

CLECK
SUPREME COURT OF VIRGINIA
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IN THE
Supreme Court of Virginia
AT RICHMOND

Record No. 761095

Record No. 760569

BARBARA J. FOELAK

GAIL D. HURDLE

Appellant

Appellant

v.

v.

GEORGE MEIHM

WARNER PRINZ, M. D.,
et al.

Appellee

Appellee

JOINT APPENDIX OF APPELLANTS

Wayne D. Berthelsen
10406 Whitehead Street
Fairfax, Virginia 22030

Laurence G. Roman
8320 Old Courthouse Road
Vienna, Virginia 22180

Counsel for Barbara J. Foelak,
Appellant

Counsel for Gail D.
Hurdle, Appellant

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Record No. 761095

BARBARA J. FOELAK

Appellant

V.

GEORGE MEIHM

Appellee

APPENDIX

MOTION FOR JUDGMENT

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF FAIRFAX
COUNTY:

The Plaintiff moves the Court for judgment
against the Defendant on the grounds and in the amount
as hereinafter set forth:

1. On or about July 27, 1971, the Plaintiff
was the operator of a motor vehicle which was proceeding
in a northbound direction on Backlick Road (Route 617)

at or near its intersection of Rhoden Court approximately two miles north of the center of Springfield, Fairfax County, Virginia.

2. At the time and place aforesaid the Defendant was the operator of a motor vehicle which was proceeding in a southbound direction on Backlick Road and proceeded to make a left turn in an eastbound direction into the northbound lanes of Backlick Road.

3. That the Defendant did then and there so carelessly, recklessly and negligently operate his motor vehicle that same was caused to collide with the vehicle which the Plaintiff was operating with great force and violence.

4. As a direct and proximate result thereof, Plaintiff was caused to sustain serious and permanent injuries, has been prevented from transacting her business, has suffered and will continue to suffer great pain of body and mind; has sustained permanent disability, deformity and loss of earning capacity; has incurred and will incur in the future doctors' and related bills in an effort to be cured of said injuries. Plaintiff's motor vehicle was also severely damaged.

5. The Plaintiff's date of birth is February 27, 1954 and at the time of the accident she was an infant, 17 years of age.

WHEREFORE, Plaintiff seeks judgment against the Defendant in the sum of Forty-Five Thousand and no/100 Dollars (\$45,000.00), costs on her behalf expended, and interest from the date of the accident.

Murray W. Seagears
Counsel for Plaintiff

Filed 1/22/75
W. Franklin Gooding,
Clerk

* * * * *

ANSWER TO MOTION FOR JUDGMENT

COMES NOW the defendant, George Meihm, by counsel, in answer to the Motion for Judgment filed herein and states as follows:

1. That the defendant, George Meihm, by counsel, admits those allegations contained in paragraphs one (1), two (2) and five (5) of the Motion for Judgment filed herein.

2. That the defendant, George Meihm, by counsel, denies paragraph three (3) of the Motion for Judgment and demands strict proof of each and every allegation contained therein.

3. That the defendant, George Meihm, by counsel, is without sufficient knowledge to either admit or deny paragraph four (4) of the Motion for Judgment and therefore must deny the same and ask for strict proof of each and every allegation contained therein.

4. That the defendant, George Meihm, by counsel, states that this accident was caused by the sole negligence of Barbara J. Foelak and/or without admitting any negligence on the part of the defendant, that this accident was caused by the contributory negligence of the plaintiff herein.

5. That the defendant, George Meihm, by counsel, intends to rely upon the defense of the Statute of Limitations. The Statute of Limitations ended on July 1, 1974.

WHEREFORE, the defendant, George Meihm, by counsel, having fully answered the Motion for Judgment prays that the Motion for Judgment be dismissed with costs assessed against the plaintiff.

L. J. Miller
Counsel for Defendant

Filed 4/28/75

W. Franklin Gooding,
Clerk

* * * * *



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA
FAIRFAX AND PRINCE WILLIAM COUNTIES

-5-

ARTHUR W. SINCLAIR
BARNARD F. JENNINGS
JAMES KEITH
WILLIAM G. PLUMMER
LEWIS D. MORRIS
PERCY THORNTON, JR.
BURCH MILLSAP
JAMES C. CACHERIS
Thomas J. Middleton

9302 Peabody Street
Manassas, Virginia 22110
November 3, 1975

LOWRY J. MILLER, Esquire
2701 North Pershing Drive
Arlington, Virginia 22201

MURRAY W. SEAGEARS, Esquire
10560 Main Street
Fairfax, Virginia 22030

RE: FOELAK v. MEIHM
At Law No. 33077

Gentlemen:

After due consideration of the circumstances involved in the subject case and respective memorandums of law filed by counsel, I am of the opinion that the Motion for Summary Judgment filed by the defendant should be denied.

In reaching this decision, I am drawing an analogy from the ruling in Ferguson v. Ferguson, 169 Va. 77, in that Sections 1-13.42 and 8-30, Code of Virginia, should be applied prospectively. The accident occurred on July 27, 1971, when the plaintiff was 17 years old (born February 27, 1954) and thusly pursuant to the statutes in effect at that time, Section 8-24 and 8-30, the plaintiff had until February 17, 1977, to file an action; the suit was filed on February 22, 1975.

Recognizing that Section 1-13.42, effective July 1, 1972, definitively declared the age of majority to be 18 years of age in lieu of the long standing majority of 21 years of age and that the plaintiff is in fact exercising her majority of 18 years of age in bringing the suit on January 22, 1975, I cannot find any basis for application of Section 1-13.42 to accrued rights of theretofor infants on July 1, 1972. To the contrary, the Legislature has declared in Section 1-16 that no new law shall be construed to affect any right accrued or claim arising under the former law.

Mr. Seagears is requested to prepare an order in accordance with the above decision.

Sincerely yours,

PERCY THORNTON, JR.

O R D E R

CAME THIS 24TH DAY OF FEBRUARY, 1976 the plaintiff and her attorney, and the defendant and his attorney.

THEREUPON, from the veniremen in attendance on this date came a panel of thirteen (13) who were sworn on their voir dire and found free from exception, from which panel each side struck three.

THEREUPON, came a jury of seven (7) composed of the following named persons, to-wit: Magdelene Baskin, Richard Lee, Nancy Elke, Ruth Wetherington, James Hogan, Kathleen Parsons and Alvin Fones, who were sworn as the law directs as a jury for the trial of this case.

WHEREUPON, all witnesses present were sworn as the law directs and on motion of counsel for the defendant, were excluded from the Courtroom until they took the witness stand to testify. Those coming thereafter being likewise so sworn as they respectively took the witness stand to testify.

WHEREUPON, opening statements were made by the attorney for the plaintiff and counsel for the defendant and the plaintiff, by her attorney, proceeded with the introduction of her evidence, until the Court excused the jury for the luncheon recess.

WHEREUPON, after the luncheon recess the jury returned to the jury box and the plaintiff, by counsel, continued with the introduction of her evidence to the completion thereof and the Court directed the jury to retire to its room.

WHEREUPON, the defendant, by counsel, moved the Court to strike the evidence of the plaintiff on the grounds that this action as a matter of law is barred by the applicable Statute of Limitations, to-wit: Code of Virginia, Section 8-24.

IT APPEARING to the Court that on January 22, 1975, the plaintiff filed this suit in the Clerk's Office of the Circuit Court of Fairfax County. The defendant thereafter filed his Answer and Grounds of Defense in which he specifically pleaded the Statute of Limitations barred the plaintiff's cause of action. The plaintiff, in her pleadings and in her testimony, admits that she was born on February 27, 1954. This is an action by the plaintiff against the defendant for negligently causing personal injuries to the plaintiff arising out of an automobile accident which occurred on July 27, 1971. That on February 27, 1972 the plaintiff became eighteen (18) years of age; and

IT FURTHER APPEARING to the Court that the General Assembly of the Commonwealth of Virginia reduced

the age of majority to eighteen (18) years effective July 1, 1972 (Section 1-13.42, Code of Virginia, 1950, as amended). And it further appearing to the Court that the Motion for Judgment was filed beyond the period allowed by law and that the defendant's motion to strike the plaintiff's evidence on the grounds of the plea of the Statute of Limitations should be granted.

THEREUPON, the Court granted the defendant's motion to strike the evidence of the plaintiff and the jury was discharged as to this case.

It is, therefore, ORDERED, ADJUDGED and DECREED that the defendant's motion to strike the plaintiff's evidence is hereby granted and that the plaintiff's Motion for Judgment is dismissed with prejudice and the plaintiff's exceptions to the Court's rulings are noted.

AND THIS ORDER IS FINAL.

L. J. Miller
Counsel for Defendant

Murray W. Seagears
Counsel for Plaintiff

Entered 4/28/76
Judge Thomas J.
Middleton

* * * * *

ASSIGNMENTS OF ERROR

2. The Court erred in granting the Defendant's Motion to strike the Plaintiff's evidence on the grounds of the plea of the statute of limitations.

3. The trial Court erred in ruling that the cause of action in this case was barred by the statute of limitations in Section 8-24 of the 1950 Code of Virginia as amended.

4. The trial Court erred in ruling that the statute of limitations commenced running as of July 1, 1972 because at the time of the accident alleged in this case, the Plaintiff was seventeen years old and the statutes in effect at the time provided that the Plaintiff had two years from the time she obtained age twenty-one to file suit.

Wayne D. Berthelsen
and
Murray W. Seagears
Counsel for Plaintiff

Filed 5/27/76
James E. Hoofnagle,
Clerk

* * * * *

STATEMENT OF FACTS

On July 27, 1971 the Plaintiff, Barbara J. Foelak, received personal injuries in an automobile accident alleged to have been caused by the negligence of the Defendant, George Meihm. At the time of the accident, the Plaintiff was seventeen (17) years of age, her date of birth being February 27, 1954. On July 1, 1972, Section 1-13.42 of the 1950 Code of Virginia as amended, commonly known as the "Age of Majority Act", reduced the age of majority tenure from twenty-one (21) to eighteen (18) years of age. The Motion for Judgment in this case was filed in the office of the Clerk of the Court of Fairfax County on January 22, 1975.

ENTERED this 25th day of June, 1976.

/s/Judge Thomas J. Middleton

Wayne D. Berthelsen
Counsel for Plaintiff

L. J. Miller
Counsel for Defendant

Tendered 6/25/76
Entered 6/25/76

* * * * *