

CASE NOTE:

WALK V. RING: AN EQUITABLE APPLICATION OF THE STATUTE OF LIMITATIONS

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I. FACTS

In early 1991, Dr. Dale Ring, a dentist, recommended that Jimmye Walk undergo a full-mouth reconstruction.¹ Walk agreed to the reconstruction, but within months of the first procedure she began experiencing significant temporomandibular joint (TMJ) pain in her jaw.² After the surgeries' obvious failure, Ring referred Walk to Dr. Jim McDonald, a dentist who specialized in TMJ problems and reconstruction work.³ McDonald concluded that Ring's reconstruction work was responsible for Walk's TMJ problems.⁴ Although McDonald informed his insurance carrier and Ring of his conclusion, he did not tell Walk.⁵ Walk did not learn about McDonald's conclusion until 1996, which was two years since she left Ring's care and five years after she began experiencing significant TMJ pain.⁶ In 1997, she filed a medical malpractice

1. Walk v. Ring, 44 P.3d 990, 992 (Ariz. 2002).

2. *Id.*

3. *Id.* Upon transferring the case to McDonald, Ring made the following note in his chart:

Told [Plaintiff] that I needed to refer her to Jim McD, if he will accept this case. I'd certainly pay for the treatment, not because I did anything wrong, but rather that the outcome was not as I had expected or what she deserved. She said she didn't think I did anything wrong but it had been a learning experience we don't want to repeat.

Id. at 992–93.

4. *Id.* at 993.

5. *Id.* Walk knew that the TMJ problems were a result of Ring's reconstruction work, but she continued to believe that this was "simply an untoward result not attributable to any fault of Defendant." *Id.*

6. *Id.*

complaint against Ring alleging that his negligence was the cause of her TMJ problems.⁷

II. TREATMENT OF WALK'S CLAIM UNDER *KOWSKE*

The Arizona statute of limitations for medical malpractice bars claims such as Walk's two years "after the cause of action accrues."⁸ The term "accrues" is not defined in the Arizona statute of limitations, but it has been judicially defined as the date "when the plaintiff knew or by the exercise of reasonable diligence should have known of the defendants' conduct."⁹ The Arizona Court of Appeals set forth a more specific guide for determining accrual in *Kowske v. Life Care Centers of America, Inc.*¹⁰

In *Kowske*, the court of appeals held that the statute of limitations begins to run as soon as a plaintiff knows that an injury occurred and that someone was responsible for the injury.¹¹ The plaintiffs in *Kowske* filed their action within two years of discovering that Kowske's death might be due to negligence, but within three years of Kowske's actual death.¹² The court found that accrual began at the time of death even though the medical records from that time did not indicate that her death was a result of wrongdoing.¹³ Because a cause of action existed at least two years prior to the filing, the court of appeals held that the statute of limitations barred the claim.¹⁴ This holding indicated that a plaintiff need only know "the facts which give rise to the cause of action, not . . . the legal significance of such facts" to trigger accrual.¹⁵

In *Walk*, the plaintiff was aware of both her injuries and their connection to Ring's dental work more than two years before she filed her lawsuit.¹⁶ The trial court interpreted these facts in light of the *Kowske* decision and held that Walk's claim was barred by the applicable statute of limitations.¹⁷ The finding was affirmed by the court of appeals.¹⁸ According to the court of appeals, Walk's

7. *Id.*

8. ARIZ. REV. STAT. § 12-542 (2002).

9. *Mayer v. Good Samaritan Hosp.*, 482 P.2d 497, 501 (Ariz. Ct. App. 1971).

10. 863 P.2d 254 (Ariz. Ct. App. 1993).

11. *Id.*

12. *Id.* at 256.

13. *Id.* at 255. A doctor performed an autopsy and "found no signs of misdiagnosis or mistreatment." *Id.* Later, a medical expert told Kowske that his wife's death might be due to "substandard nursing and medical care." In 1988, a nurse concluded that the deceased had "received substandard nursing and medical care prior to her death" and that this treatment most likely contributed to Mrs. Kowske's death. *Id.* at 255. After getting the nurse's opinion, the plaintiffs filed their case. *Id.* at 256.

14. *Id.* at 256.

15. *Id.* (quoting *Ins. Co. of N. Am. v. Superior Court*, 784 P.2d 705, 708 (Ariz. Ct. App. 1989), *vacated on other grounds by* 800 P.2d 585 (Ariz. 1990)).

16. *Walk*, 44 P.3d at 994.

17. *Id.*

18. *Id.*

action accrued no later than June 28, 1994 because by this date she was clearly aware that the surgeries performed by Ring had resulted in her TMJ pain.¹⁹

III. THE SUPREME COURT CLARIFIES THE STANDARD FOR ACCRUAL

In reviewing the court of appeals decision, the Arizona Supreme Court examined the precedent foregoing *Kowske*. The court noted, “[f]rom early days, we have treated the question of accrual as one of equitable tolling.”²⁰ In reviewing applicable Arizona case law, the court found that it embodies a commitment to applying the statute of limitations in an equitable manner.²¹

The holding of *Tom Reed Gold Mines Co. v. United Eastern Mining Co.*,²² was one of the first indications that the clock will begin to run against plaintiffs only after the wrongdoing was or should have been discovered by them.²³ In *Acton v. Morrison*,²⁴ the Arizona Supreme Court explained that statute of limitations should not punish people for failing to discover the real cause of their problems.²⁵ Similarly, in *Mayer v. Good Samaritan Hospital*,²⁶ the court defined a “fair and just statute of limitations”²⁷ as one that balances the difficulty plaintiffs have understanding their injuries with the potential staleness of a claim.²⁸ The court has also said that the difficulty of detecting an injury is an “important inquiry in applying the discovery rule.”²⁹ Finally, in the recent case of *Doe v. Roe*³⁰ the Arizona Supreme Court held that plaintiffs must possess “a minimum requisite of knowledge sufficient to identify that a wrong occurred and caused injury.”³¹

19. *Id.*

20. *Id.* at 995.

21. *Id.* at 994.

22. 8 P.2d 449 (Ariz. 1932).

23. *Id.* at 450 (holding that a defendant who has prevented a plaintiff from knowing pertinent facts is not permitted to use the statute of limitations against the plaintiff until the plaintiff “knows, [or] reasonably should have known, of the existence of such facts”).

24. 155 P.2d 782 (Ariz. 1945). The Morrison case actually came before the Arizona Supreme Court on two separate occasions. *See Morrison v. Acton*, 198 P.2d 590 (Ariz. 1948).

25. *Morrison*, 198 P.2d at 596. The plaintiff in this case had made extensive efforts to decipher the cause of his illness and pain, but medical doctors were unable to diagnosis the problem for several years. The plaintiff filed the malpractice action within six months of learning of defendant’s negligence. *Id.*

26. 482 P.2d at 497.

27. *Walk*, 44 P.3d at 995.

28. *Mayer*, 482 P.2d at 500–01 (holding that malpractice claims do not accrue until the plaintiff “knew or by the exercise of reasonable diligence should have known of the defendants’ conduct”).

29. *Gust, Rosenfeld & Henderson v. Prudential Ins. Co.*, 898 P.2d 964, 968 (Ariz. 1995).

30. 955 P.2d 951 (1998). *Doe* involved repressed memories of sexual abuse that did not surface until decades after the abuse. *Id.*

31. *Id.* at 962.

Together, these cases stand for the proposition that the statute of limitations should not work against plaintiffs until they have appropriate knowledge indicating wrongdoing. *Kowske*'s narrow requirements for accrual do not fulfill this historical desire for an equitable statute of limitations because it requires the statute to begin running even when the plaintiff is unaware that the injury is attributable to negligence. After examining the case law prior to *Kowske*, the court concluded that the time of accrual should be related to the plaintiff's knowledge of wrongdoing.

A review of legislative history offered further support for this conclusion. The *Walk* court noted that for accrual to be triggered, "something more is required than the mere knowledge that one has suffered an adverse result while under the care of a professional."³² This requirement for "something more" is supported by the history of Arizona's statute of limitations.³³ The statute of limitations underwent a revision after being declared unconstitutional by the Arizona Supreme Court in 1984.³⁴ The former statute provided that a malpractice claim must be brought within two years of the "date of injury."³⁵ When the legislature re-wrote this law, they provided that negligence actions, including medical malpractice claims, must be filed within two years from the date of "accrual."³⁶ The change in language, from "date of injury" to "accrual," reflects the legislature's desire to adopt a statute of limitations that begins to toll when a plaintiff knows or should know that her injuries are due to defendant's negligence.³⁷

In light of the statute of limitations' evolution and the desire to enforce equitable tolling, the court held that the statute of limitations began to run when *Walk* had reasonable notice that her injury was due to *Ring*'s negligence.³⁸ The court disapproved of *Kowske* "to the extent that it suggests accrual occurs in cases of this type before a plaintiff is put on reasonable notice to investigate whether the injury is attributable to negligence."³⁹ Accordingly, the court vacated the grant of summary judgment and remanded the case to the trial court.⁴⁰

32. *Walk*, 44 P.3d at 997.

33. *Id.*; see also *Mayer*, 482 P.2d at 500-01 ("[O]ne of the fundamental reasons underlying the philosophy of these statutes—the presumed invalidity of a claim allowed to become stale—is not present in the case where the injured plaintiff has no knowledge that such a claim exists.").

34. *Kenyon v. Hammer*, 688 P.2d 961 (Ariz. 1984). The Court found the statute of limitations discriminated against medical malpractice claims while giving more favorable treatment to malpractice claims against other professionals. Because the statute imposed "a special burden upon a very limited class of tort claimants" the Court found it violated the equal protection clause of the Arizona Constitution. *Id.* at 969.

35. ARIZ. REV. STAT. § 12-542(A) (repealed 1985.)

36. ARIZ. REV. STAT. § 12-542(A)(1) (2002).

37. *Walk*, 44 P.3d at 997; see also *Mayer*, 482 P.2d at 501; *Kenyon*, 688 P.2d at 965 n.1.

38. *Walk*, 44 P.3d at 1001.

39. *Id.* at 996. The Court did not wholly overrule the *Kowske* decision. It concedes that circumstances in which "an unfortunate result would immediately put the plaintiff on notice that the result . . . might be attributable to some fault." In such cases, the *Kowske* ruling would presumably still apply. See, e.g., *Montano v. Browning*, 48 P.3d 494,

In reaching its decision, the court rejected a divergent formulation of statutes of limitations⁴¹—one of which was offered by the United States Supreme Court in *U.S. v. Kubrick*.⁴² The plaintiff in *Kubrick*, a veteran, discovered that he incurred hearing loss due to medical malpractice while being treated at a veteran's hospital.⁴³ He filed suit under the Federal Torts Claim Act.⁴⁴ The Court held that a medical malpractice action under federal law accrues when plaintiffs become aware of the injury and of the injury's connection to defendants' treatment.⁴⁵ The action accrues regardless of whether the plaintiff was aware of any negligence.⁴⁶ While acknowledging the potential benefits of a bright line rule, like the one advocated in *Kubrick*, the Arizona Supreme Court found two significant shortcomings to the rule.⁴⁷ First, the court felt that such a stringent rule would have "some unjust effects."⁴⁸ For example, *Kubrick's* reasoning would bar claims by people who had been reassured by their doctors that injuries were not the doctors' fault.⁴⁹

Another detriment of the bright line rule advocated by *Kubrick* is its potential to "inject an element of mistrust" between patients and their care-givers and advisors.⁵⁰ The court believed that if plaintiffs are not put on notice to investigate whether an injury is due to negligence, then "patients and clients should not be required to commence investigation of a malpractice action."⁵¹ To avoid the proliferation of mistrust between these parties, the court felt the "better rule" is one in which accrual is not triggered until plaintiffs have reasonable notice that their injuries might be caused by negligence.⁵² The question of when Walk had such notice was determined to be a question for the jury.⁵³

Finally, the court also determined that reasonable minds could differ about when Walk had the necessary notice. It did not believe, as a matter of law, that Walk was put on notice to begin investigating whether Ring acted

498 (Ariz. App. 2002) (rejecting the argument that a cause of action did not accrue until legal counsel informed the plaintiff of who could be sued).

40. *Id.* at 1001.

41. *Walk*, 44 P.3d at 998.

42. 444 U.S. 111 (1979).

43. *Id.* at 111.

44. *Id.* at 114; *see* Federal Torts Claims Act, 28 U.S.C. § 2401(b) (tort claims against the U.S. government must be brought "within two years after such claims accrue").

45. 444 U.S. at 122 ("We are unconvinced that for statute of limitations purposes a plaintiff's ignorance of his legal rights and his ignorance of the fact of his injury or its cause should receive identical treatment.").

46. *Id.* at 123–24.

47. *Walk*, 44 P.3d at 998.

48. *Id.*

49. *Id.* Other examples include those who have "no reason to believe they were negligently injured." *Id.* There may also be people with "no way to ascertain they were injured through some wrongdoing." *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

negligently.⁵⁴ Additionally, the court rejected the argument that, as a matter of law, a reasonable person in Walk's situation is required to question doctors for purposes of uncovering negligence.⁵⁵ Thus, the questions of when this discovery was made and how diligently Walk acted in investigating the potential negligence were deemed questions for the jury.⁵⁶

IV. CONCLUSION

The Arizona Supreme Court saw *Walk* as an opportunity to "examine and reconcile Arizona's cases applying discovery and fraud theories to the statute of limitations."⁵⁷ By refusing to adopt a "bright-line 'what and who' rule,"⁵⁸ the court has made the application of the statute of limitations more context specific. Lawyers and judges trying to determine the time of accrual will now have to consider when plaintiffs were aware that their injuries might be attributable to negligence. If the possibility of negligence was obvious at the time of the injury, then the *Kowske* test might still apply. However, if the injuries were not immediately attributable to negligence, then the *Walk* formulation is likely to be the most appropriate test. Hence, the Arizona Supreme Court's decision requires lawyers and judges to be even more attentive to each case's specific facts. It is presumably the hope of this court that such inquires will lead to more equitable application of the statute of limitations.

54. *Id.* at 996.

55. *Id.*

56. *Id.* at 999. "Given the facts of the present case, one cannot say as a matter of law that plaintiff slept on her rights or was dilatory in failing to investigate or file." *Id.* at 998.

57. *Id.* at 990.

58. *Id.* at 998.