

RENDERED: NOVEMBER 10, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2005-CA-000339-MR

GEORGE SMITH

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE STEVEN JAEGER, JUDGE
ACTION NO. 04-CI-00335

DARRIN L. GAINES AND
INTERNATIONAL KNIFE & SAW, INC.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON, KNOPF, AND VANMETER, JUDGES.

KNOPF, JUDGE: On November 29, 2001, at the intersection of Crescent Avenue and West Third Street in Covington, a vehicle owned and operated by George Smith was struck from the rear by a vehicle owned by International Knife and Saw, Inc., and operated by its employee, Darrin Gaines. Alleging damages as a result of the accident, Smith filed suit against International and Gaines

in February 2004, some two months outside the applicable two-year statute of limitations.¹ By summary judgment entered January 24, 2005, the Kenton Circuit Court dismissed Smith's suit as untimely. Appealing from that judgment, Smith contends that the limitations period was tolled by his disability and that the trial court erred by failing to so find. We affirm.

As Smith notes, KRS 413.170(1) provides that if, at the time his or her cause of action accrues, a person is

an infant or of unsound mind, the action may be brought within the same number of years after the removal of the disability . . . allowed to a person without the disability to bring the action after the right accrued.

Smith is a Vietnam-war veteran who was diagnosed in the mid-1980's with post-traumatic stress disorder (PTSD). During the later half of the 1980s, he suffered the break up of his marriage, endured two suicide attempts, was several times hospitalized for emotional problems, had trouble controlling his anger, and became enmeshed in alcohol abuse. At some point during that period he was awarded veteran's disability benefits. In July 2000, however, his request for increased disability benefits was denied and he was assessed as having only moderate symptoms or moderate difficulty in social, occupational, or school functioning. This was the most recent evidence Smith proffered. He contends that this history and his PTSD diagnosis

¹ KRS 304.39-230.

would support a finding that at the time of his accident, when his cause of action accrued, he was of "unsound mind" for the purposes of the tolling statute.

KRS 413.170 does not define the phrase "unsound mind," but in Southeastern Kentucky Baptist Hospital, Inc. v. Gaylor,² our Supreme Court indicated that the limitations period may not be tolled on this ground unless the plaintiff's mental illness is such "as to render [him] incapable of managing [his] own affairs."³ Other courts have reached the same result,⁴ and in particular it has been held that, standing alone, a diagnosis of PTSD is not sufficient evidence of unsound mind to invoke the tolling statute.⁵ In addition, the plaintiff must proffer "hard evidence" that he has been rendered "incapable of carrying on the day-to-day affairs of human existence."⁶

The trial court did not err by ruling that Smith's evidence fails to meet this standard. Indeed, Smith proffered no evidence of his condition at the time of the accident, and

² 756 S.W.2d 467 (Ky. 1988).

³ *Id.* at 469; Rigazio v. Archdiocese of Louisville, 853 S.W.2d 295 (Ky.App. 1993).

⁴ Annotation, "Posttraumatic Syndrome as Tolling Running of Statute of Limitations," 12 ALR 5th 546, (Lawyers Cooperative Publishing 1993).

⁵ Florez v. Sargeant, 917 P.2d 250 (Ariz. 1996).

⁶ *Id.* at 255.

otherwise the record indicates that notwithstanding his drinking problem he was then capable of living by himself, maintaining a car and an operator's license, and pursuing his veteran's benefits. There is no evidence that he was incapable of managing his own affairs. In the absence of such evidence, Smith's claim could not have been found timely and thus could not have prevailed. Summary judgment, therefore, was appropriate.⁷ Accordingly, we affirm the January 24, 2005, judgment of the Kenton Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Harry P. Hellings, Jr.
Covington, Kentucky

BRIEF FOR APPELLEE:

Emily A. Faith
Amy M. Stewart
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⁷ Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (Ky. 1991).