that an action for personal injury must be brought within one year. The alleged personal injury occurred on April 16, 2003, and Duffy did not file his complaint until May 7, 2004, which was three-weeks outside of the one-year limitations period. Hence, unless for some reason the limitations period was tolled, the filing was not timely.

The limitations period was not tolled by the discovery rule. A concise statement of the discovery rule is contained in Carroll v. Owens-Corning Fiberglas Corp., 37 S.W.3d 699, 700 (Ky. 2000): "When an injury does not manifest itself immediately, the cause of action should accrue not when the injury was initially inflicted, but when the plaintiff knew or should have known that he had been injured by the conduct of the tortfeasor." Id. at 700 (quoting Louisville Trust Co. v. Johns-Manville Prods. Co., Ky., 580 S.W.2d 497, 500 (1979)).

Here, the injury resulting from Williams April 16, 2003, fall manifested itself immediately, so the discovery rule is inapplicable. In addition, as discussed further below, it does not appear that Williams was under any incompetency which

would have prevented her from knowing that she was injured on April 16, 2003. We are of the opinion that the statute was not tolled by application of the discovery rule.

The limitations period was also not tolled by KRS 413.280. KRS 413.280 provides as follows:

When two (2) or more disabilities exist in the same person at the time the cause of action accrues, the limitation does not attach until they are all removed.

The disabilities which Duffy alleges are suffered by Williams, and hence toll the limitations period, are blindness and ambulation. These, however, are physical disabilities unrelated to the type of "disability" referred to in KRS 413.280. The types of "disability" contemplated by KRS 413.280 are conditions which would justifiably excuse the plaintiff from filing a lawsuit because of a reduced capacity to maintain an action, as, for instance, being an infant or of unsound mind, KRS 413.170; death, KRS 413.180; absence from the state, KRS 413.190; injunction or other restraint, KRS 413.260; or citizen of enemy country, KRS 413.300.³

Blindness and ambulation, while physical disabilities, are not disabilities within the meaning of the term as used in the area of limitations of action, and the statute of

³ The disability of coverture (See Hays v. Hay's Adm'r, 290 S.W.2d 795 (Ky. 1956) and Section 2525, Carroll's Kentucky Statutes (1930)) and the disability of being an inmate of a penitentiary (See former KRS 413.310) have been repealed.

limitations in this case was not tolled by these physical disabilities.

For the foregoing reasons the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dan Duffy, pro se
Lexington, Kentucky

BRIEF FOR APPELLEE:

Donald P. Moloney, II
J. Peter Cassidy, III
Lexington, Kentucky