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NO. COA01-115

NORTH CAROLINA COURT OF APPEALS

Filed: 4 June 2002

REGINALD SIMPSON,

Plaintiff,

v.

Onslow County
No. 00 CVS 1443

KEVIN McCONNELL, in his
capacity as Administrator
for the ESTATE OF JEREMY
NASON and NATIONWIDE MUTUAL
INSURANCE COMPANY,

Defendants.

Appeal by plaintiff from orders entered 22 November 2000 and 11 December 2000 by Judge Benjamin G. Alford in Onslow County Superior Court. Heard in the Court of Appeals 29 November 2001.

Vaiden P. Kendrick, Tracie H. Brisson, and Erma Johnson for Plaintiff-Appellant.

Hedrick, Blackwell & Criner, L.L.P., by Jeffrey H. Blackwell for Defendant-Appellee McConnell.

Marshall, Williams & Gorham, L.L.P., by William Robert Cherry, Jr., for Defendant-Appellee Nationwide Mutual Insurance Company.

BRYANT, Judge.

This action arises out of a motor vehicle accident in Onslow County on 19 May 1996. Plaintiff, Reginald Simpson, was injured in a collision with a vehicle being operated by Jeremy Nason, who died at the scene. Plaintiff filed a complaint in Brunswick County

Superior Court against Nationwide Mutual Insurance Company, plaintiff's underinsured motorist carrier, and the Estate of Jeremy Nason. The action against Nationwide was dismissed on 24 August 1999, and the derivative action against Nason's Estate was dismissed on 28 September 1999.¹

Defendant Kevin McConnell was appointed Administrator of Nason's Estate on 30 March 2000. Plaintiff filed this complaint against McConnell and Nationwide on 8 May 2000, alleging, inter alia, negligence and unfair or deceptive trade practices. Both defendants filed motions to dismiss for failure to state a claim upon which relief could be granted. The trial court granted Nationwide's motion on 22 November 2000, and McConnell's motion on 11 December 2000, based on the expiration of the statute of limitations. Plaintiff appeals.

Plaintiff's sole argument on appeal is whether the trial court erred in dismissing his complaint for failure to state a claim on which relief can be granted because the complaint does not show on its face that the statute of limitations had run. We hold that the trial court erred in part and reverse as to plaintiff's unfair or deceptive trade practices claim.

I. Negligence

Plaintiff argues that his negligence claim is not barred because N.C.G.S. § 1-22 extends the time period for filing claims

¹ The record on appeal does not indicate when the first action was filed, nor whether the dismissal was voluntary or involuntary, with or without prejudice. Therefore, we cannot consider this earlier action as having any relevance to the instant case.

against Nason's estate after appointment of the administrator. We disagree.

The statute of limitations for a negligence claim is three years. N.C.G.S. § 1-52 (2001). However, because this is an action against the estate of the deceased tortfeasor, N.C.G.S. § 1-52 is not the only statute we must consider.

N.C.G.S. § 1-22 provides:

If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his personal representative or collector after the expiration of that time; provided, the action is brought or notice of the claim upon which the action is based is presented to the personal representative or collector within the time specified for the presentation of claims in G.S. 28A-19-3.

N.C.G.S. § 1-22 (2001). "N.C. Gen. Stat. § 1-22 modifies the operation of the general three-year statute of limitations applicable to plaintiff's claim to comport with that 'time specified for the presentation of claims in G.S. 28A-19-3.'" *Lassiter v. Faison*, 111 N.C. App. 206, 208, 432 S.E.2d 373, 374 (1993). N.C.G.S. § 1-22

was not intended to be a restriction on the statute of limitations so that a claim should become barred by the lapse of a year from the grant of letters, where, in regular course, but for this section, it would not be barred until a later date.

Ingram v. Smith, 16 N.C. App. 147, 150, 191 S.E.2d 390, 393 (1972) (citations omitted); see also *Lassiter v. Faison*, 111 N.C. App. 206, 432 S.E.2d 373 (1993).

N.C.G.S. § 28A-19-3(b)(2) governs limitations on the presentation of claims against decedents' estates, and provides in pertinent part that claims not founded in contract against the decedent's estate arising at or after the decedent's death are barred against the personal representative unless presented to the personal representative within six months after the cause of action arose. N.C.G.S. § 28A-19-3(b)(2) (2001). N.C.G.S. § 28A-19-3 is a "non-claim statute" that bars claims not presented within the specified time period. *Ragan v. Hill*, 337 N.C. 667, 447 S.E.2d 371 (1994). Non-claim statutes operate independently of statutes of limitation. *Id.*

Our Supreme Court has previously discussed the operation of N.C.G.S. § 28A-19-3. In *Ragan v. Hill*, 337 N.C. 667, 447 S.E.2d 371 (1994), Edith B. Ragan was injured on 23 March 1986 when the decedent's car veered into the path of the car she was driving, causing a head-on collision. The decedent died as a result of injuries sustained in the accident. No personal representative was appointed. Ragan and her husband brought negligence and loss of consortium actions, respectively, against the administrator of the decedent's estate on 8 July 1988, within the three-year statute of limitations for personal injury actions. The jury awarded Ragan \$325,000 and her husband \$10,000.

This Court reversed, holding in part that N.C.G.S. § 28A-19-3 required an action to be filed in court within six months after the claim arose. *Id.* at 672, 447 S.E.2d at 374. Our Supreme Court reversed in part, stating that "[w]e do not believe that the

legislature intended the non-claim statute to operate where no personal representative or collector has been appointed." *Id.* at 673, 447 S.E.2d at 375 ("To the extent that *Brace* interprets § 28A-19-3 as requiring the filing of an action in court within six months after the claim arises, it is overruled."), overruling *Brace v. Strother*, 90 N.C. App. 357, 368 S.E.2d 447 (1988). The *Ragan* Court declined to place the burden on plaintiff to have a personal representative appointed. *Id.* at 674, 447 S.E.2d at 376. However, the *Ragan* Court noted that "claimants who . . . find no personal representative to whom they may present their claims are not without some time limitations on actions to recover on their claims. As noted above, any action filed in a court of law will be subject to the applicable statute of limitations" *Id.* at 673, 447 S.E.2d at 375.

In the instant case, Nason died on 19 May 1996, and defendant McConnell was appointed Administrator for the estate on 30 March 2000, almost four years later. Following the reasoning in *Ragan*, the non-claim statute, N.C.G.S. § 28A-19-3, did not operate to bar plaintiff's negligence claim in the instant case where no personal representative had been appointed. Further, N.C.G.S. § 1-22 did not apply to extend the time to file a claim in the instant case where the claim arose simultaneously with the death of Nason. Here, plaintiff was required to file this action within three years, the limitations period for a personal injury claim. See N.C.G.S. § 1-52 (2001). Plaintiff failed to do so. Accordingly, this claim is barred by the statute of limitations and the trial

court did not err in dismissing plaintiff's negligence claim. Before discussing plaintiff's other arguments, we note that our recent holding in *Mabry v. Huneycutt* does not apply to the facts of this case. See *Mabry v. Huneycutt*, ___ N.C. App. ___, ___ S.E.2d ___ (Apr. 2, 2002) (COA01-686) (holding that plaintiff's claim not time barred where conditions of § 1-22 applied to extend time for filing, and where plaintiff complied with time requirements for presentation of claims under § 28A-19-3(a)).

II. Unfair or Deceptive Trade Practice

Plaintiff also argues that Nationwide violated N.C.G.S. § 58-63-15, which governs unfair or deceptive trade practices. N.C.G.S. § 58-63-15 (2001). We note that in their respective briefs on appeal neither defendant-appellee, Kevin McConnell nor defendant-appellee, Nationwide addressed the claim of unfair or deceptive trade practices. The statute of limitations for a cause of action alleging unfair or deceptive trade practices is four years. N.C.G.S. § 75-16.2 (2001). Plaintiff filed his complaint within four years of the accident giving rise to this cause of action; thus, the statute of limitations for unfair or deceptive trade practices would not have expired. The administrator was appointed on 30 March 2000. N.C.G.S. § 28A-19-3(b)(2) required plaintiff to present his claims to the personal representative within six months after the date on which the claim arose. Plaintiff filed this complaint just over a month after the appointment of the administrator. We note that the accrual of the cause of action and the appointment of the administrator are two different things.

However, as the *Ragan* Court stated, "Plaintiffs' pursuit of their claim . . . more than two years after the claim arose, had no adverse impact on the timeliness of the administration of the decedent's estate, since no one had been appointed to administer the estate." *Ragan*, 337 N.C. at 673, 447 S.E.2d at 375. We therefore hold that the trial court erred in dismissing Plaintiff's claim against Nationwide for unfair or deceptive trade practices based on the expiration of the statute of limitations.

III. Breach of Contract

Plaintiff also alleged breach of contract in his complaint. However, because plaintiff failed to cite to any authority in his brief in support of his claim, this argument is deemed abandoned. See N.C. R. App. P. 28(b)(5).

IV. Conclusion

We hold that the trial court did not err in dismissing plaintiff's negligence claim, but erred in dismissing plaintiff's unfair or deceptive trade practices claim.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

Judges McGEE and HUNTER concur.

Report per Rule 30(e).