

JUSTICE MUNDY

DECIDED: November 22, 2017

In this appeal by allowance, we consider whether the Superior Court applied the correct statute of limitations for a survival action in a medical professional liability case. For the reasons set forth below, we conclude the statute of limitations for medical professional liability cases in the form of wrongful death or survival actions is two years from the time of the decedent's death. Accordingly, we affirm the judgment of the Superior Court.

The facts and procedural history of this medical professional liability action, asserting negligent care at a nursing home, are as follows. On July 25, 2005, Elise Dubose was admitted to Albert Einstein Medical Center (Einstein) after she fell in her home and sustained severe head injuries, including anoxia and a brain injury. On August 9, 2005, Mrs. Dubose was transferred and admitted to Willowcrest Nursing Home (Willowcrest), a division of Einstein, where she was diagnosed with Type II diabetes, respiratory failure necessitating a ventilator, chronic obstructive pulmonary disease, and several pressure ulcers (bedsores). On September 6, 2005, to treat the ulcers, a physician ordered a flexor bed and frequent repositioning of Mrs. Dubose. Willowcrest's staff negligently failed to follow the physician's order, resulting in a deterioration of Mrs. Dubose's existing pressure ulcers and proliferation of new ones to other parts of her body. During a hospitalization at Einstein from January 30 to February 14, 2007, Mrs. Dubose developed additional bedsores on her right heel and shin, on her right scapula (upper back), and on her lower back. In addition, while at Willowcrest from 2005 to 2007, Mrs. Dubose suffered malnourishment, dehydration, conscious pain from the bedsores, bone infection, and a sepsis systemic infection.

One of the ulcers, located at the sacral region of the spine, which Mrs. Dubose developed during her initial July 25, 2005 hospitalization, gradually increased in size

from August 9, 2005 to July 2007. In July 2007, the sacral ulcer became infected with bacteria from contact with feces. This infection caused sepsis in Mrs. Dubose in September 2007, and she was admitted to Einstein with sepsis on September 12, 2007. On October 18, 2007, Mrs. Dubose died from sepsis and multiple pressure sores.

On August 13, 2009, Robert Dubose, as administrator for the Estate of Elise Dubose, filed a complaint against Willowcrest and Albert Einstein Healthcare Network (collectively Appellants). This complaint contained counts for negligence on behalf of Mrs. Dubose (survival action¹), and a wrongful death action² to compensate Mrs. Dubose's survivors. Additionally, on September 14, 2009, Robert Dubose commenced a second case by filing a praecipe to issue a writ of summons. On October 7, 2009, Mr. Dubose filed a complaint in the second case, asserting similar survival and wrongful death actions based on negligence, requesting punitive damages, and naming as defendants Mark Quinlan, Willowcrest's administrator; Donna Brown, Willowcrest's director of nursing; Einstein; Willowcrest; and Jefferson Health System. On October 18, 2010, the trial court issued an order consolidating the two cases pursuant to Pennsylvania Rule of Civil Procedure 213(a).

In October 2012, the case proceeded to a jury trial, which resulted in a mistrial. A second jury trial was held from February 13, 2013 to March 13, 2013. On March 13, 2013, the jury returned a verdict in favor of Mr. Dubose and against Appellants in the amount of \$125,000.00 on the wrongful death action and \$1,000,000.00 on the survival action. The jury apportioned liability as 60% to Willowcrest, 25% to Einstein Healthcare Network, and 15% to Donna Brown. Further, on March 21, 2013, following a bifurcated punitive damages trial, the same jury awarded \$875,000.00 in punitive damages against

¹ Act of June 30, 1972, P.L. 500, No. 164.

² Act of 1855, P.L. 309; Pa.R.C.P. 2202(a).

Appellants. The trial court granted the defendants' post-trial motions in part in the form of judgment notwithstanding the verdict (JNOV), dismissing the action as against Donna Brown because she was an employee of Willowcrest, but the trial court did not reduce the amount of the verdict. The trial court denied the remaining post-trial motions for a new trial, for JNOV, and for remittitur, and entered judgment on the verdict. Regarding the subject of this appeal, the trial court explained that Mr. Dubose's survival action was timely filed pursuant to Section 513(d) of the Medical Care Availability and Reduction of Error Act (MCARE), 40 P.S. §§ 1303.501-1303.516, which permits plaintiffs to bring survival actions within two years of death. Trial Ct. Op., 6/27/14, at 11. As alternative support, the trial court applied the "discovery rule" and concluded that Mrs. Dubose's comatose condition prevented her from knowing or reasonably discovering her injuries before her death. *Id.* at 12. Appellants appealed to the Superior Court.

Relevant to this appeal, Appellants argued Mr. Dubose's survival claims were barred by the two-year statute of limitations for personal injury actions, which began to run at the time of Mrs. Dubose's injury in 2005.³ Appellants asserted that a survival action is distinct from a wrongful death action. A survival action is merely a continuation

³ 42 Pa.C.S. § 5524 provides a two-year statute of limitations for personal injury actions:

§ 5524. Two year limitation

The following actions and proceedings must be commenced within two years:

...

(2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another.

42 Pa.C.S. § 5524(2).

of a cause of action that accrued to the plaintiff's decedent while the decedent was alive, and the statute of limitations begins to run when the decedent is injured. On the other hand, a wrongful death action accrues to the decedent's heirs when the decedent dies of such an injury, and its statute of limitations begins to run at the decedent's death. Appellants asserted that once the statute of limitations expires on the decedent's cause of action, it cannot form the basis for a survival action following the decedent's death. Appellants' Super. Ct. Brief at 12-14 (citing *Baumgart v. Kenne Bldg. Prods. Corp.*, 633 A.2d 1189 (Pa. Super. 1993) (en banc)).

Applying these principles, Appellants argued that the statute of limitations for Mrs. Dubose's medical professional liability claim began when she sustained the pressure ulcer in 2005. The two-year statute of limitations on the survival actions expired in 2007, and therefore the survival actions Mr. Dubose filed in 2009 were time-barred.

Further, Appellants disputed the trial court's holding that the survival action was rendered timely by Section 513 of MCARE, which provides:

§ 1303.513. Statute of repose

(a) General rule.--Except as provided in subsection (b) or (c), no cause of action asserting a medical professional liability claim may be commenced after seven years from the date of the alleged tort or breach of contract.

(b) Injuries caused by foreign object.--If the injury is or was caused by a foreign object unintentionally left in the individual's body, the limitation in subsection (a) shall not apply.

(c) Injuries of minors.--No cause of action asserting a medical professional liability claim may be commenced by or on behalf of a minor after seven years from the date of the alleged tort or breach of contract or after the minor attains the age of 20 years, whichever is later.

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