

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES T. "BEAU" WISEMAN AND
CHRISTY WISEMAN,

Appellants,

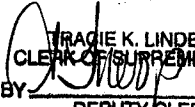
vs.

WASHOE COUNTY; DEAN R. HINITZ,
PH.D.; JOHN MACINTYRE; VISTAR;
RICHARD M. BALDO, PH.D.; BETTY
SPRUILL; AND RICHARD
BLANCHARD,
Respondents.

No. 48382

FILED

MAR 06 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from district court dismissal and summary judgment orders in a tort and breach of contract action. Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

In this case, we consider whether the district court erred in granting summary judgment against appellants Charles Wiseman and Christy Wiseman (the "Wisemans"), when it determined that various contract and tort claims were barred under the doctrine of res judicata and the statutes of limitations. We conclude that the district court did not err in granting summary judgment and dismissing the Wisemans' action because all of the Wisemans' claims were time barred.¹

¹Although we agree with the district court that the doctrine of res judicata barred many of the Wisemans' claims, because we conclude that all of the Wisemans' claims were time barred, we do not address the issue.

FACTS

Charles Wiseman (Charles) worked for Washoe County (the "County") for approximately twenty-four years. While managing the County's collections division, Charles claims to have uncovered many accounting problems and fund deficiencies, which he disclosed to Washoe County Manager, John MacIntyre (MacIntyre). Charles alleged that MacIntyre "ordered" him, under implied threat of termination, to attend Vistar training in an effort to stop him from further disclosing the fund deficiencies.

Vistar is an experiential educational program administered by Vistar Nevada, a professional seminar corporation. Charles alleged that Vistar was derived from another similar program called "Lifespring," which, due to its intensity, had been known to cause dangerous side effects such as suicide and psychosis in certain individuals. Charles alleged in his complaint that the principals of Vistar, Dean Hinitz, Betty Spruill, and Richard Blanchard, knew the dangers of the program. Charles also alleged that MacIntyre knew of these dangers and yet recommended Vistar to him.

Charles claims that while participating in Vistar, he suffered from various indignities and emotional traumas. Charles alleged that Vistar's principals told him that disclosing the County's purported fund discrepancies was improper. Charles also alleged that he was once kidnapped by other Vistar members and that MacIntyre and Vistar's principals approved and participated in the kidnapping. As a cumulative result of Vistar's "cult-like" program and the County's retaliations,

Charles alleged that he started to drink and that his mental health declined substantially, forcing him to take an early disability retirement.²

The federal action

In June of 1999, the Wisemans brought an action against the County, MacIntyre, Vistar, Vistar's principals, and Richard Baldo in the United States District Court, District of Nevada, alleging that the defendants violated various federal and state laws.³ On March 31, 2000, the federal court dismissed all claims over which the court had original jurisdiction. After dismissing the federal claims, the federal court declined to exercise its jurisdiction over the Wisemans' pendant state law claims and also dismissed them without prejudice. The federal court also found that the Wisemans' claims against the defendants were frivolous and awarded attorney fees to the defendants. The Wisemans appealed to the United States Court of Appeals for the Ninth Circuit, which affirmed the federal district court's decision, but reversed the award of attorney fees.

²In the complaint, Charles alleged that he was a recovering alcoholic who before the Vistar Program had his alcoholism under control.

³ The Wisemans alleged following claims: breach of contract, tortious breach of covenant of good faith and fair dealing, negligence, false imprisonment, negligent misrepresentation, Intentional misrepresentation, claim for wages civil rights violation under 42 U.S.C. §1983, conspiracy to deprive civil rights under 42 U.S.C. §1985, violation of Americans with Disabilities Act, negligent infliction of emotional distress, racketeering (RICO) in violation of NRS 207.350 & 18 U.S.C. § 1964(c), intentional infliction of emotional distress, assault and battery, intentional concealment, religious and sexual harassment, and discrimination under 42 U.S.C. §2000(e).

The State court action

On September 11, 2002, the Wisemans brought the various pendant state law claims, which they had previously asserted in the federal action, in the Second Judicial District Court for the State of Nevada, arguing that 28 U.S.C. §1367(d) tolled the statutes of limitations for the claims.⁴ In addition, the Wisemans brought conspiracy claims against all defendants except the County, breach of contract claim against Vistar and its principals, and a professional malpractice claim against Hinitz.

The district court dismissed the Wisemans' action after finding that the statutes of limitations had run on all of the Wisemans' claims. The district court also found that the doctrine of res judicata precluded many of the Wisemans' claims. In addition, the district court found that the Wisemans failed to provide any genuine issues of material facts to support their remaining claims. We conclude that the district court did not err in granting summary judgment because the Wisemans' claims were barred by the statutes of limitations and/or unsupported by genuine issues of material fact.

⁴The Wisemans brought the following pendant state laws claims: tortious breach of covenant of good faith and fair dealing, breach of contract against the County, negligence, false imprisonment, negligent misrepresentation, intentional misrepresentation, claims for wages, negligent infliction of emotional distress, intentional infliction of emotional distress, assault and battery.

DISCUSSION

The Wisemans' argument in support of viability of their claim is twofold. For the pendant state law claims against the County and MacIntyre, the Wisemans argue that the statutes of limitations are tolled pursuant to 28 U.S.C. §1367(d). As to new claims brought for the first time in the state court, (conspiracy against all respondents except the County, breach of contract against Vistar and its principals, and malpractice) the Wisemans argue that they are not time barred since the statutes of limitations did not begin to run until June 2000, when Charles was forced to retire and "sustained damages."

"This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court."⁵

The Wisemans claim that their pendant state law claims—conspiracy, negligence, intentional and negligent misrepresentation, intentional and negligent infliction of emotional distress against the County and MacIntyre—were timely. They argue that these claims became final, for the purpose of tolling the statutes of limitations, upon the Ninth Circuit Court of Appeal's disposition on August 12, 2002. Thus, the Wisemans argue that pursuant to 28 U.S.C. §1367(d), they had thirty days from August 12, 2002, to file these claims in state court. We disagree.

28 U.S.C. §1367(d) provides in pertinent part:

(d) The period of limitations for any claim asserted under subsection (a) and for any other claim in the same action that is voluntarily

⁵Wood v. Safeway, 121 Nev. 727, 729, 121 P.3d 1026, 1029 (2005).

dismissed at the same time as or after the dismissal of the claim under subsection (a) shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

This court reviews questions of statutory interpretation de novo.⁶ Generally, it is true that under 28 U.S.C. §1367(d) a statute of limitations is tolled for thirty days after the final adjudication by an appellate court.⁷ However, in a case where no appeal is taken, the trial court's ruling becomes the final adjudication when the time for appeal has run.⁸

Here, the Wisemans only appealed the federal court's rulings on the federal claims, and did not appeal the court's dismissal of the pendant state law claims. Consequently, the claims became final on March 31, 2000, when the federal district court dismissed them without prejudice and, the Wisemans had thirty days from March 31, 2000, until April 31, 2000, to bring the claims in the appropriate court. They failed to do so. Instead, the Wisemans filed the state action on September 11, 2002, well past the thirty-day tolling period provided in 28 U.S.C. §1367(d). Accordingly, we conclude that the district court properly dismissed the Wisemans' pendant state law claims.

⁶Marquis & Aurbach v. Dist. Ct., 122 Nev. __, __, 146 P.3d 1130, 1136 (2006).

⁷Grider v. USX Corp., 847 P.2d 779, 784 (Okl. 1993).

⁸State ex rel. Derryberry v. Kerr-McGee Corp., 516 P.2d 813, 820 (Okl. 1973).

The Wisemans argue that the claims of conspiracy⁹ (against MacIntyre, Vistar and its principals) and breach of contract and malpractice claims were not time barred because the statutes of limitations did not begin to run until June 2000, when Charles was forced to retire as a result of the aforementioned conduct by the respondents. We disagree.

The Wisemans' conspiracy claim was based on respondents MacIntyre, Vistar, and Vistar's principals' alleged efforts to conceal the County's fund deficiencies through their threats against Charles. Civil conspiracy is governed by the catch-all provision of NRS 11.220, which provides that an action "must be commenced within 4 years after the cause of action shall have accrued[,]"¹⁰ from the time the party discovered or should have discovered facts constituting [his] claims."¹¹

As with the alleged breach of contract and professional malpractice by Vistar and its principals, the alleged conspiracy would have had to occur between April 1997 and July 1997 while Charles was enrolled in Vistar. Therefore, the Wisemans had until 2001 to bring the

⁹One of the overt acts alleged by the Wisemans in support of the conspiracy claim is that the respondents engaged in litigation fraud involving the deposition transcripts during the federal action. Thus, the Wisemans assert that the statute of limitations for the conspiracy claim did not begin to run until the federal action began. This court need not reach the merits of this matter because the federal court has determined that the respondents did not engage in any misconduct during the federal action.

¹⁰Siragusa v. Brown, 114 Nev. 1384, 1392, 971 P.2d 801, 806 (1998).

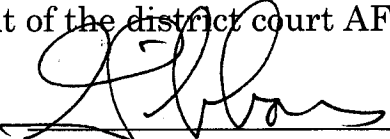
¹¹Id. at 1391, 971 P.2d at 806.

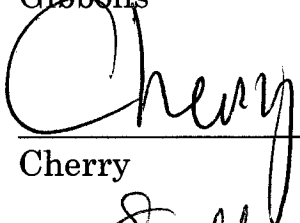
conspiracy claim. Likewise, the statutes of limitations for malpractice and breach of contract claims are two and four years, respectively.¹² Thus, because the Wisemans brought the claims in 2002, five years past 1997, when the causes of action accrued, we conclude that the district court properly dismissed the claims.

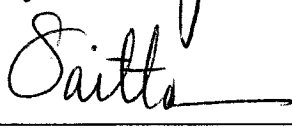
CONCLUSION

Having considered each of the Wisemans' claims, we find them to be without merit because they were filed outside of the applicable statutes of limitations.¹³ Therefore, we conclude that the district court did not err in dismissing the Wisemans' claims on the ground that they were untimely. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C. J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

¹²See NRS 11.190. We also note that Charles, before enrolling in Vista, executed a "hold harmless and release agreement" that immunizes Vistar and its principals against the Wisemans' claims.

¹³We also uphold the district court's dismissal of Christy Wiseman's claim for loss of consortium because her claim is a derivative of Charles' claim. See Harbury v. Hayden, 444 F.Supp. 2d 19, 43 (D.D.C. 2006) (holding that a wife's derivative tort claims would be dismissed, where claims based on husband's injuries were not viable).

cc: Second Judicial District Court Dept. 7, District Judge
Mirch & Mirch
Kilpatrick Johnston & Adler
Lemons Grundy & Eisenberg
Piscevich & Fenner
Washoe District Court Clerk