

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JESSICA MCGINNIS and DAVID F.)	
MCGINNIS, wife and husband,)	
and JESSICA MCGINNIS, individually)	C.A. No. N15C-07-180 FWW
and as next friend of DAVID A.)	
MCGINNIS, EMILY J. MCGINNIS,)	
and COREY MCGINNIS, minors,)	
)	
Plaintiffs,)	
)	
v.)	
)	
RICO PIERELLI,)	
)	
Defendant.)	

Submitted: November 18, 2016
Decided: January 13, 2017

Upon Defendant's Motion to Dismiss
GRANTED.

ORDER

Gary S. Nitsche, Esquire, Renée J. Leverette, Esquire, Weik, Nitsche & Dougherty,
305 North Union Street, Second Floor, P.O. Box 2324, Wilmington, Delaware
19899; Attorney for Plaintiffs.

Michael C. Rosendorf, Esquire, 221 Main Street, Stanton, Delaware 19804;
Attorney for Defendant.

WHARTON, J.

This 13th day of January, 2017, upon consideration of Defendant Rico Pierelli's ("Pierelli") Motion to Dismiss, Plaintiffs' letter in opposition to Pierelli's Motion to Dismiss, and Pierelli's letter replying to Plaintiffs' response, it appears to the Court that:

1. On May 31, 2013, Plaintiffs sustained personal injuries in a motor vehicle accident involving another vehicle, which was driven by Pierelli.¹
2. On July 22, 2015, Plaintiffs filed a lawsuit against Pierelli contending that Pierelli was negligent in operating his motor vehicle.² Plaintiffs seek damages for their personal injuries, pain and suffering, medical expenses, and loss of consortium.³
3. On August 31, 2016, Pierelli filed his Motion to Dismiss. Pierelli asserts that Plaintiffs' personal injury claims are time barred pursuant to 10 *Del. C.* § 8119 because Plaintiffs filed their Complaint after the two-year statute of limitations period had expired.⁴
4. Plaintiffs admit that their claims are time barred pursuant to 10 *Del. C.* § 8119.⁵ However, Plaintiffs ask for this Court to create an exception to the statute of limitations because their attorney, Lois Dawson ("Dawson"), became severely ill and ultimately died during the statute of limitations period. As a result of

¹ Pls.' Compl., D.I. 1, at 1.

² *Id.* at 2-3.

³ *Id.*

⁴ *See* D.I. 25, at ¶ 3.

⁵ *See* D.I. 31, at 2.

Dawson's illness and death, Plaintiffs were unable to file a complaint within the limitations period.⁶ Specifically, Dawson began representing Plaintiffs on or around June 17, 2014.⁷ During Dawson's vacation in Jamaica from April 2015 to May 6, 2015, Dawson became ill.⁸ She was admitted to the hospital on May 7, 2015 where she was diagnosed with liver failure.⁹ On June 23, 2015, she was transferred from the hospital to a hospice care facility where she remained until her death on July 1, 2015.¹⁰ During Dawson's hospitalization, Plaintiffs claim Dawson was not physically or mentally able to maintain her law practice.¹¹ Therefore, Plaintiffs contend that creating an exception to the statute of limitations under these circumstances is warranted.

5. A motion to dismiss will not be granted if the "plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."¹² The Court's review is limited to the well-pled allegations in the complaint.¹³ In ruling on a 12(b) motion, the Court "must draw all reasonable factual inferences in favor of the party opposing the motion."¹⁴ Dismissal is warranted "only if it appears with reasonable certainty that the plaintiff could not

⁶ *Id.* at 5.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2–3.

¹² *Browne v. Robb*, 583 A.2d 949, 950 (Del. 1990).

¹³ *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005).

¹⁴ *Id.*

prove any set of facts that would entitle him to relief.”¹⁵

6. In Delaware, the rules of statutory construction are well established. From the outset, the Court must determine whether the statute under consideration is ambiguous.¹⁶ “If the statute is unambiguous, then there is no room for judicial interpretation and ‘the plain meaning of the statutory language controls.’”¹⁷ If the statute is ambiguous—that is, the “statute is capable of being reasonably interpreted in two or more different senses”¹⁸—then the Court must consider the statute as a whole, rather than its parts, and read each section in light of all others to produce a harmonious whole.¹⁹

7. Pursuant to § 8119, “[n]o action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained; subject, however, to the provisions of § 8127 of this title.”

8. After reviewing § 8119 and the applicable precedent, the Court finds that the unambiguous language of § 8119 does not permit the Court to toll the limitations period based upon an attorney’s disability.²⁰ Indeed, the court cannot “create

¹⁵ *Id.*

¹⁶ *Doroshov, Pasquale, Krawitz & Bhaya v. Nanticoke Mem. ’l Hosp., Inc.*, 36 A.3d 336, 342 (Del. 2012).

¹⁷ *Id.* at 343 (quoting *Eliason v. Englehart*, 733 A.2d 944, 946 (Del. 1999)).

¹⁸ *Id.* at 342 (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1041 (Del. 2011)).


¹⁹ *Taylor v. Diamond State Port Corp.*, 14 A.3d 536, 538 (Del. 2011) (citing *Dewey Beach Enters., Inc. v. Bd. Of Adjustment*, 1 A.3d 305, 307 (Del. 2010)).

²⁰ *Watts v. Hanson*, 1994 WL 714001, at *1 (Del. Super. Oct. 27, 1994) (“There are no express

exceptions to the continuous running of the statute in the absence of express statutory language,”²¹ and here, no such language exists in § 8119. While the Court recognizes the unique and unfortunate nature of Plaintiffs’ situation, it is the role of the legislature, not the Court, to expressly create exceptions to § 8119. Therefore, Plaintiffs’ personal injury claims are time barred pursuant to § 8119.²²

THEREFORE, Defendant’s Motion to Dismiss is GRANTED.

IT IS SO ORDERED.



Ferris W. Wharton, J.

provisions in the Delaware Code tolling the statute of limitations due to an attorney’s disability.”).

²¹ *Mergenthaler v. Asbestos Corp. of Am.*, 500 A.2d 1357, 1362–63 (Del. Super. 1985) (citations omitted). See also *Ewing v. Beck*, 520 A.2d 653, 660 (Del. 1987) (“Since at least 1907, this Court has refused to rewrite clear statutes of limitations to provide exceptions.”); *Lewis v. Pawnee Bill’s Wild West Co.*, 22 Del. 316 (1907) (“Where the Legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none, and it is not the province of the court to do so.”).

²² Moreover, Plaintiffs’ argument that 18 Del. C. § 3914 is applicable in this case is inaccurate. See *LaFayette v. Christian*, 2012 WL 3608690, at *2 (Del. Super. Aug. 21, 2012); *Ndieng v. Woodward*, 2012 WL 6915205, at *3 (Del. Super. Dec. 19, 2012).