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Wrongful Death Act and Fraudulent Concealment

In this week's post we take a look at the recent Indiana Court of Appeals decision in *Alldredge v. The Good Samaritan Home, Inc.*, which found, as a matter of first impression, that the doctrine, but not the statute, of fraudulent concealment operates to toll the two-year statute of limitation for actions under Indiana's Wrongful Death Act. The case is a major victory for persons who have suffered the loss of a loved one.

The case arises from the passing of Venita Hargis, a resident at a nursing home in Evansville owned and operated by Good Samaritan. In November 2006, the elderly Miss Hargis reportedly fell and began vomiting several hours later, whereupon she was taken to a nearby hospital. Nine days later, Miss Hargis passed away due to head injuries that were said to have stemmed from her fall. This version of events was the version told to Miss Hargis' family by the nursing home.

Almost three years to the day a former employee informed Miss Hargis's daughter that her mother's "head injury had not been caused by a simple fall as [she] had previously been led to believe." According to the former employee, Miss Hargis was the victim of an attack by another elderly resident of the home who had pushed her to the floor causing the head injury. The following year, Miss Hargis' family undertook the procedural formality of opening a Wrongful Death Estate to pursue a claim against the nursing home for the loss of Miss Hargis under Indiana's

Wrongful Death Act. Finally, on October 27, 2011 – almost two years after learning of the true cause of Miss Hargis’ passing, the family filed suit.

The issue in the case arises entirely from the timing of when the suit was filed. Pursuant to the Wrongful Death Act, a claim must be filed within two-years of the person’s passing. Your first instinct may well be to call this the Act’s “statute of limitation.” I entirely sympathize with your gut instinct to do so, and ultimately, it turns out, you would not be wrong to do so. However, such a simple assertion is premature as the ultimate decision of the case turns on whether that two-year period is a “statute of limitation.”

In order to fully understand the nuances of this decision, it is important to understand a bit of the history behind Indiana’s Wrongful Death Act.

Indiana first enacted a wrongful death statute in 1852. Like other wrongful death acts across the country, this statute was enacted to solve what was perceived to be a gross inequity in the common law—that because there was no common law action that allowed a person’s family members to recover when another’s wrongful act or omission killed their loved one and the person’s own claim died with him, it was often cheaper for a defendant to kill his victim than to maim him.

To summarize, prior to the adoption of wrongful death laws, there was no cause of action on behalf of a deceased person. Thus, were it not for the existence of the Wrongful Death Act the loved ones of the deceased person could not bring a case.

Throughout much of modern Indiana case law, the Court of Appeals has routinely held that the two-year time period was not a “statute of limitation.” It was actually a “condition attached to the right to sue.” This meant that no claim could be brought more than two years after the death of the person. No further considerations were to be taken. It was a simple matter of marking time. However, this case arose due to language in two 2008 Indiana Supreme Court decisions that referred to the two-year time period as a “statute of limitations provision.” This assertion called into question the prior interpretations by the Court of Appeals. The Court of Appeals found that it had been, in fact, mistaken in its previous decisions and concluded that the two-year time period is a “statute of limitation.”

At this point, you are probably wondering why any of that mattered. Set your mind at ease, your author would not lead you on a journey that ends in more confusion than when we began. The reason this distinction matters is because a “statute of limitation” can be manipulated so as to extend the period in which to file a case. One method for extending a statute of limitation beyond its original confines

is the Indiana Fraudulent Concealment Statute. The Fraudulent Concealment Statute states:

If a person liable to an action conceals the fact from the knowledge of the person entitled to bring the action, the action may be brought at any time within the period of limitation after the discovery of the cause of action.

This means that if someone hides the facts necessary to know what happened, then the injured person is not punished by that concealment. It is designed to create a system where a defendant like the nursing home could not just hide the details for a couple years and then get off scot-free.

On first blush, it would appear that we have our answer and the Fraudulent Concealment Statute grants the right to bring the claim more than two years later. However, it is not that easy. Recall that Indiana adopted wrongful death laws in 1852. Before that, in 1843, Indiana adopted the Fraudulent Concealment Statute. Because of a peculiar and frankly absurd concept in Indiana law, this timing issue prevents straight application of the Fraudulent Concealment Statute to the Wrongful Death Act. This bizarre concept originates from the 1956 Indiana Supreme Court case *Guy v. Schuldt*, “holding that the Fraudulent Concealment Statute was inapplicable to medical malpractice cases because the medical malpractice statute was enacted many years after the Fraudulent Concealment Statute, and thus the Fraudulent Concealment Statute could not be considered an ‘exception’ to the statute of limitations set forth in the medical malpractice statute.”

Nevertheless, just because the Fraudulent Concealment Statute did not hold the answer does not mean that the plaintiffs are without recourse. The Court of Appeals, continuing the logic of the medical malpractice cases, adopted the solution applied to medical malpractice cases. In the medical malpractice context, the Indiana Supreme Court has held that “where a long latency period prevents a patient from discovering a physician’s malpractice within the applicable statute of limitations, the medical malpractice statute of limitations cannot be constitutionally applied to bar the plaintiff’s action.” Chiefly, application of the statute would violate both Article 1, section 12 of the Indiana Constitution and the XIV Amendment to the U.S. Constitution.

As such, the court held that, like in medical malpractice cases, a would-be plaintiff has the same period in which to bring his or her claims – i.e. the original two-year time period. Further, this time would begin to be calculated from the date that the would-be plaintiff could have discovered the information that was concealed.

To summarize, the court held:

Accordingly, we conclude that where one fraudulently conceals the existence of a wrongful death action beyond the WDA's two-year limitations period, the decedent's personal representative shall be entitled to commence the action within the lesser of two years from the date of the discovery of the cause of action or two years from the discovery of facts that, in the exercise of reasonable diligence, should lead to the discovery of the wrongful act or omission that resulted in the decedent's death.

This is a major victory for Hoosiers and for the rule of law founded in justice and good sense. It deprives wrongdoers from being able to benefit from their own malfeasance.

Join us again next time for further discussion of developments in the law.

Sources

- *Allredge v. The Good Samaritan Home, Inc.*, 982 N.E.2d 378 (Ind. Ct. App. 2013).
- *Guy v. Schuldt*, 236 Ind. 101, 138 N.E.2d 891 (1956).
- *Martin v. Richey*, 711 N.E.2d 1273 (Ind. 1999).
- Indiana Code article 34-23 – Indiana Wrongful Death Act.
- Indiana Code section 34-11-5-1 – Indiana Fraudulent Concealment Statute.
- Article 1, section 12 of the Indiana Constitution.
- XIV Amendment to the U.S. Constitution.

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