

Summary of SC93906, Sally Boland, Sherri Lynn Harper, David C. Gann, Jennirae Littrell, Natural Daughter of Decedent Clarence Bailey Warner, Helen Pittman, Natural Sister of Decedent Shirley R. Eller v. Saint Luke's Health System Inc. and Saint Luke's Hospital of Chillicothe f/k/a The Grand River Health System Corporation d/b/a Hedrick Medical Center, and Community Health Group

Appeals from the Livingston County circuit court, Judges Thomas N. Chapman and Jason A. Kanoy Argued and submitted September 17, 2014: opinion issued August 18, 2015, and modified on the Court's own motion October 27, 2015

Attorneys: The survivors were represented by Michael W. Manners, J. Kent Emison, Brett A. Emison and Jessica M. Agnelly of Langdon & Emison in Lexington, (660) 259-6175; L. Annette Griggs and David L. McCollum of McCollum & Griggs in North Kansas City, (816) 474-0202; and Steven J. Streen, an attorney in Kansas City, (816) 842-3003.

The St. Luke's entities were represented by Adam S. Davis, Thomas W. Wagstaff and Christopher L. Schneiders of Wagstaff & Cartmell LLP in Kansas City, (816) 701-1160. Community Health Group was represented by Scott M. Adam and Sean T. McGrevey of Adam & McDonald PA in Overland Park, Kansas, (913) 647-0670.

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: Individuals whose family members died while being treated at a hospital appeal the circuit court's judgments on the pleadings in favor of the hospital, which had argued the survivors' claims were barred because they were filed after the expiration of the three-year statute of limitations for wrongful death claims. In a decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the judgments. All 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 that, because wrongful death claims have their own special statute of limitations, the fraudulent concealment exception to the general statutes of limitation does not apply to wrongful death claims. Four judges agree that, despite the harsh result this produces in this situation, the legislature has not enacted either a tolling provision or a delayed accrual for wrongful death claims due to fraudulent concealment, and it is not the Court's duty or right to add exceptions not provided for by the statute.

Judge George W. Draper concurs in part and dissents in part. He would reverse the circuit court's judgments and would remand (send back) the cases for further proceedings. He would find this Court's precedent requires it to interweave the wrongful death law with common law principles. As such, he would hold the doctrine of equitable estoppel should foreclose the hospital from relying on the wrongful death statute of limitations as an affirmative defense due to the fraudulent concealment of its wrongdoing.

Facts: These consolidated appeals arise from five separate but essentially identical wrongful death claims brought by individuals who all had family members die while being treated at Hedrick Medical Center in Chillicothe in February, March or April 2002. In their lawsuits, the survivors allege that a respiratory specialist formerly employed by the hospital was responsible for the family

members' deaths. Specifically, they allege that the respiratory specialist intentionally administered a lethal dose of medication that resulted in the deaths of the family members, that the respiratory specialist's actions caused at least nine suspicious deaths and 18 suspicious medical emergencies, that the hospital was aware of the respiratory specialist's actions, and that the hospital took affirmative action to conceal the suspicious nature of the deaths. Both a physician and the hospital's risk manager alerted hospital administrators about their concerns regarding the respiratory specialist's patients, but both were instructed to keep the matter confidential. Ultimately, the risk manager and a group of nurses threatened to alert the media if the hospital failed to stop the respiratory specialist. The hospital suspended and, in May 2002, fired the respiratory specialist after another of her patients died under suspicious circumstances. An outside investigation identified a number of "sentinel" events – unexpected occurrences involving death or serious physical or psychological injury or the risk thereof – in 2002, and the hospital was required to report such events to patients and their families. The survivors, however, allege they were not notified of the circumstances surrounding their family members' deaths until shortly before they filed their lawsuits about eight years later. The hospital filed motions for judgment on the pleadings, arguing the survivors' claims were barred because they were filed after the expiration of the three-year statute of limitations for wrongful death claims. The circuit court granted the motions. The survivors appeal.

AFFIRMED.

Court en banc holds: (1) The fraudulent concealment tolling exception in section 516.280, RSMo, does not apply to the survivors' cases. In cases to which the general statutes of limitation (found in chapter 516, RSMo) apply, there is an exception for fraudulent concealment – section 516.280 provides that, if any person absconds, conceals himself or otherwise acts improperly to prevent the commencement of an action, the statute of limitations is tolled (does not run) until the fraudulent concealment ends. Under section 516.300, however, no provision of chapter 516 applies to causes of action that contain their own special statutes of limitation. Wrongful death actions contain their own special statute of limitations – section 537.100, RSMo, which provides that wrongful death actions must be filed within three years after the cause of action accrues. Section 537.100 contains two exceptions; the parties agree neither of these applies in the survivors' cases.

(2) The rule that a wrongful death claim accrues at death – which long has been the rule in Missouri and which was the holding in this Court's 1958 decision in *Frazer v. Partney* – is reaffirmed. *Frazer* remains good law. In that case – in which survivors of family members killed in an automobile accident in 1954 did not sue the driver who caused the accident until after they learned the driver's identity in 1956 – the Court considered two questions: when a wrongful death cause of action accrues, and whether a defendant's allegedly fraudulent concealment of his identity tolled or extended the limitation period in section 537.100. At the time, section 537.100 provided a one-year limitation period for wrongful death claims. The Court held that, despite the harshness of the outcome, the wrongful death claim accrued at the moment of death because the statute of limitations contained no exception for concealment, even if fraudulent. The Court noted the legislature had amended the statute twice since its adoption to include other exceptions but never had crafted a fraudulent concealment exception like the one in section 516.280 to apply to the wrongful death statute. This holding remains good law, despite two subsequent decisions that are distinguishable. In its 1983 decision in *O'Grady v. Brown*, this Court held that a fetus was a "person" for purposes of the wrongful death statute. The second case, *Howell v. Murphy*, involved survivors who filed wrongful death claims against a man who murdered their loved ones and concealed the evidence for more than five years – the statutory length of time a person had to be missing before the person could be

presumed dead. In *Howell*, the appeals court held in 1992 that, due to the defendant's concealment of the bodies and the statutory presumption that missing persons were alive, the three-year limitation of section 537.100 was tolled until the plaintiffs could ascertain, by reasonable diligence, that they had a wrongful death action, stating that *O'Grady* had superseded the reasoning in *Fraze*. *Howell* is in error. *O'Grady* never referenced *Fraze*, and the statute of limitation was not at issue in *O'Grady*. *Howell* no longer should be followed to the extent it stated that *O'Grady* supersedes *Fraze*. The language of section 537.100 is unambiguous, and this Court's precedence is clear: the survivors' claims accrued at their family members' deaths, and section 537.100 does not provide for delayed accrual under these circumstances.

(3) While what occurred here is undoubtedly a tragedy and the survivors present a compelling policy argument for why their suits should be allowed to proceed, this Court's function is not to disregard the law as written by the legislature. As this Court held in *Fraze*, the legislature had not enacted – for wrongful death actions – either a tolling provision or a delayed accrual on the account of fraud, concealment or other improper act, and it is not the duty or right of courts to add exceptions not provided for by the statute. *Fraze* does not seek to incentivize fraudulent acts. Rather, it stands for the principle that it is the Court's role to interpret the law, not rewrite it. Accordingly, the survivors' argument here is one better made to the legislature, which is in the best position to determine policy for exceptions to statutes of limitation. The Court declines to hold that equitable maxims of common law become a part of all statutory schemes unless the legislature expressly writes these maxims out of the law. Further, the history of section 537.100 indicates a legislative intent not to provide the exception the survivors seek. Although the fraudulent concealment exception has existed to the general statutes of limitation since 1836, the legislature never has added it to the statute of limitations for wrongful death claims, despite adding one exception in 1905 and another in 1909 and amending the wrongful death statute of limitations twice more since *Fraze* to lengthen the limitations period.

Opinion concurring in part and dissenting in part by Judge Draper: The author agrees that *Fraze v. Partney* remains valid despite the assertion to the contrary in *Howell v. Murphy*; that a wrongful death action accrues at the decedent's death; and that section 537.100 does not contain an explicit tolling exception for a tortfeasor's fraudulent concealment. The author disagrees, however, that the doctrine of equitable estoppel does not foreclose the hospital from relying on the wrongful death statute of limitations as an affirmative defense due to the fraudulent concealment of its wrongdoing and, therefore, would reverse the circuit court's judgments and would remand the cases for further proceedings. The principal opinion casts aside the common law maxim that fraud vitiates everything – a longstanding, well-respected legal foundational tenet – in favor of speculation as to the meaning of legislative inaction, resulting in the perversion of justice.

The principal opinion disregards the importance of this Court's holding in *O'Grady v. Brown*. In *O'Grady*, the Court explained that the wrongful death statute does not take away any common law right, recognizing the Court's duty to interweave new legislative policies with inherited common law principles and to construe the wrongful death act with a view to promoting the apparent object of the legislative enactment. The principal opinion's failure to apply *O'Grady*'s statutory interpretation directives thwarts all the objectives of the wrongful death act, resulting in the survivors having no opportunity for compensation because they cannot survive a motion to dismiss and the hospital being rewarded for concealing its wrongdoing for years.

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, the principle of equitable estoppel frequently has been employed to bar inequitable reliance on statutes of limitations. Section 1.010, RSMo, 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. Although the principal opinion relies on the fact that the legislature has not amended section 537.100 to include a fraudulent concealment exception, this Court previously has held that it is speculative to infer legislative approval from legislative inaction. Accordingly, 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. Further, the principal opinion’s reading of the statute leads to an illogical and absurd result – that the legislature intended to permit tortfeasors to evade liability for causing wrongful death so long as the tortfeasors could conceal their wrongdoing until the statute of limitations expired.

It is important to note that applying equitable estoppel principles does not mean the survivors are entitled to relief on their claims against the hospital. They still must prove fraud – along with the elements of wrongful death – to prevail.