

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Rhonda Riley, etc., et al

Court of Appeals No. L-16-1061

Appellants

Trial Court No. CI0201502395

v.

Highland Crest Associates, LLC, et al.

**DECISION AND JUDGMENT**

Appellees

Decided: May 19, 2017

\* \* \* \* \*

Tim A. Dugan, for appellants.

Edward T. Mohler and Lavell O. Payne, for appellees.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that granted appellees' motion to dismiss appellants' wrongful death action. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} This appeal arises from a wrongful death action originally filed by appellants Rhonda Riley and minor child M.R. on June 3, 2013 (Lucas County Court of Common Pleas case No. CI0201303124) following the death of LaToya Riley and Madison Riley-Finn in a fire at Southcrest Apartments in Toledo, Ohio, on June 3, 2011. On January 27, 2014, appellees filed a motion to dismiss based upon appellants' failure to comply with discovery requests and failure to prosecute the case. Appellants did not respond to the motion. On March 24, 2014, the trial court dismissed appellants' complaint without prejudice for want of prosecution.

{¶ 3} On April 27, 2015, appellants refiled their wrongful death action (Lucas County Court of Common Pleas case No. CI0201502395). On May 11, 2015, appellees filed an answer and a motion to dismiss or in the alternative motion for summary judgment. On February 26, 2016, the trial court granted the motion to dismiss upon finding that the complaint was untimely. It is from that judgment that appellants have appealed, setting forth the following assignment of error:

The Trial Court erred in dismissing Appellant M.R.'s personal injury claim.

{¶ 4} In support of their sole assignment of error, appellants assert that their personal injury cause of action for minor child M.R. was not time barred by the wrongful death statute of limitations as set forth in R.C. 2305.16. Appellants simply state that their personal injury claim is separate and distinct from the wrongful death actions that were not tolled by R.C. 2305.16.

{¶ 5} Appellees note that all parties agreed during the trial court proceedings that the personal injury claim alleged by M.R. was a derivative claim under the wrongful death statute. In fact, in their memorandum in opposition to appellees' motion to dismiss in the trial court, appellants stated that all of their claims "are joint and inseparable from each other and joint and inseparable from the individual and distinct claims of (M.R.)."

{¶ 6} In *Taylor v. Black & Decker Mfg. Co.*, 21 Ohio App.3d 186, 486 N.E.2d 1173 (12th Dist.1984), syllabus, the court stated "A right of action for wrongful death is a statutorily created right (R.C. 2125.01). Therefore, the time limitation imposed by the statute is a restriction which qualifies the right of the action, rather a time limitation on the remedy, and is not tolled by a beneficiary's minority pursuant to R.C. 2305.16." See also *Schaffer v. Gateway Harvestore*, 129 Ohio App.3d 448, 454, fn. 4, 717 N.E.2d 1179 (3d Dist.1998). Therefore, as all parties agreed that M.R.'s personal injury claim is a derivative claim under the decedents' estates, all claims were time barred, including M.R.'s.

{¶ 7} Accordingly, appellants' sole assignment of error is not well-taken.

{¶ 8} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellants pursuant to App.R. 24.

Judgment affirmed.

Riley v. Highland Crest Assoc., LLC  
C.A. No. L-16-1061

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
*See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

James D. Jensen, P.J.  
CONCUR.

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JUDGE