

Murphy v. Welsh; Stoddard v. Watson, [1993] 2 S.C.R. 1069

Lorna Stoddard

Appellant

v.

**Wanda Watson and Tilden
Rent-a-Car** *Respondents*

and

**Sharon-Leigh Murphy (also known as
Sharon Murphy) and Jamie Murphy by
his Litigation Guardian, Sharon-Leigh
Murphy**

and

Frederick Welsh (also known as Fred Welsh)

and

**Hastings, Charlebois, Feltmate,
Fur and Delibato** *Interveners*

Indexed as: Murphy v. Welsh; Stoddard v. Watson

File No.: 22601.

1993: May 31; 1993: September 2.

Present: La Forest, L'Heureux-Dubé, Sopinka, Cory, McLachlin, Iacobucci and Major JJ.

on appeal from the court of appeal for ontario

Practice -- Limitation periods -- Legal disability -- Traffic accidents -- Accidents giving rise to actions occurring when plaintiffs still minors -- Action commenced while plaintiff still a minor or within time after reaching majority -- Extension of time granted because of special circumstances to permit bringing of action by parent of minor -- Whether the limitation period is to commence from the date a minor comes of age or disability ceases or whether from the date of the accident -- Whether s. 47 of the Limitations Act applicable to the limitation period prescribed in s. 180 of the Highway Traffic Act -- Whether court has discretion to grant relief from the consequences of a limitation period in "special circumstances" -- Highway Traffic Act, R.S.O. 1980, c. 198, s. 180(1), (2), (3) -- Limitations Act, R.S.O. 1980, c. 240, ss. 45, 47 -- Rules of Civil Procedure, Rule 3.02.

Ontario's limitation scheme is divided between the *Limitations Act* and various other statutes. Generally, s. 45 of the *Limitations Act* sets a 6-year limitation period for negligence actions, unless a shorter period is prescribed elsewhere. Under the *Highway Traffic Act*, s. 180(1) reduces the limitation period to two years. However, s. 47 of the *Limitations Act* postpones the running of a limitation period while a plaintiff is under a legal disability. The central issue in the present cases is whether s. 47 postpones the s. 180(1) limitation period.

Appellant Stoddard was 17 when injured in a motor vehicle accident. The action to recover for her injuries was commenced more than two years from the date of the

accident but within two years of her attaining majority. Watson and Tilden Rent-a-Car alleged no prejudice other than the limitation bar. The trial judge found Stoddard had brought her action in time.

In *Murphy v. Welsh*, appellants Sharon Murphy, and her son Jamie, who was eight at the time, were injured in a motor vehicle accident in June 1984. Their first lawyer notified the respondent Welsh of the claim in September 1984. The intervening law firm took over the file in April 1986, misplaced it and finally issued the statement of claim on July 11, 1986, more than two years from the date of the accident but while Jamie was still an infant. The statement of claim named both Sharon Murphy and Jamie Murphy as plaintiffs, and included a derivative action by Jamie Murphy under the *Family Law Act*. An application to extend retroactively the time for commencing the action was brought in October 1986. The Ontario District Court granted the extension without reasons and the Supreme Court of Ontario, on appeal, found that Jamie Murphy's claim was not barred by s. 180(1) and went on to find that there were "special circumstances" that would allow an amendment to add Sharon Murphy as a party in Jamie Murphy's action. The law firm intervened when the matter came before the Ontario Court of Appeal.

The Court of Appeal in both actions held that s. 180(1) excluded s. 47 and held that the actions, including the derivative action, were not within time.

Murphy v. Welsh was adjourned in order to deal with the constitutional question properly. All parties in that case were granted intervener status in *Stoddard v. Watson* so that the Court could deal with the remaining issues in both cases.

At issue here are: whether the limitation period is to commence from the date a minor comes of age or a disability ceases, or whether it is to run from the date of the accident; whether s. 47 of the *Limitations Act* did not apply to the limitation period prescribed in s. 180 of the *Highway Traffic Act*; whether, the claim of Jamie Murphy is allowed to proceed, the claim of Sharon Murphy should also be allowed to proceed on the basis of a court's discretion to grant relief from the consequences of a limitation period where the "special circumstances" are found?

Held (Stoddard v. Watson): The appeal should be allowed.

Held (Murphy v. Welsh): The appeal should be allowed with respect to the action of Jamie Murphy and dismissed with respect to the action of Sharon Murphy and the derivative action of Jamie Murphy.

A presumption of coherence between related statutes exists in determining parliamentary intention. Provisions are only deemed inconsistent where they cannot stand together. Sections 180(1) and 47 are not *prima facie* inconsistent. Section 180(1) sets the length of the limitation period and s. 47 states when the limitation period begins to run. Their co-existence does not lead to absurd results.

The s. 180(1) limitation period favours the defendant by serving both the certainty and evidentiary rationales. The diligence rationale cannot be used to support s. 180(1) because diligence implicitly requires awareness of one's rights. Those under legal disability are presumed not to know their rights and remedies and it would be unfair to expect them to proceed diligently in such matters. Whatever interest a defendant may

have in the universal application of the 2-year motor vehicle limitation period must be balanced against the concerns of fairness to the plaintiff under legal disability. The prejudice to plaintiffs under legal disability outweighs the benefits of providing a procedural defence to liability.

Driving and owning a motor vehicle are activities with known risks. The s. 180(1) limitation period truncates liability. The legislature did not intend to remove these risks altogether.

Even if there are special circumstances in the case at bar they do not assist Sharon Murphy's claim. In special circumstances the court will allow a statement of claim to be amended to add another party after a limitation period expires. However, the new party's claim will only go back to the date of the statement of claim. Here, even if Sharon Murphy is added as a party to Jamie Murphy's action, her claim is out of time. While the statement of claim was filed in time for the infant, it was too late for the adult.

The only remedy that would allow Sharon Murphy to bring her claim is an extension of time. Rule 3.02 cannot be used to extend the limitation period because the present limitation period falls under the *Highway Traffic Act* which makes no provision for extending time to commence an action. Sharon Murphy's action is incurably out of time and Jamie Murphy's derivative claim under the *Family Law Act* accordingly falls.

Cases Cited

Considered: *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6; **referred to:** *Papamonolopoulos v. Board of Education for the City of Toronto* (1986), 56 O.R. (2d) 1; *Martin v. Kingston City Coach Co.*, [1947] O.W.N. 110, aff'g [1946] O.W.N. 915; *Kamloops (City of) v. Nielsen*, [1984] 2 S.C.R. 2; *Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147; *Basarsky v. Quinlan*, [1972] S.C.R. 380.

Statutes and Regulations Cited

Family Law Act, 1986, S.O. 1986, c. 4.*

Family Law Act, R.S.O. 1990, c. F.3, ss. 2(5), 61(4).

Highway Traffic Act, R.S.O. 1980, c. 198, s. 180(1), (2), (3).

Limitations Act, R.S.O. 1980, c. 240, ss. 45, 47.

Professional Engineers Act, R.S.O. 1990, c. P.28, s. 46.

Public Authorities Protection Act, R.S.O. 1980, c. 406.

Rules of Civil Procedure, Rule 3.02.

Authors Cited

Côté, Pierre-André. *The Interpretation of Legislation in Canada*, 2nd ed. Cowansville: Yvon Blais, 1991.

APPEAL from a judgment of the Ontario Court of Appeal (*Stoddard v. Watson*) (1991), 3 O.R. (3d) 182, 81 D.L.R. (4th) 475, 50 O.A.C. 246, 4 C.P.C. (3d) 301, allowing an appeal from a judgment of Osborne J. allowing appellant's action. Appeal allowed.

* See Erratum [1993] 3 S.C.R. iv

APPEAL from a judgment of the Ontario Court of Appeal (*Murphy v. Welsh*) (1991), 3 O.R. (3d) 182, 81 D.L.R. (4th) 475, 50 O.A.C. 246, 4 C.P.C. (3d) 301, allowing an appeal from a judgment of the Divisional Court (1967), 62 O.R. (2d) 159 n, 44 D.L.R. (4th) 192 n, 31 C.P.C. (2d) 209, dismissing an appeal from a judgment of Rosenberg J. (1986), 57 O.R. (2d) 622, 33 D.L.R. (4th) 762, 15 C.P.C. (2d) 173, dismissing an appeal from an order of Stayshyn Dist. Ct. J. granting a retroactive extension of time for commencement of action. Appeal allowed with respect to the action of Jamie Murphy; appeal dismissed with respect to the action of Sharon Murphy and the derivative action of Jamie Murphy.

W. L. N. Somerville, Q.C., and *R. B. Bell*, for the appellant.

William S. Zener, for the respondents.

William Morris, Q.C., and *Michael W. Kelly*, for the interveners Sharon-Leigh Murphy and Jamie Murphy by his litigation guardian, Sharon-Leigh Murphy.

Ian Scott, Q.C., *Thomas D. Galligan* and *Andrew K. Lokan*, for the intervener Frederick Welsh.

W. L. N. Somerville, Q.C., for the intervener Hastings, Charlebois, Feltmate, Fur and Delibato.

//Major J.//

The judgment of the Court was delivered by

MAJOR J. --

I. The Facts

Both *Stoddard v. Watson* and *Murphy v. Welsh* (S.C.C., File No. 22542) involve the interpretation of limitations legislation. Ontario's limitation scheme is divided between the *Limitations Act*, R.S.O. 1980, c. 240, and various other statutes. Generally, s. 45 of the *Limitations Act* sets a six-year limitation period for negligence actions, unless a shorter period is prescribed elsewhere. Under the *Highway Traffic Act*, R.S.O. 1980, c. 198, s. 180(1), (hereinafter "s. 180(1)") the limitation period is reduced to two years. Section 180 reads:

180.--(1) Subject to subsections (2) and (3), no action shall be brought against a person for the recovery of damages occasioned by a motor vehicle after the expiration of two years from the time when the damages were sustained.

(2) Where death is caused, the action may be brought within the time limited by the *Family Law Reform Act*.

(3) Notwithstanding subsections (1) and (2), when an action is brought within the time limited by this Act for the recovery of damages occasioned by a motor vehicle and a counterclaim is made or third party proceedings are instituted by a defendant in respect of damages occasioned in the same accident, the lapse of time herein limited is not a bar to the counterclaim or third party proceedings.

However, s. 47 of the *Limitations Act* (hereinafter "s. 47") postpones the running of a limitation period while a plaintiff is under a legal disability:

47. Where a person entitled to bring an action mentioned in section 45 or 46 is at the time the cause of action accrues a minor, mental defective, mental incompetent or of unsound mind, the period within which the action may be brought shall be reckoned from the date when such person became of full age or of sound mind.

The central issue in the present cases is whether s. 47 postpones the s. 180(1) limitation period.

The appellant Lorna Stoddard was injured in a motor vehicle accident in November 1984. Stoddard was 17 at the time of the accident. The action to recover for her injuries was commenced on February 18, 1987, more than two years from the date of the accident but within two years of her attaining majority. The trial proceeded by means of an agreed statement of facts. The respondents Wanda Watson and Tilden Rent-a-Car (hereinafter "Tilden") admitted liability and all parties agreed on the assessment of damages at \$33, 917.75. Watson and Tilden did not allege any prejudice other than the limitation bar. The trial judge relied on *Papamonolopoulos v. Board of Education for the City of Toronto* (1986), 56 O.R. (2d) 1 (C.A.), and found Stoddard had brought her action in time. *Papamonolopoulos v. Board of Education for the City of Toronto* involved s. 47 and a limitation period under the *Public Authorities Protection Act*, R.S.O. 1980, c. 406.

The facts in *Murphy v. Welsh* are somewhat more complex. The appellant Jamie Murphy was injured in a motor vehicle accident in June 1984. He was 8 years old at the time of the accident. His mother, the appellant Sharon Murphy, was injured in the same accident. The Murphys' first lawyer notified the respondent Frederick Welsh of the claim in September 1984. The law firm of Hastings, Charlebois, Feltmate, Fur and Delibato took over the Murphy file in April 1986. The file was misplaced and the statement of claim was not issued until July 11, 1986, more than two years from the date of the accident but while

Jamie Murphy was still an infant. The statement of claim named both Sharon Murphy and Jamie Murphy as plaintiffs, and included a derivative action by Jamie Murphy under what is now the *Family Law Act, 1986*, S.O. 1986, c. 4.*

An application to extend retroactively the time for commencing the action was brought in October 1986. The Ontario District Court granted the extension without reasons. Welsh appealed the order to the Supreme Court of Ontario. The Supreme Court of Ontario, relying on *Papamonolopoulos v. Board of Education for the City of Toronto*, found that Jamie Murphy's claim was not barred by s. 180(1). The Supreme Court of Ontario went on to find that there were "special circumstances" that would allow an amendment to add Sharon Murphy as a party in Jamie Murphy's action. Eventually, the matter came before the Ontario Court of Appeal as a Special Case, with Hastings, Charlebois, Feltmate, Fur and Delibato intervening.

The Court of Appeal ((1991), 3 O.R. (3d) 182) delivered its decision in *Stoddard v. Watson* together with its decision in *Murphy v. Welsh*. The Court of Appeal held that s. 180(1) excluded s. 47. The Court of Appeal relied on basic principles of statutory interpretation and found that s. 180(1) was only subject to subss. (2) and (3). The Court of Appeal also found support for its position in the legislative history of s. 180(1) and in its earlier decision in *Martin v. Kingston City Coach Co.*, [1947] O.W.N. 110, aff'g [1946] O.W.N. 915. *Martin v. Kingston City Coach Co.* held that the *Highway Traffic Act* applied to bar claims after two years regardless of whether the plaintiff was under a legal disability. While acknowledging that s. 47 was not being applied uniformly to special limitation periods, the Court of Appeal considered this was a matter for legislative reform.

* See Erratum [1993] 3 S.C.R. iv

The Court of Appeal concluded that Sharon Murphy's claim fell with Jamie Murphy's action.

This Court granted leave to appeal in both cases. In order to deal properly with the constitutional question raised in *Murphy v. Welsh* that case was adjourned. However, all parties in *Murphy v. Welsh* were granted intervener status in *Stoddard v. Watson*, so that the Court could proceed with the remaining issues in both cases.

II. Issues

The issues stated in *Stoddard v. Watson* are:

- [1.] In actions on behalf of infants and those under legal disability for damages occasioned by a motor vehicle, will the limitation period be reckoned from the date the person comes of age or disability ceases or from the date of the accident?
- [2.] As a matter of statutory interpretation, do the words "subject to" when prefacing limitation provisions in a section of an act such as the Highway Traffic Act, serve to exclude operation of statutes of general application in favour of infants and those under legal disability, such as the Limitations Act?
- [3.] Does s. 15 of the Charter require an interpretation of statutes (regardless of any merit to the "proper construction" or "subject to" analysis) to allow those with personal characteristics such as infants and others under legal disability to be treated differently than adults with no disability in order to avoid inequality before the law applicable to remedies?

The non-constitutional issues stated in *Murphy v. Welsh* are:

- [4.] Did the Court of Appeal err in finding that s. 47 of the *Limitations Act* (the "disability" clause) did not apply [to] the limitation period prescribed in s. 180 of the *Highway Traffic Act*, R.S.O. 1980?
- [5.] If the claim of the Plaintiff Jamie Murphy is allowed to proceed, should the claim of Sharon Murphy also be allowed to proceed on the basis of a court's discretion

to grant relief from the consequences of a limitation period where the "special circumstances" are found?

Given the result in these appeals it will only be necessary to deal with Issues 1, 4, and 5.

III. Analysis

A. Interpretation of Sections 180(1) and 47

These appeals concern the relationship between provisions in different statutes. The respondents argue that the opening words of s. 180(1) define this relationship and exclude the application of s. 47: "Subject to subsections (2) and (3), no action shall be brought" However, to find that subsections (2) and (3) are the sole exceptions to s. 180(1) means reading s. 180(1) as "subject only to subsections (2) and (3)". Statutory interpretation presumes against adding words unless the addition gives voice to the legislator's implicit intention. As Pierre-André Côté states in *The Interpretation of Legislation in Canada* (2nd ed. 1991), at pp. 231-32:

Since the judge's task is to interpret the statute, not to create it, as a general rule, interpretation should not add to the terms of the law. Legislation is deemed to be well drafted, and to express completely what the legislator wanted to say:

...

The presumption against adding words must be treated with caution because legal communication, like all communication, has both implicit and explicit elements. The presumption only concerns the explicit element of the legislature's message: it assumes that the judge usurps the role of Parliament if terms are added to a provision. However, if the judge makes additions in order to render the implicit explicit, he is not overreaching his authority. The relevant question is not whether the judge can add words or not, but rather if the words that he adds do anything more than express what is already implied by the statute.

In determining the legislator's intention there is a presumption of coherence between related statutes. Provisions are only deemed inconsistent where they cannot stand together. Sections 180(1) and 47 are not *prima facie* inconsistent. Section 180(1) sets the length of the limitation period. Section 47 states when the limitation period begins to run. Their co-existence does not lead to absurd results. Merely because s. 180(1) sets a short limitation period does not bar postponement for disability. Sections 45(1)(h) and (i) of the *Limitations Act* set two-year limitation periods, and s. 45(1)(m) sets a 1-year limitation period, all of which are subject to s. 47. The co-existence of a short limitation period and a rule for its postponement is not an absurd result.

This Court recently described the purpose of limitations legislation in *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6. *M. (K.) v. M. (H.)* was a claim for damages for incest brought well after the expiration of the limitation period, even allowing for the plaintiff to reach majority. La Forest J. stated at pp. 29-30:

In order to determine the time of accrual of the cause of action in a manner consistent with the purposes of the *Limitations Act*, I believe it is helpful to first examine its underlying rationales. There are three, and they may be described as the certainty, evidentiary, and diligence rationales: see Rosenfeld, "The Statute of Limitations Barrier in Childhood Sexual Abuse Cases: The Equitable Estoppel Remedy" (1989), 12 *Harv. Women's L.J.* 206, at p. 211.

Statutes of limitations have long been said to be statutes of repose; see *Doe on the demise of Count Duroure v. Jones* (1791), 4 T.R. 301, 100 E.R. 1031, and *A'Court v. Cross* (1825), 3 Bing. 329, 130 E.R. 540. The reasoning is straightforward enough. There comes a time, it is said, when a potential defendant should be secure in his reasonable expectation that he will not be held to account for ancient obligations

The second rationale is evidentiary and concerns the desire to foreclose claims based on stale evidence. Once the limitation period has lapsed, the potential defendant should no longer be concerned about the preservation of evidence relevant to the claim

Finally, plaintiffs are expected to act diligently and not "sleep on their rights"; statutes of limitation are an incentive for plaintiffs to bring suit in a timely fashion.

While these rationales benefit the potential defendant, the Court also recognised that there must be fairness to the plaintiff as well. Hence, the reasonable discovery rule which prevents the injustice of a claim's being statute barred before the plaintiff becomes aware of its existence: *Kamloops (City of) v. Nielsen*, [1984] 2 S.C.R. 2; *Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147; *M. (K.) v. M. (H.)*, *supra*. A limitations scheme must attempt to balance the interests of both sides.

The s. 180(1) limitation period favours the defendant by serving both the certainty and evidentiary rationales. The diligence rationale cannot be used to support s. 180(1). Implicitly, diligence requires awareness of one's rights. Those under legal disability are presumed not to know their rights and remedies and it would be unfair to expect them to proceed diligently in such matters. Whatever interest a defendant may have in the universal application of the two year motor vehicle limitation period must be balanced against the concerns of fairness to the plaintiff under legal disability. If s. 180(1) excludes s. 47, an individual under legal disability would be deprived of any remedy unless the disability ends within two years of the accident. Only infants over the age of 16 and individuals suffering from short term mental incompetence would be able to pursue their remedies. The prejudice to plaintiffs under legal disability outweighs the benefits of providing a procedural defence to liability.

Admittedly, vicarious liability and reverse onus provisions may result in a defendant's being faced with a claim years down the road for an accident caused by another person. However, driving and owning a motor vehicle are activities with known risks. The

s. 180(1) limitation period truncates liability. Surely the legislature did not intend to remove these risks altogether.

B. Special Circumstances

Even if there are special circumstances in the case at bar they do not assist Sharon Murphy's claim. As this Court held in *Basarsky v. Quinlan*, [1972] S.C.R. 380, in special circumstances the court will allow a statement of claim to be amended to add another party after a limitation period expires. However, the new party's claim will only go back to the date of the statement of claim. Here, even if Sharon Murphy is added as a party to Jamie Murphy's action, her claim is out of time. While the statement of claim was filed in time for the infant, it was too late for the adult. The remedy granted by the Supreme Court of Ontario was ineffectual.

The only remedy that would allow Sharon Murphy to bring her claim is an extension of time. Indeed this is what the Murphys originally asked for under the Ontario *Rules of Civil Procedure*. Rule 3.02 (1) and (2) allows a court to "extend or abridge any time prescribed by these rules . . . on such terms as are just . . . before or after the expiration of the time prescribed." However, the present limitation period falls under the *Highway Traffic Act*. Rule 3.02 cannot be used to extend the limitation period. Unlike the *Family Law Act*, R.S.O. 1990, c. F.3, ss. 2(5) and 61(4), and the *Professional Engineers Act*, R.S.O. 1990, c. P.28, s. 46, which provide for extending of limitation periods, the *Highway Traffic Act* makes no provision for extending time to commence an action. Sharon Murphy's action is incurably out of time.

IV. Conclusion

The infants Lorna Stoddard and Jamie Murphy commenced their actions within the time prescribed by the *Highway Traffic Act* and the *Limitations Act*. The appeals are allowed on this point and the Court of Appeal's orders declaring the infants' claims to be statute barred are set aside. Sharon Murphy's claim is statute barred; as a result, Jamie Murphy's derivative claim under the *Family Law Act* also falls.

Appeal (Stoddard v. Watson) allowed.

Appeal (Murphy v. Welsh) allowed with respect to the action of Jamie Murphy; appeal dismissed with respect to the action of Sharon Murphy and the derivative action of Jamie Murphy.

Solicitors for the appellant: Borden & Elliot, Toronto.

Solicitors for the respondents: Lipman, Zener & Waxman, Toronto.

Solicitor for the interveners Sharon-Leigh Murphy and Jamie Murphy by his Litigation Guardian, Sharon Murphy: William Morris, Hamilton.

Solicitors for the intervener Frederick Welsh: Paul Lee & Associates, Toronto.

Solicitors for the intervener Hastings, Charlebois, Feltmate, Fur and Delibato: Borden & Elliot, Toronto.