

Kentucky Supreme Court
Cases of Note
[January-February, 2020](#)

Note: To open hyperlink, take one of the following steps:

1. Hold down the control (“Ctrl”) key and click on the link.
2. Right-click on the link and select “Open Hyperlink”.

Note: No Court in January.

STATUTE OF LIMITATIONS

[Tracie Williams v. Katelin Hawkins, Administratrix of the Estate of Charlotte Hawkins 2019-SC-000012-DG](#) February 20, 2020

Opinion of the Court by Justice Hughes. Minton, C.J.; Keller, VanMeter, Wright, JJ., concur. Lambert, J. dissents without separate opinion. Nickell, J., not sitting.

Appellant Tracie Williams was injured in a two-vehicle accident with Charlotte Hawkins in March 2015. Despite public records indicating that Charlotte had died in October 2015, Appellant did not discover her death until one day prior to the expiration of the statute of limitations in March 2017. Because Appellant did not name her estate in place of Charlotte individually, the trial court dismissed the complaint and the Court of Appeals unanimously affirmed. On discretionary review, the Supreme Court affirmed. Appellant argued that she was not afforded the full statutory period to file her complaint because the nonexistence of an estate prevented her from timely filing suit. She sought application 3 of the doctrine of equitable tolling, which pauses the running of the limitations period if (1) she has been pursuing her rights diligently, and (2) some extraordinary circumstance stood in her way. The Supreme Court concluded that Appellant did not pursue her rights diligently because available public information indicated that Charlotte was deceased - an obituary and the probate case. The plaintiff has an affirmative obligation to locate the proper party defendant and determine their vital status, which could have easily been determined in this case by a simple internet search. Additionally, equitable estoppel is inapplicable because, contrary to Appellant’s assertion, there is no evidence suggesting that Charlotte’s insurer knew of her death. Without evidence that the insurer knew of the death, there is no evidence that the insurer concealed a material fact or intended to induce Appellant’s action or inaction in reliance thereon, as required by the estoppel doctrine. Lastly, despite Appellant’s argument that application of Gailor v. Alsabi, 990 S.W.2d 597 (Ky. 1999), regularly leads to unjust results, the result in this case could have been avoided with due diligence, something Kentucky law has always required in cases such as this. No extraordinary circumstance justifies deviating from this routine application of the statute of limitations.

TORTS

[Angela Jackson and Lamont Marshall v. Estate of Gary Day and USAA General Indemnity Company](#)

[2018-SC-000297-DG](#) February 20, 2020

Opinion of the Court by Justice Hughes. All sitting. Minton, C.J.; Keller, Nickell, VanMeter, and Wright, JJ., concur. Lambert, J., dissents without separate opinion.

Appellants Marshall and Jackson were injured in a two-vehicle accident with Gary Day in February 2014. On December 29, 2015, well before the statute of limitations period expired pursuant to KRS 304.39-230(6), Appellants filed a complaint against Day. After several unsuccessful service attempts, a sheriff's return filed in the record on May 18, 2016 indicated that Day was deceased. However, it was not until receipt of a special bailiff report in August 2016, after expiration of the limitations period, that all parties discovered his death. Appellants filed a third amended complaint, naming Day's estate in place of Day individually, on December 19, 2016. Appellees filed a motion for summary judgment arguing that the claims were time barred by the statute of limitations, while the Appellants argued that the third amended complaint could relate back to the original complaint pursuant to CR 15.03. The trial court granted summary judgment and dismissed the complaint based on this Court's holding in *Gailor v. Alsabi*, 990 S.W.2d 597 (Ky. 1999). The Court of Appeals adopted the trial court opinion in its entirety. Affirming the Court of Appeals, the Supreme Court determined that the Appellants' case is factually similar to *Gailor*, where this Court upheld the dismissal of a complaint against a deceased driver's estate as untimely. The 4 plaintiff has an affirmative obligation to locate the correct party defendants and determine their vital status, a status that could have been easily determined in this case by simply examining the court file. The original complaint filed against Day, the deceased driver, was a nullity. Moreover, his Estate could not have known about the proceedings against it during the applicable limitations period as required by CR 15.03 and our relation back doctrine because the Estate did not exist during that time frame. Further, the facts do not warrant equitable tolling of the statute of limitations because Appellants did not pursue their claim diligently despite readily available information accessible within the limitations period informing the parties that Day was deceased. The Supreme Court also reiterated that proof that the tortfeasor is an underinsured motorist (UIM) is an essential fact that must be proved before a insured can recover judgment in a lawsuit against his UIM insurer.