

**WRONGFUL DEATH – STATUTE OF LIMITATIONS – MICHIGAN’S
STATUTE OF LIMITATIONS FOR WRONGFUL DEATH ACTIONS IS
EXCLUSIVE, THEREFORE PRECLUDING THE USE OF THE COMMON LAW
DISCOVERY RULE. *Trentadue v. Gorton*, 738 N.W.2d 664 (Mich. 2007).**

INTRODUCTION

In *Trentadue v. Gorton*,¹ the Michigan Supreme Court was asked to decide whether the applicable statute of limitations barred a wrongful death suit, or whether the common law discovery rule tolled the statute until the identity of the murderer was discovered.² The decedent, Margarette F. Eby, was found raped and murdered in her Flint home in November of 1986.³ The murder remained unsolved until 2002, when DNA evidence determined that Jeffrey Gorton had committed the crime.⁴ Gorton was charged and convicted of murder and was sentenced to life imprisonment.⁵ At the time of Eby’s death, Gorton had been an employee of his parents’ corporation, the Buckler Automatic Lawn Sprinkler Company (Buckler).⁶ Buckler serviced the sprinkler systems on the Ruth Mott Family Estate, where Eby leased the gatehouse and lived alone.⁷ The gatehouse basement contained the sprinkler system controls for the estate, which Gorton was provided access to by Mott Estate staff members.⁸

In August of 2002, Dayle Trentadue, Eby’s daughter and personal representative of her estate, filed a wrongful death claim against several defendants.⁹ The defendants included: Buckler; Buckler’s owners Laurence and Shirley Gorton; Jeffrey Gorton; Ruth Mott; MFO Management Company, which provided administrative services to the Mott family; and two of Mott’s staff members.¹⁰ The plaintiff alleged negligence in hiring regarding the Gortons and negligence in security and allowing access to the gatehouse regarding the other defendants.¹¹ The defendants, except Jeffrey Gorton, each moved for summary disposition, arguing that plaintiff’s suit was barred by the three-year statute of

-
1. 738 N.W.2d 664 (Mich. 2007).
 2. *Id.* at 666–67.
 3. *Id.* at 667.
 4. *Id.*
 5. *Id.*
 6. *Id.*
 7. *Id.*
 8. *Id.*
 9. *Id.*
 10. *Id.*
 11. *Id.*

limitations for a wrongful death action.¹² The trial court denied the motions of Buckler and its owners, finding that the common law discovery rule allowed the action.¹³ The court reasoned that all of the elements of negligence were not present until the killer was identified.¹⁴ However, the trial court granted the motions of the other defendants because the plaintiff should have known there was inadequate security at the time of Eby's death.¹⁵ On review, the court of appeals found that *all* of the defendants' motions for summary disposition should have been denied, basing its conclusion on the discovery rule.¹⁶

Buckler, the Gortons, and MFO Management Company appealed to the Michigan Supreme Court and leave was granted. The court found that the statutory scheme for wrongful death actions was exclusive, and consequently the common law discovery rule was abrogated.¹⁷ Therefore, the defendants' motions for summary disposition should have been granted.¹⁸ Thus, in Michigan, a plaintiff's wrongful death suit is precluded if she could not bring the suit within the three-year statute of limitations period, even if the identity of the killer was unknown.

I. BACKGROUND

Chapter 58 of the Revised Judicature Act of 1961¹⁹ contains the statutes on the limitations of actions relevant to *Trentadue*. In particular, in a wrongful death suit, Michigan Compiled Laws section 600.5805(10) states that "[t]he period of limitations is [three] years after the time of the death or injury . . . to recover damages for the death of a person, or for injury to a person or property."²⁰ Section 600.5827 clarifies that "the period of limitations runs from the time the claim accrues [T]he claim accrues at the time the wrong upon which the claim is based was done regardless of the time the damage results."²¹ The Act also provides for tolling of the limitations period in certain circumstances: specifically in actions alleging professional and medical malpractice,²² actions against

12. *Id.*

13. *Id.* at 668.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 672.

18. *Id.* at 680.

19. MICH. COMP. LAWS ANN. §§ 600.5801–.5869 (West 2007) (Chapter 58 is entitled "Limitations of Actions").

20. § 600.5805(10).

21. § 600.5827.

22. § 600.5838(2); § 600.5838(a)(2).

specified defendants alleging injuries from unsafe property,²³ and actions alleging fraudulent concealment of a claim.²⁴

In 1963, the Michigan Supreme Court in *Johnson v. Caldwell*²⁵ found that the applicable statute of limitations in a medical malpractice case would produce “grave inequities” and accordingly adopted the discovery rule.²⁶ The court described the rule, stating that “[t]he limitation . . . statutes in malpractice cases do not start to run until the date of discovery, or the date when, by the exercise of reasonable care, plaintiff should have discovered the wrongful act.”²⁷ The discovery rule was subsequently applied in many contexts outside the scope of medical malpractice.²⁸ Significantly, in *Chase v. Sabin*,²⁹ the court held “that the discovery rule governs the accrual date for *negligence* claims.”³⁰

A court’s willingness to apply the discovery rule may be attributable to the various policy considerations for statutes of limitations.³¹ “[T]he primary purposes behind statutes of limitations are: 1) to encourage plaintiffs to pursue claims diligently, and 2) to protect defendants from having to defend against stale and fraudulent claims.”³² When neither of these policy considerations will be furthered by the application of a statute of limitation, the discovery rule may be justified. This logic is applicable “because statutes of limitation do not evidence a legislative intent to extinguish a cause of action before the plaintiff is aware of the possible cause of action.”³³ Despite the aforementioned authority to the contrary, the court in *Trentadue* reconsidered whether the statutory scheme codified in the Chapter 58 of the Revised Judicature Act of 1961 and the common law discovery rule could continue to co-exist.

23. § 600.5839(1).

24. § 600.5855.

25. 123 N.W.2d 785 (Mich. 1963).

26. *Id.* at 791.

27. *Id.*

28. See *Moll v. Abbott Labs.*, 506 N.W.2d 816 (Mich. 1993) (pharmaceutical products liability action); *Larson v. Johns-Manville Sales Corp.*, 399 N.W.2d 1 (Mich. 1986) (asbestos related products liability action); *Southgate Cmty. School Dist. v. West Side Constr. Co.*, 247 N.W.2d 884 (Mich. 1976) (breach of warranty claim); *Williams v. Polgar*, 215 N.W.2d 149 (Mich. 1974) (negligent misrepresentation action).

29. 516 N.W.2d 60 (Mich. 1994).

30. *Id.* at 65 (emphasis added).

31. *Lemmerman v. Fealk*, 534 N.W.2d 695, 698 (Mich. 1995).

32. *Id.* (quoting *Larson*, 399 N.W.2d at 5). See also *Trentadue v. Gorton*, 738 N.W.2d 664, 683 (Mich. 2007) (Weaver, J., dissenting).

33. *Chase*, 516 N.W.2d at 63.

II. ANALYSIS

A. *The Majority Opinion – The Plain Language of the Statutory Scheme Precludes the Use of the Common Law Discovery Rule to Toll the Date of Accrual of a Claim*

The *Trentadue* court rejected the court of appeals' finding that the claims did not accrue until the plaintiff discovered that Jeffrey Gorton was the murderer.³⁴ The court reached this conclusion "because the statutory scheme is exclusive and thus precludes this common law practice of tolling accrual based on discovery in cases where none of the statutory tolling provisions apply."³⁵ The court, quoting *Hoerstman General Contracting v. Hahn*,³⁶ stated:

[W]here comprehensive legislation prescribes in detail a course of conduct to pursue and the parties and things affected, and designates specific limitations and exceptions, the Legislature will be found to have intended that the statute supersede and replace the common law dealing with the subject matter.³⁷

The court showed, as an example, that MCL section 600.5855 states that the limitations period is tolled when a claim is fraudulently concealed.³⁸ Since the statute provided its own exception for tolling, the discovery rule would "render [section] 5855 effectively meaningless" because there would be no "need to establish that the claim or tortfeasor had been fraudulently concealed."³⁹ "[I]f a statutory provision and the common law conflict, the common law must yield."⁴⁰ Therefore, the court concluded that the discovery rule may not be used to toll accrual in avoidance of the plain language of the statute of limitations.⁴¹

In accordance with its holding, the court overruled *Johnson* and its progeny.⁴² The court justified this decision by reasoning that "by its nature, the discovery rule does not create expectation or reliance interests."⁴³ A plaintiff does not postpone her claim due to reliance on the discovery rule. A defendant, on the other hand, should be able, after a

34. *Trentadue*, 738 N.W.2d at 670.

35. *Id.*

36. 711 N.W.2d 340 (Mich. 2006).

37. *Trentadue*, 738 N.W.2d at 671 (quoting *Hoerstman*, 711 N.W.2d at 346).

38. MICH. COMP. LAWS ANN. § 600.5855 (West 2007).

39. *Trentadue*, 738 N.W.2d at 671.

40. *Id.* at 670–71 (quoting *Pulver v. Dundee Cement Co.*, 515 N.W.2d 728, 732 n.8 (Mich. 1994)).

41. *Id.* at 672.

42. *Id.*

43. *Id.* (citing *Robinson v. Detroit*, 613 N.W.2d 307 (Mich. 2000)).

certain period of time, to be free from having to defend against stale claims.⁴⁴

The court also rejected the plaintiff's argument that by precluding the use of the discovery rule, she will be deprived due process of law.⁴⁵ Specifically, the plaintiff argued that it was unconstitutional for the Legislature to deprive her of a cause of action when she had an injury, but "through no fault of [her] own, [had] no knowledge of who injured [her]. . . ."⁴⁶ She relied on the court's decision in *Price v. Hopkin*,⁴⁷ which held that due process was violated when a legislature "[took] away an existing right of action, by a statute of limitations which allows no time in which to bring suit after the statute has come into operation."⁴⁸ The *Trentadue* court distinguished *Price* from the case before it, reasoning that the limitations period had remained the same since the plaintiff's claims accrued.⁴⁹ "A plaintiff's right to due process is not violated [simply] because a desired remedy is no longer available"⁵⁰ Therefore, the only due process analysis necessary was to determine whether the statute "bears a reasonable relation to a permissible legislative objective."⁵¹ Here, the objective of "relieving defendants of the burden of defending claims brought after the time so established" was sufficient so as not to violate the plaintiff's due process rights.⁵²

Finally, the court rejected the plaintiff's last argument that the court should "employ a 'pinpoint application of equity'" to her specific case and render her claims timely.⁵³ Here, the plaintiff relied on *Bryant v. Oakpointe Villa Nursing Centre, Inc.*,⁵⁴ which allowed a malpractice claim to be brought after the applicable limitations period where the plaintiffs mistakenly believed the claim was in negligence, which had a longer limitations period.⁵⁵ In response to this argument, the *Trentadue* court stated that *Bryant* was limited to cases where "the courts themselves have created confusion," whereas here, "plaintiff [had] not detrimentally relied on confusing, pre-existing case law."⁵⁶ Accordingly, the court denied the application of equitable tolling.⁵⁷

44. *Id.* at 673.

45. *Id.* at 679.

46. *Id.* at 677.

47. 13 Mich. 318 (1865).

48. *Id.* at 324.

49. *Trentadue*, 738 N.W.2d at 678.

50. *Id.*

51. *Id.* (quoting *Phillips v. Mirac, Inc.*, 685 N.W.2d 174, 186 (Mich. 2004)).

52. *Id.* (quoting *O'Brien v. Hazelet & Erdal*, 299 N.W.2d 336, 340 (Mich. 1980)).

53. *Id.* at 679.

54. 684 N.W.2d 864 (Mich. 2004).

55. *Id.*

56. *Trentadue*, 738 N.W.2d at 679.

57. *Id.* at 680.

Ultimately, the court decided that the plain language of the statute of limitations precluded the use of the discovery rule.⁵⁸ Here, the plaintiff's cause of action accrued in 1986 at the time of Eby's rape and murder. The court found that the intent of the Legislature was to allow the defendants not to "face the threat of litigation [sixteen] years later, merely because plaintiff alleges she could not reasonably discover the facts underlying their potential negligence until 2002."⁵⁹ Therefore, the court reversed the court of appeals' decision denying summary disposition to the defendants.⁶⁰

B. *The Dissenting Opinions*

1. *Justice Weaver's Dissenting View that the Limitations Period did not Begin to Run Until the Murderer was Identified*

Justice Weaver would have applied the discovery rule, thus accruing the statute of limitations at the time the elements forming the cause of action could have been pleaded.⁶¹ While she conceded that the actual events of Eby's death occurred in 1986, Justice Weaver argued that "not all the elements of a wrongful death action had 'occurred'" at that time.⁶² For instance, the plaintiff could not know whether there was a duty owed until she knew the identity of the killer and his relationship to the other defendants.⁶³

In coming to her conclusion, Justice Weaver disagreed with the majority's analysis and found its authority unpersuasive.⁶⁴ While the majority relied on *Hoertzman General Contracting* to support its view that the statute of limitations at issue eliminated the common law discovery rule, Justice Weaver distinguished that case on the basis that it dealt with Article 3 of the Michigan Uniform Commercial Code (U.C.C.).⁶⁵ There, the court found that the U.C.C. superseded the common law defense of accord and satisfaction.⁶⁶ However, unlike the U.C.C., Chapter 58 of the Revised Judicature Act neither contains a provision defining the scope of the chapter, nor states that it is exclusive.⁶⁷ Moreover, in Chapter 58, where the Legislature wanted to abrogate the discovery rule, it did so specifically.⁶⁸ For example, the malpractice provision states that the claim

58. *Trentadue*, 738 N.W.2d at 680.

59. *Id.*

60. *Id.*

61. *Id.* at 683 (Weaver, J., dissenting).

62. *Id.*

63. *Id.* at 684.

64. *Id.* at 688–90.

65. *Id.* at 688; MICH. COMP. LAWS ANN. § 440.3101 (West 1994).

66. *Trentadue*, 738 N.W.2d at 688 (citing *Hoertzman Gen. Contracting v. Hahn*, 711 N.W.2d 340 (Mich. 2006)).

67. *Id.* at 689.

68. *Id.* at 690.

“accrues at the time [a licensed professional] discontinues serving the plaintiff . . . regardless of the time the plaintiff discovers or otherwise has knowledge of the claim.”⁶⁹ Conversely, the wrongful death provision does not contain similar limitations. Therefore, Justice Weaver would affirm the court of appeals’ use of the discovery rule.⁷⁰

2. *Justice Kelly’s Dissenting View that MCL Section 600.5827 does not Apply or, Alternatively, the Court Should not Abandon the Discovery Rule on the Grounds of Stare Decisis*

Justice Kelly stated three reasons for dissenting from the majority opinion. First, she did not agree that the time of accrual in MCL section 600.5827 applied to this case.⁷¹ As the majority also found, the limitation statute for wrongful death is found in subsection 600.5805(10).⁷² However, Justice Kelly argued that subsection 10 differs from the other subsections in section 600.5805 because it provides for the time of accrual, specifically at the time of death or injury.⁷³ Therefore, the court should not have considered the time of accrual stated in section 600.5827 and unnecessarily eliminated the discovery rule.⁷⁴

The second opposing argument was that stare decisis required the majority to uphold the discovery rule.⁷⁵ Finally, Justice Kelly argued that even accepting that the discovery rule was inapplicable, summary disposition should still be denied. Justice Kelly offered the same basic reasoning as Justice Weaver, stating that the plaintiff’s cause of action did not accrue until all of the elements could be alleged. Here, the plaintiff could not allege a breach of duty until the killer was identified. The claim was timely since it was filed within three years of the identification.⁷⁶ Therefore, the court should have denied the defendants’ motions for summary disposition.⁷⁷

CONCLUSION

While the *Trentadue* court effectively precludes the common law discovery rule only with respect to wrongful death claims,⁷⁸ it is likely that complete abrogation will follow. In coming to its conclusion, the court overruled decades of common law precedent. Although the court

69. MICH. COMP. LAWS ANN. § 600.5838 (West 2007) (emphasis added).

70. *Trentadue*, 738 N.W.2d at 692 (Weaver, J., dissenting).

71. *Id.* at 693 (Kelly, J., dissenting).

72. *Id.* at 669 (majority opinion).

73. *Id.*

74. *Id.* at 696 (Kelly, J., dissenting).

75. *Id.* at 696–702.

76. *Id.* at 702–03.

77. *Id.* at 703.

78. MICH. COMP. LAWS ANN. §§ 600.5805(10), .5827 (West 2000).

acknowledged that “the discovery rule does not create expectation or reliance interests,”⁷⁹ its abrogation may have unforeseeable consequences in the future when a plaintiff’s cause of action is eliminated before it is discovered.

NACOLE M. HURLBERT

79. *Trentadue*, 738 N.W.2d at 672.