

2013 PA Super 25

JAMES O'KELLY

Appellee

v.

MICHELE S. DAWSON, ESQUIRE,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 421 WDA 2012

Appeal from the Judgment of February 13, 2012,
in the Court of Common Pleas of Washington County,
Civil Division at No. 2007-1274

BEFORE: MUSMANNO, WECHT and COLVILLE*, JJ.

DISSENTING OPINION BY COLVILLE, J.:

Filed: February 19, 2013

I dissent. I would find that the trial court erred in its ruling on the statute of limitations.

As we have explained:

In reviewing a motion for judgment n.o.v., the evidence must be considered in the light most favorable to the verdict winner, and he must be given the benefit of every reasonable inference of fact arising therefrom, and any conflict in the evidence must be resolved in his favor. Moreover, [a] judgment n.o.v. should only be entered in a clear case and any doubts must be resolved in favor of the verdict winner. Further, a judge's appraisal of evidence is not to be based on how he would have voted had he been a member of the jury, but on the facts as they come through the sieve of the jury's deliberations.

There are two bases upon which a judgment n.o.v. can be entered: one, the movant is entitled to judgment as a matter of

*Retired Senior Judge assigned to the Superior Court.

law, and/or two, the evidence was such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant[.] With the first a court reviews the record and concludes that even with all factual inferences decided adverse to the movant the law nonetheless requires a verdict in his favor, whereas with the second the court reviews the evidentiary record and concludes that the evidence was such that a verdict for the movant was beyond peradventure.

Fletcher-Harlee Corp. v. Szymanski, 936 A.2d 87, 93 (Pa. Super. 2007) (citations omitted).

Further, the following law is applicable. "In actions for legal malpractice, Pennsylvania uses the occurrence rule to determine when the statute of limitations begins to [run]. Under this rule, 'the statutory period commences upon the happening of the alleged breach of duty.'" ***Glenbrook Leasing Co. v. Beausang***, 839 A.2d 437, 441 (Pa. Super. 2003) (quoting ***Robbins & Seventko Orthopedic Surgeons, Inc. v. Geisenberger***, 674 A.2d 244, 246 (Pa. Super. 1996)). Pennsylvania law requires strict application of the limitations period, allowing equitable tolling under the "discovery rule" only when the injured party is unable to know of the injury or its cause, despite the exercise of reasonable diligence. ***Id.***

As this Court has explained:

. . . [W]hen asserting the discovery rule as tolling the statute of limitations, the following standard of reasonable diligence must be satisfied:

The standard of reasonable diligence is an objective or external one that is the same for all individuals. . . . "[T]he statute is tolled only if a reasonable person in the plaintiff's position would have been unaware of the salient facts." In defining reasonable diligence, [our] courts have stated "[t]here are very few facts which diligence cannot discover, but there must be some reason

to awaken inquiry and direct diligence in the channel in which it would be successful. . . ." [W]ith respect to knowledge of a claim, "plaintiffs need not know that they have a cause of action, or that the injury was caused by another party's wrongful conduct, for once a plaintiff possesses the salient facts concerning the occurrence of his injury and who or what caused it, he has the ability to investigate and pursue his claim."

Haggart v. Cho, 703 A.2d 522, 528 (Pa. Super. 1997) (quoting **A. McD. v. Rosen**, 621 A.2d 128, 131 (Pa. Super. 1993)).

The relevant facts in this case were undisputed. In June of 2004, Appellee had a report authored by a neutral master after hearing the parties' arguments and evidence on the issue of alimony over the course of four hearings. Therein, the terms of the alleged alimony agreement were absent; in their stead was a recommendation that Appellee be obligated to pay significantly more alimony than he would have under the terms of the May 3, 2002, letter. Appellant assured Appellee that that there was an agreement and that he would ultimately prevail. The trial court made a legal conclusion that, in June, 2004, Appellee had insufficient facts to awaken inquiry in a reasonable person. I believe that legal conclusion was in error; I would thus find that, as a matter of law, the discovery rule did not operate to toll the statute of limitations and the two-year statute of limitations had run by the time Appellee instituted his suit in 2007.

Accordingly, I would vacate the judgment, reverse the order denying Appellant's motion for judgment notwithstanding the verdict and remand for entry of judgment in favor of Appellant.