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Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-002275-MR

DOTTIE HOLLOWAY

APPELLANT

APPEAL FROM McCRACKEN CIRCUIT COURT
v. HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 98-CI-00215

ROBERT ALEXANDER

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM AND JOHNSON, JUDGES; EMBERTON, SENIOR JUDGE.¹

EMBERTON, SENIOR JUDGE: Dottie Holloway filed this action alleging that, pursuant to an oral contract, she delivered personal property to Robert Alexander and, while in his possession, the property sustained water damage in the amount of \$45,850. In his answer, Alexander asserted that the claim is

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

barred by the two-year statute of limitations as set out in KRS² 413.125. The circuit court agreed and dismissed the complaint. The issue presented is whether the circuit court properly found that KRS 413.125 is applicable or whether the action is governed by KRS 413.120, which provides a five-year statute of limitations. Because Holloway's claim is for damage to personal property as a result of Alexander's alleged negligence, we agree with the circuit court that the shorter statute of limitations applies.

Holloway is the granddaughter of former Vice President Alben Barkley and owns an extensive collection of Barkley memorabilia. She alleges that in February, 1995, she delivered various pieces of personal property to Alexander for storage in an unoccupied school building owned by him. She contends that she and Alexander had an oral agreement pursuant to which in exchange for permitting storage of the property, the property would eventually be auctioned and Alexander would keep a percentage of the proceeds. However, sometime in the fall of 1995, and before the auction took place, Holloway discovered that her property had sustained substantial water damage. Alexander informed her that a third party had access to the building and had failed to turn off a water faucet causing the

² Kentucky Revised Statutes.

building to flood. Holloway filed the present action on March 2, 1998, more than two years after the discovery of the damage.

Alexander denies there was an agreement that he would store the property in return for any type of compensation and claims that the arrangement was nothing more than gratuitous. Where a bailment is created for the mutual benefit of the bailor and the bailee, the bailee is liable for loss or injury to property due to his failure to exercise ordinary care to safeguard the property.³ If, however, the bailment is gratuitous, one for the sole benefit of the bailor, the duty on the bailee is to exercise only slight care to preserve the property.⁴ For our purpose of discussing the application of the statute of limitations, we need not decide whether the bailment was gratuitous, for the mutual benefit of the parties, or whether there was a contract between the parties. Under our standard of review, we must accept the allegations of the complaint as true including that there was a bailment contract.⁵

KRS 413.125 provides:

An action for the taking, detaining or injuring personal property, including an action for specific recovery shall be commenced within two (2) years from the time the cause of action accrued.

³ Smith-Hager Ice Co. v. Reid, 228 Ky. 489, 15 S.W.2d 504 (1929).

⁴ Parkrite Auto Park v. Badgett, 242 S.W.2d 630 (Ky. 1951).

⁵ Pike v. George, 434 S.W.2d 626 (Ky. 1968).

KRS 413.120 provides in relevant part that certain actions shall be commenced within five (5) years after the cause of action accrued. The list includes an oral contract, an action for damages for withholding real or personal property, and an action for injury to the plaintiff not arising on contracts or otherwise enumerated.

When a bailment is for an unspecified time, the statute of limitations accrues when the bailor makes a demand for the chattel and is refused or the bailee performs some act that is hostile or inconsistent with the bailment.⁶ The parties have agreed that Holloway discovered the damage more than two years prior to filing her complaint; so if KRS 413.125 is the applicable statute of limitations, her claim was properly dismissed. She argues though that this is not a claim sounding in tort for damage to personal property but one based on a breach of an oral contract.

There appears to be little case law on the application of KRS 413.125, enacted in 1988, to the facts presented. However, there are some general rules regarding statutes of limitation that aid our discussion. In Carr v. Texas Eastern Transmission Corp.,⁷ the plaintiff sued for injuries to his cattle and was brought outside the one-year statute of

⁶ Slack v. Bryan, 299 Ky. 132, 184 S.W.2d 873 (1945).

⁷ 344 S.W.2d 619 (Ky. 1961).

limitations in effect for injuries to livestock. He argued that Texas Eastern agreed not to damage any property off the right-of-way easement and, therefore, this was a breach of contract action. Rejecting the plaintiff's argument the court stated:

The rule, therefore, is that it is the *object* rather than the *form* of the action which controls in determining the limitation period. The form in the case at bar may derive indirectly from a contract but the object of the action is to recover for alleged injuries (speculative and remote though they may be) to cattle.⁸

Preferring the "object of the action" rather than the legal form to control applicable statutes of limitations is the prevailing rule and has been applied to statutes similar to KRS 413.125. It is equally well established law that if there are two statutes dealing with a similar subject matter, the specific statute will control over the more general.⁹

KRS 413.125 expressly applies to actions for damage to personal property, and there is no distinction between tort and contract actions. The legislature could have made its application dependent on the form of the action rather than the object. We find it was the intent of the legislature that it be applicable to personal property damage claims whether arising from contract or tort.

⁸ Id. at 620 (emphasis original).

⁹ Wells v. White, 648 S.W.2d 77 (Ky. 1983).

Holloway points to two cases decided prior to the enactment of KRS 413.125, both of which held that the five-year statute of limitations in KRS 413.120 was applicable to bailment actions.¹⁰ When read closely, neither case supports her contention but in fact supports the view that KRS 413.125 now governs such actions. Prior to 1988, KRS 413.120(6) contained language identical to that now contained in KRS 413.125. Thus, the court's reasoning was not based on the theory that the action was one for breach of contract. To the contrary, the action was one for damage to personal property then controlled by a five-year statute of limitations.¹¹

The circuit court properly held that the two-year statute of limitations found in KRS 413.125 bars Holloway's action. The order dismissing the complaint is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James W. Owens
Paducah, Kentucky

BRIEF FOR APPELLEE:

Daniel S. Stratemeyer
Paducah, Kentucky

¹⁰ See Slack; Bristow v. Taul, 310 Ky. 82, 219 S.W.2d 641 (1949).

¹¹ See Slack, 184 S.W.2d at 875. The court specifically cited KRS 413.120(6).