

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-002002-MR

JAMES D. SALLIE

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 04-CI-00477

COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS, AND
COMMONWEALTH OF KENTUCKY, BOARD
OF CLAIMS

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: BARBER AND VANMETER, JUDGES; EMBERTON,¹ SENIOR JUDGE.

EMBERTON, SENIOR JUDGE: James D. Sallie appeals from an order affirming an order of the Board of Claims dismissing his personal injury claim against the Commonwealth of Kentucky because it was not presented within one year from the date it accrued. The issue presented is whether a claim brought one

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.

year and a day after the date of the alleged accident is timely filed under KRS 44.110(1).²

In his claim filed on August 18, 2004, Sallie alleged that on August 18, 2003, while traveling westbound on U.S. 60 in Carter County, his vehicle slipped off the roadway into a foot deep rut causing him to lose control of the vehicle and strike a tree. He alleged that the Commonwealth was aware of the hazardous road condition and sought damages.

KRS 44.110(1) provides that claims must be filed with the board within "one year from the time the claim for relief accrued." Citing Commonwealth Dept. of Highways v. Baker,³ the board held that the day of Sallie's accident must be considered to determine when the action accrued and dismissed the claim as untimely filed. In Baker, Baker was injured on December 12, 1959, and filed his claim on December 12, 1960. When discussing the identical issue we are presently considering, the court reasoned that:

The filing of the claim within the one year period is a condition precedent to recovery. Commonwealth Dept. of Highways v. Chinn, Ky., 350 S.W.2d 622. The computation of time is governed by KRS 446.030, not CR 6.01. Randall v. L.L. Morris Transport Co., Ky. 380 S.W.2d 221. As held in that case, since the day the cause of action accrues must be counted, proceedings commenced on the same date of the following year are not

² Kentucky Revised Statutes.

³ 385 S.W.2d 192 (Ky. 1964).

'within one year from the time the cause of action accrues.'⁴

If Baker expresses the current state of the law, then the actions of the board and of the circuit court must be affirmed. We find persuasive, however, Sallie's contention that the 1970 amendment to KRS 446.030(1)(a) is controlling and, therefore, that his claim is timely.

In Baker, the court correctly applied KRS 446.030 as it existed to the calculation of "one year" under KRS 44.110(1). At that time, KRS 446.030 required that the day of the alleged event giving rise to the cause of action be counted in computing the time within which an action must be commenced. In 1970, however, the statute was amended and now reads:

In computing any period of time prescribed or allowed...by statute or regulation, the day of the act, event or default after which the designated period of time begins to run is not to be included.⁵

Thus, the basis for the holding in Baker is now in direct contradiction of KRS 446.030; the board's dismissal of Sallie's claim is, therefore, erroneous.

The order of the circuit court affirming the dismissal of Sallie's claim is reversed and the case is remanded for further proceedings.

ALL CONCUR.

⁴ Id.

⁵ KRS 446.030(1)(a), (emphasis added).

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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