

Summary of SC94030, *State ex rel. Bob T. Beisly II v. The Honorable Timothy Perigo*

Proceeding originating in the Jasper County circuit court, Judge Timothy Perigo
Argued and submitted September 17, 2014; opinion issued August 18, 2015

Attorneys: Beisly was represented by Mark E. Turley of Smith & Turley in Rolla, (573) 612-1408. The mother was represented by Dane C. Martin, Todd P. Graves, Edward D. Greim and Ryan J. Parks of Graves Garrett LLC in Kansas City, (816) 256-3181. Jeremy L. Maples of the Vernon County sheriff's office in Nevada represented himself.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man sued by his estranged wife's mother for the wrongful death of his estranged wife seeks to make permanent a preliminary writ prohibiting the circuit court from entering an order permitting the wrongful death case to move forward. In a decision written by Judge George W. Draper III, the Supreme Court of Missouri quashes the writ. Seven judges agree that this Court's prior holding that a wrongful death action accrues at the decedent's death remains valid despite an appeals court ruling to the contrary and that the statute of limitations for wrongful death does not contain an explicit tolling exception for a defendant's fraudulent concealment. Four judges agree, however, that common law maxims precluding one from benefiting from one's own fraud and the doctrine of equitable estoppel apply to bar the man from asserting the statute of limitations to the mother's wrongful death suit.

Judge Zel M. Fischer dissents. He writes separately to explain why he would have retransferred this case to the appeals court to avoid the conflict between this decision and the Court's decision in SC93906, *Boland, et al. v. Saint Luke's Health System Inc., et al.*, also decided today.

Judge Mary R. Russell also dissents, in an opinion joined by two other judges. She would hold – as this Court stated in *Boland* – that the doctrine of equitable estoppel may not be used to preclude application of the special statute of limitations for wrongful death claims. As such, she would hold the circuit court abused its discretion in overruling the man's motion to dismiss the suit.

Judge Anthony Rex Gabbert, a judge of the Missouri Court of Appeals, Western District, sat in this case by special designation in place of Chief Justice Patricia Breckenridge.

Facts: Bob Beisly's estranged wife was found shot to death in July 2009 inside her home. Her death was ruled a homicide, but the case remained unsolved until February 2013, when the state charged Beisly and another man with her murder. The state alleged that the other man shot Beisly's wife and that Beisly aided and encouraged the shooter in committing the murder. A few days after the charges were filed, the wife's mother filed a wrongful death action against Beisly and the shooter alleging, in part, that they concealed their arrangement from being discovered by staging the death to make it look like a home invasion, using an untraceable weapon, lying to law enforcement, destroying evidence and denying their involvement in the wife's death. Beisly filed a motion to dismiss the mother's case, arguing her claim was barred by a three-year statute of

limitations. The circuit court overruled Beisly's motion, reasoning that, to allow wrongdoers to escape civil liability on the basis of the statute of limitations in this case was shocking to the conscience. Beisly seeks to make permanent this Court's preliminary writ prohibiting the circuit court from entering such a judgment.

WRIT QUASHED.

Court en banc holds: The application of common law maxims precluding one from benefiting from one's own fraud and the application of the doctrine of equitable estoppel bar Beisly from asserting the statute of limitations to the mother's wrongful death suit.

(1) This Court's holding in its 1958 decision in *Fraze* v. *Partney* that a wrongful death claim accrues (the right to sue arises) at death remains good law. In that case, survivors of family members killed in an automobile accident in 1954 alleged the driver who caused the accident fraudulently concealed his identity until 1956. The driver filed a motion to dismiss, arguing the survivors' claim was barred by the statute of limitations, which at the time was one year for wrongful death cases. As such, *Fraze* required the Court to address whether the wrongful death cause of action accrued at the time of death or upon the discovery of the alleged wrongdoer in 1958. The Court determined that, because the wrongful death statute contained a special statute of limitation – section 537.100, RSMo – the general fraudulent concealment tolling provision (removing or interrupting the bar of a statute of limitations) in section 516.280, RSMo, did not apply. Recognizing that hardship would result, the Court held that, under section 537.100, the cause of action accrued and the statute of limitations began running upon the family members' death, even though the survivors had not yet discovered the identity of the defendant.

In later interpreting the wrongful death statute – though it did not reference *Fraze* – the Court in *O'Grady v. Brown* recognized its duty to perceive the import of major legislative innovations and to interweave new legislative policies with inherited common law principles, ultimately holding that an unborn, viable fetus was a "person" under the wrongful death statute. The Court rejected the argument that the wrongful death statute had to be construed strictly and, instead, applied the statute's language with a view to promoting the act's objectives of providing compensation to bereaved plaintiffs for their loss, ensuring that wrongdoers pay for the consequences of their actions and deterring harmful conduct that might lead to death, ultimately holding that an unborn, viable fetus was a "person" under the wrongful death statute. The appeals court later, in *Howell v. Murphy*, concluded that *O'Grady* superseded the reasoning in *Fraze*. This Court finds that *Howell* erroneously determined that *O'Grady* superseded *Fraze*. *Fraze* remains good law, and *Howell's* statement to the contrary no longer should be followed.

(2) Common law maxims and principles of equitable estoppel apply to bar Beisly from asserting the statute of limitations as a defense. Although the legislature has not amended section 537.100 since *Fraze* to include a fraudulent concealment exception to the statute of limitations for wrongful death, this Court previously has held that it is speculative to infer legislative approval from legislative inaction. Unless the legislature has changed, modified or eliminated a common law maxim, those maxims continue to exist and should be interwoven with a statute's interpretation. Common law maxims were adopted as Missouri law and codified in section 1.010, RSMo, which expressly provides that all legislative acts shall be liberally construed so as to effectuate their true intent and meaning. This is what *O'Grady* instructed as well – that the

wrongful death act be construed to perceive the import of major legislative innovations and to interweave new legislative policies with inherited common law principles.

A basic common law maxim – deeply rooted in this country’s jurisprudence and older than the country itself – is that no person shall take advantage of or benefit from his or her wrong. As the United States Supreme Court has noted, this principle of equitable estoppel frequently has been employed to bar inequitable reliance on statutes of limitations. Several other states have cited these equitable estoppel principles to prevent defendants from asserting the statute of limitations as an affirmative defense in wrongful death actions when the defendant has committed fraud to conceal his or her actions. Other states have applied the common law maxim that fraud vitiates any assertion of the statute of limitations in wrongful death actions. Some cases from other states specifically applied these common law maxims and equitable estoppel to prevent defendants who have committed murders from relying on the wrongful death statute of limitations as a defense when sued civilly.

This Court has not run afoul of its constitutional duties in reaching this holding. Tolling and accrual are distinct legal concepts from the application of fraudulent concealment as a form of equitable estoppel. Applying equitable estoppel does nothing to engraft a tolling mechanism or otherwise extend the statute of limitations beyond what is stated expressly in the statute. The cause of action still accrues at the decedent’s death, and the statute of limitations begins to run at that time. Equitable estoppel does not toll the running of the statutes but rather forecloses the wrongdoer, who concealed his or her actions fraudulently, from pleading the statute of limitations as a defense.

Dissenting opinion by Judge Fischer: The author agrees with Judge Russell’s dissenting opinion and writes separately to explain how he believes the Court should have avoided issuing conflicting opinions today in two cases involving the same legal issue. This writ case is one, with the deciding vote by a special judge from the court of appeals sitting in place of one of the Court’s regular members who was recused; in the other – SC93906, *Boland, et al. v. Saint Luke’s Health System Inc., et al.*, involving a direct appeal – the deciding vote was by this Court’s regular member who was recused in *Beisly*. These cases previously were decided by different districts of the appeals court, with the *Beisly* appeals court (whose opinion adhered to this Court’s precedent and the position now taken by a majority of this Court’s members in *Boland*) recognizing its opinion was in conflict with that of the *Boland* appeals court. Because a majority of this Court’s regular members now have vacated and rejected the appeals court’s decision in *Boland*, there remains no conflict between opinions of the appeals court. Therefore, no practical or legitimate reason remains for this Court to issue an opinion in this case. The proper approach would have been to retransfer this writ case to the appeals court.

Dissenting opinion by Judge Russell: While the author is troubled by the tragedy in this case and finds the outcome she would reach regrettable, the author would hold – as this Court stated in *Boland v. Saint Luke’s Health System Inc.*, also decided today – that the doctrine of equitable estoppel may not be used to preclude application of section 537.100, RSMo, the special statute of limitations for wrongful death claims. Because this special statute of limitations governs, the author agrees that the fraudulent concealment exception in section 516.280, RSMo, may not be applied to a wrongful death claim. The author also agrees that this Court’s holding in *Frazee v.*

Partney that a plaintiff's cause of action accrued at the decedent's death, regardless of the fact that the defendant's identity was unknown at the time of death, remains good law. But – noting *Fraze*'s holding that it is not the duty or right of courts to write new provisions into section 537.100 – the author disagrees with the principal opinion's holding that equitable estoppel bars Beisly from asserting the statute of limitations as an affirmative defense due to acts of fraudulent concealment. Despite its discussion of the difference between equitable tolling and equitable estoppel, the principal opinion unmistakably holds that equitable estoppel is now a de facto exception to section 537.100. There is no way to reconcile this with *Fraze*, and the principal opinion effectively overrules that decision. Although it has made several amendments to section 537.100, both before and after *Fraze* was decided, the legislature has not added a fraudulent concealment provision to section 537.100, despite the fact that such a provision has existed in Missouri for more than 150 years. Even though the result is severe for the plaintiff here, it is the job of the legislature – not this Court – to address exceptions to a special statute of limitations. Although the outcome shocks the conscience, the author would hold that the circuit court abused its discretion in overruling Beisly's motion to dismiss the wrongful death suit.