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Limitations of Actions: Statutory Period Commences Only When Plaintiff Has Notice of Injury

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LIMITATION OF ACTIONS: STATUTORY PERIOD COMMENCES ONLY WHEN PLAINTIFF HAS NOTICE OF INJURY

Miami v. Brooks, 70 So.2d 306 (Fla. 1954)

Plaintiff received X-ray therapy treatment at a hospital of defendant municipal corporation. Five years later she consulted a physician for an ulcer that had developed at the place of treatment and found that she had been burned by an overdose of X ray. Within the prescribed period[1] from the time she learned of the negligent act and the resulting injury plaintiff gave notice to the city as required by the city charter and subsequently filed suit. On the issue of whether the statute of limitations began to run on commission of the negligent act or on notice to plaintiff, HELD, the statute of limitations begins to run only upon notice to plaintiff of the invasion of a legal right.

By the weight of authority the statute of limitations runs regardless of whether the injured party has knowledge of a right to sue or of the facts out of which this right arises.[2] Since in certain cases the injured party is unaware of any damage, the practical effect of this rule is sometimes to start the statutory period running before a suit can be maintained. Courts justify this result by the rationale that occasional hardships are necessarily incident to a rule that arbitrarily makes legal remedies expire with the mere lapse of time.[3] An increasing number of courts, however, interpret more liberally the time when the statutory period commences.[4] Florida's position, heretofore lacking in clarity,[5]

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[1]FLA. STAT. §95.24 (1953).

[2]Birmingham v. Weston, 233 Ala. 563, 172 So. 643 (1937); Neff v. New York Life Ins. Co., 30 Cal.2d 165, 180 P.2d 900 (1947); Giambozi v. Peters, 127 Conn. 380, 16 A.2d 833 (1940); Silvertooth v. Shallenberger, 49 Ga. App. 133, 174 S.E. 365 (1934); Becker v. Porter, 119 Kan. 626, 240 Pac. 584 (1925); DeLong v. Campbell, 157 Ohio St. 22, 104 N.E.2d 177 (1952); Industrial Chrome Plating Co. v. North, 175 Ore. 351, 153 P.2d 835 (1944).

[3]State *ex rel.* Papadopoulos v. Industrial Comm'n, 130 Ohio St. 77, 196 N.E. 780 (1935); Pietsch v. Milbrath, 123 Wis. 647, 101 N.W. 388 (1904).

[4]Urie v. Thompson, 337 U.S. 163 (1949); Ehlen v. Burrows, 51 Cal. App.2d 141, 124 P.2d 82 (1942); Fraser v. Atlanta Title and Trust Co., 66 Ga. App. 630, 19 S.E.2d 38 (1942); Kitchener v. Williams, 171 Kan. 540, 236 P.2d 64 (1951); Perrin v. Rodriguez, 153 So. 555 (La. App. 1934).

[5]Miami Beach v. Alexander, 61 So.2d 917 (Fla. 1952); St. Francis Hospital, Inc. v. Thompson, 159 Fla. 453, 31 So.2d 710 (1947); Berger v. Jackson, 156 Fla. 251, 23 So.2d 265 (1945); Franklin Life Ins. Co. v. Thorpe, 130 Fla. 546, 178 So. 300 (1938).

is now in line with these liberal jurisdictions.[6]

In the instant case the Florida Court relied on a recent decision by the United States Supreme Court[7] that a three-year statute of limitations[8] began to run at the time that the plaintiff knew or should have known that he had sustained an injury rather than when he was first exposed to injurious silica dust. The Court reasoned that the running of the statute of limitations prior to the time the plaintiff had reason to know of his injury could not be intended by any humane legislative plan and that such a consequence could not be "reconciled with the traditional purposes of statutes of limitation."[9]

In a prior action against a municipality[10] the Florida Court stated that the injured party's knowledge of a negligent act starts the running of the statutory period even though the full consequences do not materialize until a later date. That case, however, was distinguished from the instant case, in which the plaintiff had no knowledge of the commission of a negligent act against her. The limitation period begins to run only when the plaintiff knows or should know that he has sustained an injury, even though this is long after the wrong occurred.

The Court also recognized implied contract, with a longer statute of limitations, as an alternative theory of relief in the instant case. In a more recent decision[11] the Court held notice provisions inapplicable to actions for wrongful death, thus firmly establishing its attitude toward restricting the operation of notice provisions in city charters. The Court has adopted a common sense interpretation of the statute of limitations, leaving intact the desirable public policy behind statutes of this type.[12]

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[6]Cases cited note 3 *supra.*
[7]Urie v. Thompson, 337 U.S. 163 (1949).
[8]35 STAT. 66 (1908), as amended, 45 U.S.C. §56 (1952).
[9]Urie v. Thompson, 337 U.S. 163, 170 (1949).
[10]Cristiani v. Sarasota, 65 So.2d 878 (Fla. 1953).
[11]Parker v. Jacksonville, 82 So.2d 131 (Fla. 1955).
[12]See, *e.g.*, Chase Securities Corp. v. Donaldson, 325 U.S. 304, 314 (1945).