

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000283-MR

STEVEN SABO, ADMINISTRATOR
OF THE ESTATE OF
ELIJAH JOSEPH SABO, DECEASED

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 98-CI-00549

K.C.'S REC. ROOM, INC. AND
GORDAN DAX WORKMAN

APPELLEES

OPINION
REVERSING AND REMANDING
** **

BEFORE: BUCKINGHAM, JOHNSON, AND MILLER, JUDGES.

MILLER, JUDGE: Steven Sabo, administrator of the estate of Elijah Joseph Sabo, deceased (Sabo), brings this appeal from a January 28, 2000, order of the McCracken Circuit Court. We reverse and remand.

On November 29, 1996, Elijah Joseph Sabo, a pedestrian, was struck and killed by a vehicle driven by Gordan Dax Workman. Workman was intoxicated at the time of the accident. On the night of the wreck, Workman had been consuming alcohol at K.C.'s Rec. Room. Workman's automobile liability insurance limits were

paid to Sabo's estate. Sabo instituted the present action. Therein, Sabo alleged that K.C.'s Rec. Room was negligent in continuing to serve and provide intoxicating alcoholic beverages to Workman on the night of the accident. K.C.'s Rec. Room filed a third-party complaint against Workman.

Upon motion for summary judgment, the circuit court dismissed the action as time barred by operation of Kentucky Revised Statutes (KRS) 413.140(b). Thereunder, an action for personal injuries must be brought within one year of injury. Summary judgment was based upon the fact that the instant action was not filed within the one-year period. Sabo disagreed and argued the applicable statute of limitations for injuries arising from motor vehicle accidents is KRS 304.39-230(6). Therein, the legislature provided a two-year limitation period for bringing tort actions arising from motor vehicle accidents. KRS 304.39-310 to 304.39-350. This appeal follows.

Sabo contends the circuit court committed error by entering the summary judgment. Summary judgment is appropriate where there exist no material issue of fact and movant is entitled to judgment as a matter of law. CR 56; Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991). Resolution of this appeal revolves around but an issue of law -- the applicable statute of limitations.

Sabo argues that the circuit court erroneously applied the statute of limitations found in KRS 413.140. We agree. We are of the opinion the applicable statute of limitations is, indeed, KRS 304.39-230(6).

In Bailey v. Reeves, Ky., 662 S.W.2d 832 (1984), it was held that the two-year statute of limitations was applicable to a situation similar to the case at hand. In that case, the driver of a motor vehicle was injured when his truck struck a cow. The driver filed suit against the owner of the cow alleging negligence in permitting the animal to stray upon the highway. In holding that the two-year statute of limitations applied, the Supreme Court stated:

The appellee argues that the two-year statute of limitations, KRS 304.39-230(6), is applicable only with respect to actions for tort liability against an owner, operator or occupant of a motor vehicle, but we find no such limiting language in the Act. The Section at issue states as follows:

An action for tort liability not abolished by KRS 304.39-060 may be commenced not later than two (2) years after the injury, or the death, or the last basic or added reparation payment made by any reparation obligor, whichever occurs later. KRS 304.39-230(6).

If the legislature intended this Section to be limited to "an action for tort liability against an owner, operator or user of a motor vehicle," we must assume that such language would have been expressed in this Section of the statute.

. . . .

Further, there are a number of situations where the victim of an automobile accident has multiple claims against different classes of litigants. For instance, from the same accident caused by a brake failure, an automobile victim may have claims against a motorist, a garage repairman, and an automobile manufacturer. There are obvious inconsistencies and litigation problems that would be created if we were to interpret MVRA to carve out a different statute of limitations in the claim

against the motorist than would apply against the repairman or manufacturer.

. . . .

The purview of the Act is motor vehicle accident victims. In Gray [Floyd v. Gray, Ky., 657 S.W.2d 936 (1983)] we decided that strictly speaking the wife of a victim was not, herself, an accident victim, and not within the class whom the Act was designed to protect. By the same reasoning, here the plaintiff is the victim of the motor vehicle accident and is within the class whom the Act is designed to protect, regardless of whether the tortfeasor is a motorist or a nonmotorist.

We are also bolstered in our opinion by the holding in Worldwide Equipment, Inc. v. Mullins, Ky. App., 11 S.W.3d 50, 59 (1999):

Moreover, the one-year statute of limitations applicable to personal injury or wrongful death, KRS 413.140(1)(a), operates as a *general* statute of limitations. [Footnote omitted.] It does not make mention of motor vehicle accidents. Conversely, KRS 304.39-230(6) is a *special* statute of limitations, which is part and parcel of an assimilated and extensive statutory scheme (the MVRA), addressing the rights and liabilities of persons involved in motor vehicle accidents. *Troxell v. Trammell*, Ky., 730 S.W.2d 525, 528 (1987).

Our rules of statutory construction are that a special statute preempts a general statute, that a later statute is given effect over an earlier statute, and that because statutes of limitation are in derogation of a presumptively valid claim, a longer period of limitations should prevail where two statutes are arguably applicable. Thus the statutory language in KRS 304.39-230(6) applies rather than the statutory language in KRS 413.140(1)(a) in the present situation where the cause of action is

both a motor vehicle accident and a
[wrongful death] claim.

In sum, we hold the circuit court erred as a matter of law in determining that the instant action was time barred by KRS 413.140(b). We perceive the applicable statute of limitations to be KRS 304.39-230(6), which provides for a two-year period. We thus conclude summary judgment was improperly entered.

Steelvest, Inc., 807 S.W.2d 476.

For the foregoing reasons, the judgment of the McCracken Circuit Court is reversed and remanded for proceeding consistent with this opinion.

ALL CONCUR.

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