No. 33190 - *Michael Worley and Cynthia Worley, his wife, v. Beckley Mechanical, Inc., et al.*

Davis, C.J., concurring:

In this case, the majority correctly has held that the commencement of the statutory limitations period within which a plaintiff is required to bring his/her cause of action is tolled when that plaintiff is mentally infirm or suffers from a mental illness. *See* W. Va. Code § 55-2-15 (1923) (Repl. Vol. 2000). I write separately to demonstrate that the majority's opinion has not strayed from our prior precedent directing us to strictly construe statutes of limitation and the legislatively-created exceptions thereto.

We long have held that "[e]xceptions in statutes of limitation are strictly construed and the enumeration by the Legislature of specific exceptions by implication excludes all others." Syl. pt. 3, *Hoge v. Blair*, 105 W. Va. 29, 141 S.E. 444 (1928). The general statute of limitations, set forth in W. Va. Code § 55-2-12 (1959) (Repl. Vol. 2000), requires that "[e]very personal action for which no limitation is otherwise prescribed shall be brought . . . within two years next after the right to bring the same shall have accrued if it be for damages for personal injuries[.]" W. Va. Code § 55-2-12(b). At issue in the case *sub judice*, however, is the language of W. Va. Code § 55-2-15, which provides a statutory

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exception to the general statute of limitations, W. Va. Code § 55-2-12.[1] As it applies to the

instant proceeding, the provisions of W. Va. Code § 55-2-15 permit that

> [i]f any person to whom the right accrues to bring any
> such personal action . . . shall be, at the time the same accrues,
> . . . insane, the same may be brought within the like number of
> years after his becoming . . . sane that is allowed to a person
> having no such impediment to bring the same after the right
> accrues . . . ., except that it shall in no case be brought after
> twenty years from the time when the right accrues.

In explaining how mental illness tolls the commencement of the statute of

limitations in accordance with W. Va. Code § 55-2-15, the majority has not created a new

exception to the general statute of limitations or created a mechanism by which the statute

of limitations is started, stopped, and restarted again. Rather, the Court has merely clarified

how the tolling mechanism of W. Va. Code § 55-2-15 operates when the plaintiff has a

mental illness. This delayed start or commencement of the statute of limitations is consistent

with our longstanding recognition that, "[a]fter the statute of limitations has commenced to

run, no subsequent disability will interrupt it." Syl. pt. 2, *Mynes v. Mynes*, 47 W. Va. 681,

35 S.E. 935 (1900). In this case, the severity of Mr. Worley's work-related injuries

necessitated the administration of medications that compromised his mental acuity. Such

medications were administered to Mr. Worley shortly after he was admitted to the hospital

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[1]See generally *Perdue v. Hess*, 199 W. Va. 299, 303 n.7, 484 S.E.2d 182, 186 n. 7
(1997), for a discussion of other legislatively-created exceptions to the general statute of
limitations.

following his accident, and continued to be given to him until his injuries progressively worsened and his mental functioning deteriorated a few days later. Given these circumstances, it is clear that Mr. Worley was not competent during this time, and thus, the statute of limitations should not have begun to run, pursuant to the tolling mechanism of W. Va. Code § 55-2-15, until after he had regained his competency.

The standard by which this Court has been guided in its jurisprudence is a recognition that "[t]he ultimate purpose of statues of limitations is to require the institution of a cause of action within a reasonable time." Syl. pt. 2, *Perdue v. Hess*, 199 W. Va. 299, 484 S.E.2d 182 (1997). Application of the tolling mechanism of W. Va. Code § 55-2-15 to the facts of this case ensures the timely institution of the Worleys' cause of action. Because the majority correctly stated the law and properly applied it to the facts of this case, I concur.