

New Mexico Court of Appeals Rejects Discovery Rule

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"New Mexico Court of Appeals Rejects Discovery Rule in Wrongful Death Act Claims"

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I. Introduction

There is a split of authority in courts across the country regarding the application of a discovery rule to wrongful death claims. Part of the split in authority is a result of differences in statutory language: some states' wrongful death statutes, such as New Mexico's, explicitly set forth when the wrongful death cause of action accrues (e.g. "as of the date of death").⁽¹⁾ Other states' wrongful death statutes are silent as to the accrual date.⁽²⁾ A number of jurisdictions refuse to apply a discovery rule to wrongful death cases when the applicable statute has defined "accrual," reasoning that courts should determine when a cause of action accrues only "in the absence of explicit instructions from the legislature."⁽³⁾ Other jurisdictions, swayed by policy argument concerns, apply a discovery rule under the rationale that a defendant whose conduct merely causes injury is subject to liability, whereas a defendant whose conduct causes death might have no exposure if the claim is time-barred.⁽⁴⁾ Prior to *Clark v. Johnson & Johnson*, in other contexts, the New Mexico courts adopted the rationale that if the statute defines "the accrual date," then a discovery rule cannot be applied to the action.⁽⁵⁾

II. *Clark v. Johnson & Johnson*

In *Clark*, the Court of Appeals addressed whether a discovery rule could be applied to a wrongful death action where the applicable statute defines "the accrual date."⁽⁶⁾ In this case, the autopsy revealed that the cause of a death was methadone intoxication.⁽⁷⁾ Plaintiffs sued the decedent's doctors. Then, just over three years after the decedent's death, Plaintiffs claimed to have discovered that a reflux medication might have been the cause of death.⁽⁸⁾ Even though the New Mexico state legislature defines "accrual" in a wrongful death action as three years after the date of death,⁽⁹⁾ Plaintiffs were allowed to amend their complaint to add claims against the manufacturer of the drug.⁽¹⁰⁾ Shortly thereafter, the pharmaceutical manufacturer successfully moved to dismiss the amended complaint based on the fact that it was filed more than three years after the death.⁽¹¹⁾ Plaintiffs appealed, asking the Court of Appeals to decide whether "the specific language in the Wrongful Death Act, stating a cause of action accrues as of the date of death, 'prevents application of the discovery rule in a case of death.'"⁽¹²⁾

In asking the Court to apply a discovery rule to wrongful death actions, Plaintiffs based their contentions on policy arguments favoring liberal construction of the Wrongful Death Act to allow survivors of a deceased person the same amount of time to discover a cause of action for wrongful death as that allowed for an injured person.⁽¹³⁾ The Court explicitly rejected these arguments. In so doing, it distinguished other jurisdictions' application of a discovery rule by noting that many of those jurisdictions have wrongful death statutes that do not contain specific language defining the date of accrual of the statute of limitations.⁽¹⁴⁾ The Court explained that, "given the lack of specificity, these courts were free to apply their normal limitations rules in a wrongful death context."⁽¹⁵⁾ Because New Mexico's Wrongful Death Act, on the other hand, gives explicit and unambiguous instructions

as to when a cause of action for wrongful death accrues (3 years after death), the Court held that when the cause of action accrues was not a judicial determination.⁽¹⁶⁾ Accordingly, interpreting the plain language of the statute, a wrongful death action accrues 3 years after death, and there is no room for interpretation to apply a discovery rule to that calculation.

The Court fully understood the practical effect of its decision to enforce the plain language of the statute, thereby rejecting the application of a discovery rule in wrongful death cases. Indeed, the Court noted that “[w]e understand the practical effect of enforcing the statute in accordance with its clear terms: defendants are better off in some cases causing the death of someone rather than leaving them alive. This result is in some ways an anomaly, but we cannot ignore or override the clear language the Legislature chose to enact.”⁽¹⁷⁾

III. Conclusion

The New Mexico Court of Appeals decision in *Clark* puts to rest the argument that a discovery rule can be applied to New Mexico’s Wrongful Death Act. Pursuant to the plain language of § 41-2-2, the cause of action accrues as of the date of death.

1. See, e.g., NMSA 1978, § 41-2-2; *Poblieglo v. Monsanto Co.*, 521 N.E.2d 728, 731 (Mass. 1988); *Hubbard v. Libi*, 229 N.W.2d 82, 84 (N.D. 1975) (“The Legislature... expressed the clear intent that the cause of action is deemed to have accrued at the time of the death of the party injured.”); *Moreno v. Sterling Drug, Inc.*, 787 S.W.2d 348, 352 (Tx. 1990) (“Section 16.003(b) . . . prescribes an absolute limitations period by expressly specifying that ‘accrual’ is the date of death”); *Corkill v. Knowles*, 955 P.2d 438, 443 (Wyo. 1998) (“[the wrongful death] statute does not contain language which permits tolling of the statutory time limit until the elements of the cause of action are discovered”).

2. See, e.g. U.C.A. 1953 § 78-12-28 (“An action may be brought within two years . . .”).

3. See authority cited in Endnote 1.

4. *Hanebuth v. Bell Helicopter Int’l*, 694 P.2d 143, 147 (Alaska 1984).

5. See, e.g., *Roberts v. Southwest Cmty. Health Servs.*, 114 N.M. 248, 252, 837 P.2d 442, 446 (1992) (§ 37-1-8 and the discovery rule apply to non-qualified healthcare providers in medical malpractice actions); *Sharts v. Natelson*, 118 N.M. 721, 885 P.2d 642 (1994) (discovery rule applied to legal malpractice action involving NMSA 1978, § 37-1-4).

6. *Clark v. Johnson & Johnson*, New Mexico Court of Appeals No. CV-2000-08718.

7. *Id.* at ¶ 2.

8. *Id.* at ¶ 3.

9. NMSA 1978, § 41-2-2.

10. *Clark*, New Mexico Court of Appeals No. CV-2000-08718, ¶ 4.

11. *Id.* at ¶ 5.

12. *Id.*

13. *Id.* at ¶ 9.

14. *Id.* at ¶ 17.

15. *Id.*

16. *Id.* at ¶ 11.

17. *Id.* at ¶ 19.