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The Impact of Death of Defendant Prior to Filing Claim for Injuries

Though we usually like to give thorough – i.e. lengthy – discussions of topics on the Hoosier Litigation Blog, today’s post will be much more brief than usual. For our devoted readers accustomed to tuning into to read my pontifications and hear me bloviate, I apologize. Your author has spent much of this week drafting a lengthy appellate brief and is departing this afternoon to South Bend for a family celebration. Nevertheless, like a mighty scorpion, though the size of this post may not be awe-inspiring, it is unwise to overlook it.

This week we take a look at a decision by the Indiana Court of Appeals that is as hot off the presses as can be since it was released just a few hours ago. The case, *Mayer v. Davis*, arises from a scenario in which the amount of recovery that could be made was limited due to the timing of the filing of the claim. We have previously discussed a scenario in which there is a shorter time limit for filing a claim due to the nature of the defendant than the typical statute of limitations. In that discussion, it was the duty to file a tort claims notice within a certain period of time prior to bringing suit against a governmental entity. In the *Mayer* case, the issue is a bit more complex.

The issue of today’s discussion is how the death of a defendant can limit the ability to recover damages in a lawsuit.

The plaintiff, Mr. Davis, filed a lawsuit after suffering injuries from an automobile accident. At trial, the jury awarded Mr. Davis \$60,000 for his injuries. Shortly thereafter, the defendant filed a motion to reduce the judgment to the limit of the applicable insurance policy. While it is often functionally the case that recovery is limited to the limits of an insurance policy, it is quite rare that a defendant has the right to ask the court to decrease the actual amount awarded. What gave rise to this motion is that the defendant, Paige Winn, had died of unrelated causes after the accident. To that end, the actual defendant was the Estate of Miss Winn as represented by Mr. Mayer. The basis for the motion to reduce the judgment was the claim that Mr. Davis had failed to “timely file his claim against Winn’s Estate.”

To understand how all of this works, we need to look at some of the specific dates and timing of what took place. The collision was on October 12, 2007. Miss Winn passed away on June 8, 2008. Mr. Davis, on the figurative eve of the expiration of his statute of limitations period – in his case two years – filed his complaint on September 25, 2009. The case was tried on August 27 & 28, 2012. The timing of the actual trial is irrelevant, though a useful indicator of how long it can take to get a jury trial.

In Indiana, matters relating to the administration of a deceased person’s estate are governed by the state’s Probate Code. The Probate Code requires claims against the estate of deceased person to be filed in a specific period of time. The determination of the time period can be complicated based upon whether an estate was opened or not. If no estate was opened, then the would-be plaintiff must have an estate opened on behalf of the would-be defendant so that there is a legal fictitious entity to defend the claim. What is rather clear, with limited exceptions generally applying only to claims brought by the government, is that a claim such as Mr. Davis’ must be “filed within nine (9) months after the death of the decedent” or be barred forever.

As our discussion will further illustrate, that nine months bar is not necessarily a complete bar to any recovery. Further, I cannot stress enough that the nine-month window is not an absolute window. Depending on other factors a claim may well need to be filed sooner than that. Put simply, when it comes to the timing issues, consult an attorney knowledgeable on the matter and do so at the earliest possible convenience to avoid problems.

Before applying the Probate Code to Mr. Davis’ specific facts, the court provided a very useful discussion of how exactly a limitation such as the nine-month bar fits into the time limitations scheme of the law. The statute is not a statute of limitations – as it is not directed at the nature of the claim. “It is a nonclaim statute

and, as such, it imposes a condition precedent to the enforcement of a right of action . . . and precludes recovery when this condition is not met.” We have discussed a similar concept in the medical malpractice context. In Indiana medical malpractice, a claim must first be filed with the Indiana Department of Insurance prior to being able to file a lawsuit. This is essentially the same thing. Most importantly, as nonclaim statute, there are a whole host of defenses to its application that are available to overcome the statute of limitations that are not available to overcome a nonclaim statute.

Where the saving grace for any recovery for Mr. Davis is found is in Ind. Code § 29-1-14-1(f). Subsection f provides some saving language to the nine-month bar language, which is subsection d of the same part of the code. Subsection f states:

Nothing in this section shall affect or prevent the enforcement of a claim for injury to person or damage to property arising out of negligence against the estate of a deceased tortfeasor within the period of the statute of limitations provided for the tort action. A tort claim against the estate of the tortfeasor may be opened or reopened and suit filed against the special representative of the estate within the period of the statute of limitations of the tort. Any recovery against the tortfeasor's estate shall not affect any interest in the assets of the estate unless the suit was filed within the time allowed for filing claims against the estate. The rules of pleading and procedure in such cases shall be the same as apply in ordinary civil actions.

In the late 90s the Indiana Supreme Court in *Indiana Farmers Mutual Insurance Co. v. Richie* interpreted subsection f in accordance with the nine-month bar to find that where an insurance policy is applicable to payment of a judgment, a plaintiff can bring a claim against an estate after the nine-month period but that claim is limited to the proceeds of the policy.

Because Mr. Davis failed to file his claim against the estate or to open an estate in a timely manner, he was only entitled to recover the proceed limits of the insurance policy – my guess \$50,000. Under that assumption, the reduction cost Mr. Davis 20% of his recovery. Had he suffered even more serious injuries, the recovery would still have been capped at the applicable policy limit.

The procedural posture of the appeal came from a denial by the trial court to order the judgment amount reduced. On appeal, the court found no error in the denial. There are statutes such as the punitive damages statute or medical malpractice act that mandate a decrease in the amount recoverable. This portion of the Probate Code is not such a statute. It only limits the amount actually

recoverable, it does not do anything to impact the judgment itself. This is a hyper technical and unimportant distinction other than to note that it is for this reason that the trial court's decision was affirmed.

The lessons of the *Mayer v. Davis* case are very important. When a would-be defendant deceases, it is vitally important to act quickly to preserve your rights prior to the termination of a time period. Put simply,

There are more things in heaven and earth, Horatio,
Than are dreamt of in your [statute of limitations].

Hamlet: Act 1, scene 5, lines 166-67. That is, there are more roadblocks out there to bar compensation for injuries or losses than just a statute of limitations. Mr. Davis, in many ways is fortunate that his injuries were not much greater.

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

Sources

- *Mayer v. Davis*, ---N.E.2d---, No. 22A01-1212-CT-570 (Ind. Ct. App. Jun. 21, 2013).
- *Indiana Farmers Mut. Ins. Co. v. Richie*, 707 N.E.2d 992 (Ind. 1999).
- Indiana Probate Code – Ind. Code art. 29-1.

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