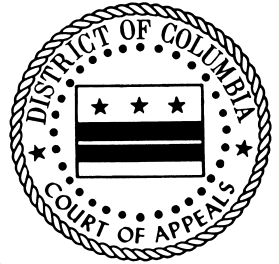


No. 23-CV-411 / No. 23-CV-412



IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

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MARILYN KUBICHEK,

Appellant,
2022-CAB-006101

DOROTHY BALDWIN

Appellant,
2022-CAB-006102-B

v.

UNLIMITED BIKING WASHINGTON, D.C., LLC, *et al.*,
Appellees.

On Appeal from a Final Order of the Superior Court of the District of Columbia,
Civil Division, Case Nos. 2022-CAB-006101 and 2022-CAB-006102-B,
Judge Hiram Puig-Lugo

REPLY BRIEF OF THE APPELLANTS

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ARGUMENT

A. Appellees Misunderstand the Meaning of the Word “Toll” or “Tolling”

Appellee’s argument rests on a misunderstanding of the word “toll” or “tolling.” As the Supreme Court stated in Artis v. District of Columbia, 138 S. Ct. 594, 601 (2018) (reversing the DC Court of Appeals on the strained meaning of the word “toll”), “[o]rdinarily, ‘tolled’ in the context of a time prescription . . . means that the limitations period is suspended (stops running) . . . then starts running again when the tolling period ends, picking up where it left off.” (citing Black’s Law Dictionary.) In Artis, the District of Columbia argued that “toll” means “to remove or take away an effect.” Id. at 603. The District of Columbia’s argument that “toll” means to take away an effect was specifically rejected, and the majority agreed that “toll” means to stop the clock. Therefore, the First Order issued on March 19, 2020 stopped the clock for “all deadlines and time limits . . . including statutes of limitations. . . .” First Order. The First Order did not remove or take away an effect, it stopped the clock.

When the period of emergency ended, which was more than a year later at the shortest interpretation, the clock started running again. Therefore, the Appellants’ Complaints, which were filed 80 days after the hypothetical un-tolled statute of limitations, were timely filed and should not have been dismissed.

B. Appellee’s Argument About the Word “Expire” Makes the Covid Orders More Ambiguous

Appellee argues that the Covid Orders only applied to a subset of statutes of limitations currently running, not all of them. Appellees argue that as each Covid Order was issued, the order only applied to statutes of limitations that “would otherwise expire before [date].” See Covid Orders (a new date was provided in successive orders). This is a confused misreading of the Covid Orders.

The DC Superior Court’s Covid Orders contain what my fifth-grade teacher would remind me are “run-on” sentences, including the sentence we are focused on here. The First Covid Order says:

Unless otherwise ordered by the court, all deadlines and time limits in statutes, court rules, and standing and other orders issued by the court that would otherwise expire before May 15, 2020 including statutes of limitations, are suspended, tolled, and extended during the period of the current emergency.

First Order at 2. A plain reading of this sentence could yield two different interpretations (at least, maybe more). The phrase “expire before May 15, 2020” could refer only to “standing and other orders issued by the court” or it could be a specification placed on all things mentioned in the sentence. Appellee argues this Court should adopt the latter interpretation. However, this interpretation does not align with the rest of the sentence. The action part of the sentence tolls deadlines and time limits “during the period of the current emergency,” not just until May 15, 2020. Appellee’s argument, if the correct interpretation, would make the Covid

Orders even less intelligible, then, by suggesting that the DC Superior Court was being specific about the subset of deadlines the Covid Orders applied to, but non-specific about the length of the tolling.¹ Appellee would have this Court believe the DC Superior Court wrote one part of the sentence in a precise way, while being vague about the action to be taken. This is a strained and confusing interpretation. Therefore, a complete reading of this sentence (and parallel sentences in subsequent Covid Orders), suggests that the DC Superior Court actually intended the “expire before May 15, 2020” phrase to only refer to “standing and other orders issued by the court.” This reading makes the sentence intelligible, as a whole.

Statutes of Limitations, as the name implies, are set by statutes, not by “standing and other orders issued by the court.” Therefore, the phrase “expire before May 15, 2020” has no relevance here, as it only dealt with court orders.

C. Appellee’s Argument About the Word “Expire” Leads to Nonsensical Results

Appellee’s argument is not only strained when reading the sentence as a whole, but it would also lead to nonsensical results. Using just the First Order as an example, Appellee would say that a statute of limitation that would run on May 14, 2020 would be tolled, but a statute of limitation that would run on May 16, 2020

¹ As argued above, Appellee can make sense of this only by believing the word “toll” means to “remove or take away an effect,” not “stop the clock” as the word does mean. See Artis.

would not be tolled.² This would mean that causes of action that accrued earlier in time would have longer to file suit (because of tolling), than a later accrued cause of action of the exact same nature. This is an absurd result. This Court should not adopt an interpretation of emergency orders that lead to absurd legal results.

In response to this absurdity, a quick legal mind may play devil's advocate and say that no matter the end date of the judicial emergency, the same absurdity exists in either interpretation (e.g. whether the tolling applies only to statutes of limitations that run during the judicial emergency or applies to all causes of action in existence during any part of the judicial emergency). But this absurdity does not persist in Appellant's interpretation of the Covid Orders. If, as we argue, the Covid Orders tolled statutes of limitations on all causes of action in existence during any part of the judicial emergency, then causes of action that arose later in time have shorter and shorter periods of tolling. A cause of action (for example, like in this matter, an accident caused by negligence) that arose 1 day before the end of the judicial emergency would only have 1 day of tolling on its statute of limitations. A cause of action (a separate accident, let's say) 1 day after the judicial emergency ended would have no tolling. In this interpretation and hypothetical, an earlier arising cause of action would not be able to file suit after the later arising cause of

² Subsequent Covid Orders did continue the tolling, but the same distinction could be made with each subsequent Covid Order. Appellee's interpretation leads to nonsensical results whatever end date is used.

action. This leads to a common sense outcome. Therefore, Appellants' interpretation comports with a plain reading of the Covid Orders and common sense legal consequences. Appellee's interpretation does not and should be rejected.

D. Statute of Limitations is a Defense Which Defendant Unlimited Biking Washington, LLC Never Raised and Trial Courts Should Not Raise Defenses Sua Sponte

Statute of limitations is a defense to a plaintiff's claims. A lawsuit does not automatically get dismissed by a trial court because Plaintiff failed to file the lawsuit within the prescribed statute of limitations period. A defendant must raise the issue by motion and argue that plaintiff's case should be dismissed. Outside of a defendant's motion, the trial court makes no determination whatsoever about a defendant's defenses. If the defendant does not raise statute of limitations as a defense, a civil case can proceed to trial on the merits. There can be many reasons, outside of the court's awareness, why a defendant may or may not raise a statute of limitations defense.

In this matter, Defendant Unlimited Biking Washington, LLC did not raise a statute of limitations defense. The trial judge should not, and cannot, argue Defendant Unlimited Biking Washington, LLC's case for them, nor raise defenses for them. It is clear error for the trial court to have done so here without a motion requesting it from Defendant Unlimited Biking Washington, LLC. Improper service or lack of service of a defendant are also defenses. No service defense or issue was

ever raised with the trial court. Again, trial judges should not be arguing a defendant's case for them. It's an irrelevant issue for Appellee Samonte to raise at this stage.

CONCLUSION

For the facts and arguments stated in Appellants' initial brief previously filed, and the additional argument above, Appellants' Complaints were not barred by the statute of limitations due to the tolling provided by the Covid Orders. The April 12, 2023 Order erred in its application of the Covid Orders to the cases here. The decision should be reversed and Appellants' cases should be remanded to DC Superior Court for further proceedings so that the claims can be heard on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 29, 2024 I sent a copy of the Reply Brief of the Appellants via the Court's e-filing system to:

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District of Columbia Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a “CV” docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

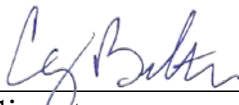
I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

- An individual’s social-security number
- Taxpayer-identification number
- Driver’s license or non-driver’s’ license identification card number
- Birth date
- The name of an individual known to be a minor
- Financial account numbers, except that a party or nonparty making the filing may include the following:

- (1) the acronym “SS#” where the individual’s social-security number would have been included;
- (2) the acronym “TID#” where the individual’s taxpayer-identification number would have been included;
- (3) the acronym “DL#” or “NDL#” where the individual’s driver’s license or non-driver’s license identification card number would have been included;
- (4) the year of the individual’s birth;
- (5) the minor’s initials; and
- (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.
3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.
4. Information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).
5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.
6. Any other information required by law to be kept confidential or protected from public disclosure.



Signature

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Nos. 23-CV-411 & 23-CV-412

Case Number(s)

01/29/2024

Date