

RENDERED: AUGUST 8, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002094-MR

DEBBIE JOHNSON, EXECUTRIX OF
THE ESTATE OF MATTIE R. GAFFORD,
DECEASED

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN K. MERSHON, JUDGE
ACTION NO. 07-CI-006481

UNIVERSITY MEDICAL CENTER, INC.,
D/B/A UNIVERSITY OF LOUISVILLE
HOSPITAL

APPELLEE

OPINION
REVERSING

** ** * * * * *

BEFORE: CLAYTON, DIXON AND WINE, JUDGES.

WINE, JUDGE: Debbie Johnson (“Johnson”), Executrix of the Estate of Mattie R. Gafford (“Gafford”), appeals from a summary judgment from the Jefferson Circuit Court’s dismissal of her complaint against University Medical Center, Inc., d/b/a University of Louisville Hospital (“University Hospital”) for personal injuries

Gafford suffered while in its care. We reverse the trial court's order granting summary judgment pursuant to Kentucky Revised Statutes ("KRS") 413.180.

The facts of this case are not in dispute. On January 1, 2006, Gafford was admitted to University Hospital. The following day, Gafford fell and fractured her hip when she attempted to rise from the commode without assistance. Gafford died on May 18, 2006, due to causes unrelated to her fall at University Hospital. Johnson qualified as Gafford's personal representative on February 22, 2007. On July 11, 2007, Johnson filed a medical negligence action for personal injuries against University Hospital alleging damages arising out of Gafford's fall on January 2, 2006. Thereafter, University Hospital filed a motion for summary judgment based on the statute of limitations. The trial court granted the summary judgment motion on October 11, 2007. This appeal followed.

The sole issue on appeal is whether an action for personal injury filed by one's personal representative is barred unless that representative qualifies within one year from the date of injury. Johnson argues, under the plain language of KRS 413.180, a personal representative has one year after appointment to bring an action for personal injury. We agree.

Under KRS 413.140(e), any action "against a physician, surgeon, dentist, or hospital licensed pursuant to KRS Chapter 216, for negligence or malpractice" or "for an injury to the person of the plaintiff" (KRS 413.140(a)) shall be commenced within one year after the cause of action accrued. However, KRS 413.180 reads in relevant part:

(1) If a person entitled to bring any action mentioned in KRS 413.090 to 413.160 dies before the expiration of the time limited for its commencement and the cause of action survives, the action may be brought by his personal representative after the expiration of that time, if commenced within one (1) year after the qualification of the representative.

(2) If a person dies before the time at which the right to bring any action mentioned in KRS 413.090 to 413.160 would have accrued to him if he had continued alive, and there is an interval of more than one (1) year between his death and the qualification of his personal representative, that representative, for purposes of this chapter, shall be deemed to have qualified on the last day of the one-year period.

The statute limits its scope to actions “mentioned” in KRS 413.090 to 413.160.

Clearly, KRS 413.140, covering personal injury claims, is explicitly included in the listed statutes. Gafford was injured on January 2, 2006; she died on May 18, 2006; Johnson was appointed personal representative on February 22, 2007; and Johnson filed this claim on July 11, 2007. Thus, we agree with Johnson that, pursuant to the plain meaning of KRS 413.180, the statute of limitations did not run before she filed this claim.

However, University Hospital cites, and the trial court relied upon, *Southeastern Kentucky Baptist Hospital, Inc. v. Gaylor*, 756 S.W.2d 467 (Ky. 1988), in support of its position that the statute of limitations had expired. In *Gaylor*, the Supreme Court of Kentucky acknowledged prior holdings that

“unless a personal representative shall qualify within one year from the injury, the action is barred.” *Id.* at 469, quoting *Louisville & N.R.R. Co. v. Brantley’s Admr.*, 106 Ky. 849, 51 S.W. 585 (1899).¹ The Court further noted that

if no valid personal representative is appointed within one year of the date of death, any action for wrongful death dies. However, if a personal representative is appointed within one year of the date of death, he then is granted one year from the date of his appointment to file suit. If no suit is filed within that time, the action for wrongful death dies.

Id. at 470, quoting *Drake v. B.F. Goodrich Co.*, 782 F.2d 638, 641-42 (6th Cir. 1986).

In so holding, the Court in *Gaylor* implicitly found that KRS 413.180 applies to wrongful death actions. This conclusion conflicted with other cases finding that KRS 413.180 applies to personal injury claims, but not to wrongful death actions. See *Massie v. Persson*, 729 S.W.2d 448 (Ky. App. 1987); *Totten v. Loventhal*, 373 S.W.2d 421 (Ky. 1963); and *Faulkner’s Adm’r v. Louisville & N. R. Co.*, 184 Ky. 533, 212 S.W. 130 (1919). Subsequently, the Supreme Court resolved this conflict in *Connor v. George W. Whitesides Co.*, 834 S.W.2d 652, 654 (Ky. 1992), in which the Court stated that “[t]he purpose of KRS 413.180 is to

¹ *Brantley* was decided subject to Ky. St. § 2516, which provided, “An action for an injury to the person of the plaintiff . . . shall be commenced within one year next after the cause of action accrued and not thereafter. (Emphasis added). Because of the language “and not thereafter,” the *Brantley* Court held Ky. St. § 2526, which allowed for the deceased’s representative to bring an action within one year of his qualification, had no application. However, as acknowledged in *Brantley*, § 2516 was subsequently amended, deleting the language “and not thereafter.” KRS 413.140, enacted in 1942, also does not include the language “and not thereafter” allowing for the application of KRS 413.180(1), the successor to Ky. St. § 2526.

allow time for the appointment of a personal representative and then to give that personal representative time to evaluate claims and determine whether to pursue those claims. . . . The net effect of this statute . . . is to provide two years from the date of death to appoint a personal representative and commence a cause of action” *Id.* Johnson suggests, and we agree, this conclusion indicates the Court’s implicit intention was to overrule prior cases supporting University Hospital’s position.

The trial court distinguished *Connor* from this case by pointing out that the issue in *Connor* was whether KRS 413.180 applies to wrongful death cases, and the Court’s affirmative conclusion overruled a long line of cases holding that KRS 413.180 was not applicable to wrongful death actions. The trial court in this case acknowledges though that the trial court in *Connor* denied summary judgment as to a personal injury claim in that case filed by the estate holding that the claim was timely filed under applicable law. This issue in *Connor* was not appealed. Significant is that the *Connor* Court clears up some confusion over varying time limitations when it wrote:

Personal injury and wrongful death claims may be prosecuted by the personal representative in one action as was done in this case. KRS 411.133. It is reasonable to conclude the General Assembly intended for the personal representative to have the same amount of time to prosecute all claims resulting from injury to the decedent including injuries resulting in death.

Connor, 834 S.W.2d at 654. The personal representative in *Connor* was not appointed until thirteen months after the date of death of the decedent.

In the current case, Johnson is asserting a personal injury claim on Gafford's behalf, not a wrongful death claim. But under the rule set out in *Connor*, KRS 413.180 applies to both personal injury and wrongful death claims. The Supreme Court in *Reda Pump Co. v. Finck*, 713 S.W.2d 818, 819-20 (Ky. 1986), noted, "We have long adhered to the rule in this jurisdiction that statutes will be construed according to the plain meaning of the words contained in the statute." It is abundantly clear in KRS 413.180 that the legislature intended that a personal representative be allowed to commence a personal injury action within one year after the qualification of the representative. Here, Johnson qualified as the decedent's personal representative on February 22, 2007, and filed this action on July 11, 2007, well within the statutory limitations. Therefore, the trial court clearly erred in finding that the action was untimely filed.

Accordingly, the order of the Jefferson Circuit Court is reversed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Jeffrey T. Sampson
Louisville, Kentucky

BRIEF FOR APPELLEE:

Susan D. Phillips
William P. Swain
Louisville, Kentucky