

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000525-MR

MARK ALLEN NEAL

APPELLANT

v. APPEAL FROM JESSAMINE CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 00-CI-00645

JESSAMINE FISCAL COURT;
FRANK HUBBARD, INDIVIDUALLY; AND
FRANK HUBBARD, IN HIS CAPACITY AS
JAILER OF THE JESSAMINE COUNTY
DETENTION CENTER

APPELLEES

OPINION
AFFIRMING
** **

BEFORE: GUIDUGLI, MILLER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from an order of the Jessamine Circuit Court dismissing a personal injury claim as time-barred per the one-year statute of limitations set forth in KRS 413.140(1)(a). Having reviewed the record and applicable law, we affirm.

Appellant, Mark Allen Neal, was in custody at the Jessamine County Detention Center from December 8, 1999 to December 13, 1999. On December 15, 2000, Neal filed a complaint naming as defendants the appellees, Jessamine County Fiscal Court

and Frank Hubbard, the jailer of the Jessamine County Detention Center. In the complaint, Neal alleged that while in custody at the detention center, he was instructed to take a shower, and, when exiting the shower, he slipped on the floor, causing a compression fracture to his back. Neal alleged that he received no medical treatment while he was in the detention center, and, as a result of appellees' failure to provide medical care, his back later became infected, paralyzing him for a period of time, and causing permanent spinal damage. Neal contended that he became aware of the disabling nature of his condition on January 23, 2000.

Appellees moved the court to dismiss Neal's complaint as time-barred per the one-year statute of limitations of KRS 413.140(1)(a). In support of the motion to dismiss, appellees provided an affidavit from Hubbard, stating that Neal was admitted to the detention center on December 8, 1999, and released on December 13, 1999. Attached to the affidavit was documentation from the detention center verifying that Neal was released on December 13, 1999.¹ Hence, appellees contended that the latest date that Neal's cause of action would have accrued would have been December 13, 1999, the date he was released from custody, and, therefore, to be timely, his action must have been filed before December 13, 2000. On February 16, 2001, the court

¹Neal's complaint stated that the accident occurred on December 15, 1999. However, on appeal, Neal acknowledges that he was released from the detention center on December 13, 1999, and states that while the exact date of his fall is unknown, it had to be prior to his release date of December 13, 1999.

entered an order dismissing Neal's complaint as time-barred. This appeal followed.

On appeal, Neal contends that his fall caused two separate injuries - first, the pain and suffering which occurred at the time of the fall, and second, the invisible infection which ultimately caused his serious spinal damage. Neal acknowledges that he has waived any claim for injuries sustained immediately upon the fall. However, Neal contends that his cause of action for injury incurred as a result of the spinal column infection did not accrue until January 23, 2000, on which date he discovered said injury when it manifested itself in the form of paralysis.

KRS 413.140(1) (a) requires that an action for injury to the person of the plaintiff be commenced within one year after the cause of action accrued. Generally, the cause of action in a personal injury case accrues when the injury occurs. Caudill v. Arnett, Ky., 481 S.W.2d 668 (1972). In cases involving latent injury resulting from exposure to harmful substances, however, Kentucky courts have applied the "discovery rule", whereby the cause of action is deemed to have accrued not when the injury occurred, but "when the plaintiff first discovers the injury or should have reasonably discovered it." Roman Catholic Diocese v. Secter, Ky. App., 966 S.W.2d 286, 288 (1998). See also, Louisville Trust Co. v. Johns-Manville Products Corp., Ky., 580 S.W.2d 497 (1979); Carroll v. Owens-Corning Fiberglas Corp., Ky., 37 S.W.3d 699 (2000).

Neal asserts that the discovery rule should be applied in his case, contending that his spinal infection was an unknown and invisible injury, analogous to the situation presented in Carroll. In Carroll, the appellant was diagnosed with a mild form of asbestosis in 1983, but chose not to sue at the time. Eight years later, the appellant was diagnosed with lung cancer and filed suit. The Kentucky Supreme Court held that the one-year statute of limitations provided by KRS 413.140(1)(a) did not bar the appellant's lung cancer claim, because, although both diseases arose from asbestos exposure, lung cancer and asbestosis are separate and distinct diseases, and are not causes or prerequisites for each other. Carroll, 37 S.W.3d at 700. Hence, the Court concluded that when the appellant was diagnosed with asbestosis, he did not necessarily know, nor should he have known, that he would also develop lung cancer. Id. at 701. Neal contends that, similar to Carroll, although falling on one's back presents the obvious injury of bruising and pain, bruising and pain do not necessarily progress to spinal infections, and the fact that he had bruising and pain did not make his spinal infection any more known to him. However, "[w]ith the exception of cases involving latent injuries from exposure to harmful substances, Kentucky courts have generally refused to extend the discovery rule without statutory authority to do so." Secter, 966 S.W.2d at 288. In Carroll, the Kentucky Supreme Court stated:

[S]tatutes of limitations in toxic substance cases serve neither of the traditional functions of statutes of limitations - - the preservation of evidence and peace of mind

for potential defendants. Unlike traditional torts, those involving toxic substances include a cause of injury that is difficult to trace, a period of exposure which is longer and more varied, harms more susceptible to misdiagnosis, and a greater number of victims.

Carroll, 37 S.W.3d at 702, citing, Michael D. Green, The Paradox of Statutes of Limitations in Toxic Substances Litigation, 76 Calif. L.Rev. 965 (1988).

In the present case, Neal contends that his spinal infection arose from the fall and alleged lack of medical treatment which are undisputed to have occurred no later than December 13, 1999. Although Neal did not realize the seriousness of his injury, i.e. the spinal infection, until later becoming paralyzed, under Caudill v. Arnett, Ky., 481 S.W.2d 668 (1972), Neal's cause of action accrued no later than December 13, 1999. In Caudill, the appellant sustained what he believed were minor injuries in a bus accident on February 2, 1963. On August 26, 1969, the appellant was diagnosed with chronic pancreatitis, the cause of which was determined to be the injury he sustained in the 1963 bus accident. On November 26, 1969, the appellant filed an action, which the trial court dismissed as time-barred by the one-year statute of limitations per KRS 413.140(1)(a). On appeal, the appellant contended that his cause of action accrued upon the date of discovery of his injury, August 26, 1969, when he was diagnosed with chronic pancreatitis, rather than the date of the bus accident. The Court stated that it did not consider the diagnosis of pancreatitis "to be a 'discovery of injury,' but rather the ascertainment of the extent of a previously recognized

injury." Caudill, 481 S.W.2d at 669. The Court held that "[t]he appellant's cause of action came into existence or accrued on the day he was injured in the school-bus accident, and limitations began to run from that date even though he was not made fully aware of the extent of his injury until several years later."

Id. Similarly, in the present case, Neal was injured on the day he fell in the shower, which was no later than December 13, 1999. Further, any denial of medical treatment by the detention center also had to have occurred no later than December 13, 1999, the date of Neal's release. Hence, Neal's cause of action accrued no later than December 13, 1999, even though he did not become aware of the spinal infection until January 23, 2000. Id.

Accordingly, the trial court did not err in dismissing Neal's complaint, filed December 15, 2000, as time-barred. KRS 413.140(1)(a).

For the aforementioned reasons, the order of the Jessamine Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James O. Springate
Versailles, Kentucky

BRIEF FOR APPELLEES:

Shelby C. Kinkead, Jr.
Lexington, Kentucky