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Fausto v. Sanchez-Flores, 137 Nev. Adv. Op. 11 (March 11, 2021)

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PERSONAL INJURY: STATUTE OF LIMITATIONS SUBJECT TO EQUITABLE TOLLING

SUMMARY

The Court concluded that the two-year limitations period for actions to recover from personal injury or wrongful death claims is subject to equitable tolling when a plaintiff demonstrates reasonable diligence in pursuing the claim and extraordinary circumstances prevented a timely complaint.

FACTS AND PROCEDURAL HISTORY

Jaqueline Fausto alleged that on December 20, 2016, after an evening out with Ricardo Sanchez-Flores and his then-wife Verence Ruth Flores (collectively, Sanchez-Flores), Ricardo took advantage of Fausto's intoxicated state to sexually assault her. Fausto alleged that Verence was aware of the sexual assault but drove Fausto home without revealing this knowledge. The day after the incident, Fausto completed a rape kit and reported the crime to the police days later. Four months after the reported assault, police collected Fausto's unwashed clothes that she had been wearing on the night of the incident. It was not until February 2, 2019, that Fausto became aware that the lab processed her items and found Ricardo's DNA on her clothing. A criminal complaint was filed against Ricardo thereafter.

Sanchez-Flores filed their motion to dismiss based on NRS 11.190(4)(e), which imposes a two-year limitation period for personal injury and wrongful death claims.² Fausto argued that the court should toll the limitation period because she could not have brought her claims before she received her rape kit results. The district court granted Sanchez-Flores's motion because Fausto's complaint was filed over six months after the two-year statute of limitations expired. The district court held that the tolling of the statute of limitations did not apply to Fausto because she knew of the underlying facts of her claim during the limitation period. Fausto was also not prevented from obtaining other information necessary to her claims despite the delayed processing of her rape kit.

DISCUSSION

Fausto argued that the district court erred in finding that her claims did not warrant tolling. Fausto asked the Court to clarify that NRS 11.190(4)(e) is subject to equitable tolling and to adopt the federal tolling standard. Fausto asserted that the federal standard would provide Nevada district courts with a better method than the one applied in *Copeland*.³ Still, Fausto argued that her tort claim's limitation period could be tolled under either standard.

Because the parties submitted exhibits containing matters outside the pleadings, and the district court did not exclude those exhibits, the Court treated the dismissal order as an order

¹ By Tanner Lucas Castro.

² NEV. REV. STAT. § 11.190(4)(e) (2021).

³ *Copeland v. Desert Inn Hotel*, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983).

granting summary judgment which they reviewed de novo.⁴ Neither party disputed the facts in the record, nor did they maintain that there were genuine issues of material fact precluding summary judgment. Instead, each party contested whether Fausto's tort claims were entitled to equitable tolling.

NRS 11.190(4)(e) is subject to equitable tolling

The limitation period for NRS 11.190(4)(e) begins to run "when the wrong occurs and a party sustains injuries for which relief could be sought."⁵ Fausto contends that the limitation period should be tolled because she could not obtain the evidence necessary to assert her claims during the limitations period. Before this case, the Court had not previously determined whether NRS 11.190(4)(e) may be equitably tolled. The doctrine of equitable tolling is a nonstatutory remedy that permits a court to suspend a limitation period and allow an otherwise untimely action to proceed when justice requires.⁶

When determining whether a statute is subject to equitable tolling, the inquiry begins with the understanding that the Legislature legislates with common law principles like tolling in mind.⁷ The Court first adopted the doctrine of equitable tolling in *Copeland* for employment discrimination claims.⁸ Since *Copeland*, the Court has applied the equitable tolling doctrine to different statutes of limitations.⁹ Based on the Court's evolving expansion of the equitable tolling doctrine to other similar statutes, and the presumption that the Legislature legislates with principles like equitable tolling in mind, the Court determined that NRS 11.190(4)(e) is subject to equitable tolling.

The standard for equitable tolling as it relates to NRS 11.190(4)(e)

The Court set forth several nonexclusive factors in *Copeland* to consider when determining whether equitable tolling is appropriate.¹⁰ Fausto points out that several of these factors do not readily apply to nonadministrative agency cases. Fausto urged the Court to adopt the federal standard for equitable tolling because it is more broadly applicable.

⁴ Winn v. Sunrise Hosp. & Med. Ctr., 128 Nev. 246, 252, 277 P.3d 458, 462 (2012).

⁵ Petersen v. Bruen, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990).

⁶ See 51 Am. Jur. 2d Limitation of Actions § 153 (2021 update).

⁷ Lozano v. Montoya Alvarez, 572 U.S. 1, 10 (2014).

⁸ *Copeland*, 99 Nev. at 826, 673 P.2d at 492.

⁹ *Copeland*, 99 Nev. at 826, 673 P.2d at 492; State, Department of Taxation v. Masco Builder Cabinet Group, 127 Nev. 730, 738-40, 265 P.3d 666, 671-73 (2011) (The Court agreeing to toll the deadline for a tax refund claim); City of N. Las Vegas v. State, Local Government Employee-Management Relations Board, 127 Nev. 631, 641, 261 P.3d 1071, 1077 (2011) (The Court agreeing to toll the deadline for filing a complaint asserting prohibited labor practices against a local government agency); O'Lane v. Spinney, 110 Nev. 496, 501, 874 P.2d 754, 757 (1994) (recognizing that the doctrine of equitable tolling could pertain to the deadline for enforcing judgments under NRS 11.190(1)).

¹⁰ *Copeland*, 99 Nev. at 826, 673 P.2d at 492. These factors include "the diligence of the claimant; the claimants knowledge of the relevant facts; the claimants reliance on authoritative statements by the administrative agency that misled the claimant about the nature of the claimants rights; any deception or false assurances on the part of the employer against whom the claim is made; the prejudice to the employer that would actually result from delay during the time that the limitations period is tolled; and any other equitable considerations appropriate in the particular case." *Id.*

While the Court agreed that some of the *Copeland* factors were specific to the context of that case, other factors were generally applicable to tort claims barred by NRS 11.190(4)(e).¹¹ The Court explained that the focus of equitable tolling is “whether there was excusable delay by the plaintiff, and that equitable tolling applies when the claimant demonstrated diligence in filing their claim.”¹² Accordingly, the Court did not find it necessary to adopt the federal standard because they have already recognized previous factors in their own jurisprudence. Courts should consider the relevant *Copeland* factors when determining whether to equitably toll NRS 11.190(4)(e).¹³ When a plaintiff seeks to equitably toll the limitations period in NRS 11.190(4)(e), the plaintiff must demonstrate that they acted diligently in pursuing their claim and that extraordinary circumstances beyond their control prevented a timely complaint.

Fausto failed to meet the relevant equitable tolling factors under Copeland

The Court determined whether Fausto’s circumstances warranted the application of equitable tolling to her claims and held that Fausto was not diligent in her complaint’s filing and that no extraordinary circumstances were brought forth to support tolling.

Diligence

The record shows that Fausto did not act diligently in bringing her claims. Fausto reported the sexual assault to the police in January 2017 but did not seek counsel or assert her claims until two and a half years later. Further, although Fausto contends that she needed the results of the rape kit test to prove her claims, she failed to demonstrate how she proactively pursued the rape kit results or that it was impossible for her to assert her civil claims absent those results.

Extraordinary circumstances

Fausto failed to demonstrate extraordinary circumstances that prevented her from filing her complaint. The Court rejected Fausto’s contention that she would have nothing to support her testimony without the rape kit results. Fausto was not required to have DNA evidence before filing and could have amended her complaint after receiving the results. The record also demonstrates that Fausto did not allege that she had doubts about her sexual assault because of the delay in processing the rape kit.

CONCLUSION

The Court held that the doctrine of equitable tolling may apply to NRS 11.190(4)(e), where the plaintiff demonstrates diligence in pursuing their claims and that some extraordinary circumstance prevented the plaintiff from bringing a timely action. As such, the Court concluded that Fausto failed to meet this standard to receive equitable tolling for her claims and affirmed the district court’s order.

¹¹ *Id.*

¹² *City of N. Las Vegas*, 127 Nev. at 640, 261 P.3d at 1077.

¹³ *Copeland*, 99 Nev. at 826, 673 P.2d at 492.