1-1-1970

Disabilities Tolling the Statute of Limitations in Montana

Harold V. Dye

Follow this and additional works at: https://scholarship.law.umt.edu/mlr
Part of the Law Commons

Recommended Citation
Available at: https://scholarship.law.umt.edu/mlr/vol31/iss2/7

This Note is brought to you for free and open access by The Scholarly Forum @ Montana Law. It has been accepted for inclusion in Montana Law Review by an authorized editor of The Scholarly Forum @ Montana Law.
DISABILITIES TOLLING THE STATUTE OF LIMITATIONS IN MONTANA

Basically, there are five fundamental social purposes behind limiting the right to bring an action to some artificial period of years. First, and most fundamental, such limitations tend to prevent the failures of justice which might occur in the trial of "stale" claims. Second, the statutes provide a means for legislatively defining and thus making certain what is a "reasonable time" for bringing any given action. Third, where vindication in open court is a reason for the existence of the action, such statutes tend to limit the action to the period where the wrong exists in the public memory. Fourth, statutes of limitation provide a means of discouraging actions which tend to conflict with some broader policy by assigning them a short period of limitation. Finally, the statutes tend to reduce the amount and complexity of the litigation handled by the courts.

However, the fundamental imperative behind such statutes—that a person must be diligent in asserting his rights—loses its validity if the person in whose favor the action accrues is under a disability which makes it difficult or impossible for him to maintain the action. As a result, from early times legislatures have determined that the interests of allowing such a person to assert his rights have outweighed the social purposes behind the statutes and have carved out partial or total exemptions from their effect in his favor.

As will be seen, these exceptions are no less arbitrary than the statutes of limitation themselves. They can and do lead to injustice in individual cases, and the most that can be said for them is that they tend to promote valid social goals broadly and in the long run. The purpose of this Note is to examine the Montana statutes together with the limited number of cases construing them and to attempt to point out some of the possible pitfalls into which the unwary might fall.

THE STATUTES

The sections of the Montana Code which constitute the general statutes of limitation were enacted on a piecemeal basis over a period of approximately thirty years beginning with the Bannack Statutes and culminating with the Code of Civil Procedure of 1895. There have been few amendments since that time.

These sections are divided into two principal parts, actions for

\footnote{Libel and slander are prime example. Revised Codes of Montana, 1947 [hereinafter RCM] 93-2603 (3) (two years).}

\footnote{Most of the actions assigned a one-year (RCM 93-2603) or six-month (RCM 93-2609) period of limitations are of this character. The "broader policy" favored in such statutes is making government more effective by freeing it from having to contend with the possibility of litigation for an extended period of time.}

\footnote{Stat. 21 James I, c. 16.}

\footnote{RCM 93-2401 through 93-2720.}

\footnote{RCM 93-2501 through 93-2516.}
the recovery of real property and all other actions. The periods of
limitations prescribed range from six months to ten years. Special
statutes of limitation are specifically excluded from the scope of these
general provisions.

The disabilities denominated as such in the statutes are infancy,
insanity, and imprisonment on a criminal charge or for a term of less
than life. The absence of a party from the jurisdiction is provided for
in two sections although it is not termed nor treated as a "disability."
The common law disability of coverture does not exist in Montana.

Montana law specifically provides that in order for the statute to
be tolled, a disability must exist at the time the right of action accrues.
By inference, the "tacking" of successive disabilities, whether in the
same person or in successors in interest, would not be allowed. How-
ever, if a person is under two or more co-existing disabilities at the
time the action accrues, the statute is tolled until all of them are
removed.

The above-mentioned provisions apply only to the denominated dis-
abilities of infancy, insanity, and imprisonment. The absence of the
defendant from the state or alienage in time of war operates as a
complete exemption from the operation of the statute.

TIME OF SUSPENSION

Basically disability provisions are of two types. They may provide
for a complete suspension of the statute of limitations, or they
may provide for some sort of end limitation on the period of suspension.
In Montana, both denominated disability provisions contain such a
limitation.

6RCM 93-2601 through 93-2618.
7RCM 93-2401.
8RCM 93-2515 (real property actions) and 93-2703 (other actions).
The exception for persons under sentence of life imprisonment is presumably because
such persons are "civilly dead." RCM 94-4721.
9These are RCM 93-2702 which suspends the statute when the defendant is out of the
state and 93-2707 which suspends the statute when one party is a subject of a state
at war with the United States.
10RCM 93-2803.
11RCM 93-2710.
(statute of limitations not suspended by the death of a person having a right of action
because of the minority of his heirs).
13RCM 93-311.
14RCM 93-2702 (absence of defendant from state); 93-2707 (alienage in time of war).
15As in the case of alienage in time of war or the absence of the defendant from the
state. Id.
The real property disability statute provides that the statute does not commence running until the disability ceases or the death of the party except that the action must be brought within five years of the termination of the disability or death of the party. For all practical purposes, however, this section operates as a complete suspension since all real property actions except actions by one claiming under letters patent or grants from the state or actions for the recovery of dower must be brought within five years and such actions are not currently of great importance.

The disability provision for "other actions" is more ambiguous. Basically it provides that the statute is tolled during the period of the disability. To this are added limitations that, except in the case of minority, the statute cannot be extended for more than five years and that in any event the action must be brought within one year after the disability ceases. The effect of these provisions, given the variables of

1. Within the age of majority; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term of less than for life.

The time during which disability continues is not deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defense, but such action may be commenced, or entry or defense made, within the period of five (5) years after such disability shall cease, or after the death of the person entitled, who shall die under such disability; but such action shall not be commenced or entry, or defense made, after that period.

That is sufficiently ambiguous so as to cause litigation in an area which calls for clarity. State ex rel. Hi-Ball Contractors v. District Court, Mont., 460 P.2d 751 (1969).
the disability ending before or after the usual period of limitations or not at all, are set forth in a table in the margin.\textsuperscript{25}

**INFANCY**

The reasons for the disability of infancy must be understood as being largely historical and conceptual in nature. It is a relic from a time when children were customarily placed “on their own” at a tender age and even then was the result of the common law judges’ dichotomy between “adults” and “infants.” In the present day, parents tend to be quite diligent in asserting their children’s rights at least until they are of such an age that they can hardly be considered “infants.” Logically, it would seem that minority is less of a handicap than many “disabilities,” such as subsequently acquired insanity or physical incapacity, which are not mentioned by the statutes.\textsuperscript{26}

Nevertheless, minors receive more complete protection under the disability statutes than any other group. As was previously mentioned,\textsuperscript{27} the statute is completely suspended during the period of minority with no end limitation. Thus, a two-year-old boy who has a tort claim for personal injuries has twenty years\textsuperscript{28} to bring this action compared to three years for a person not under a disability\textsuperscript{29} and a maximum of eight years for a person suffering from insanity.\textsuperscript{30}

**INSANITY**

The second of the denominated disabilities is insanity. The term “insane” is not defined anywhere in the Codes, but elsewhere “persons of unsound mind” is defined as “... idiots, lunatics, imbeciles, and habitual drunkards.”\textsuperscript{31}

\begin{itemize}
\item[I.] Infancy. In all cases of minority, the period of limitations is the longer of:
  \begin{itemize}
  \item A. the usual period of limitations, or
  \item B. the period of minority remaining plus one year or the period of limitations if it is less than one year.
  \end{itemize}
\item[II.] Insanity and imprisonment.
  \begin{itemize}
  \item A. Where the disability ends within the usual period of limitations, the period of limitations is the shorter of
    \begin{itemize}
    \item a) the usual period of limitations plus the time the person was under the disability.
    \item b) the usual period of limitations plus five years.
    \end{itemize}
  \item B. Where the disability ceases after the usual period of limitations, the period is the shorter of
    \begin{itemize}
    \item a) the usual period of limitations plus the time the person was under the disability, or
    \item b) the usual period of limitations plus five years or
    \item c) the time the person was under the disability plus one year.
    \end{itemize}
  \item C. In any event, the period of limitations is absolutely limited to the usual period of limitations plus five years even if the disability never ceases.
\end{itemize}

\textsuperscript{25}Note 25 supra.
\textsuperscript{26}Id.
\textsuperscript{27}RCM 64-104.
\textsuperscript{28}Note 25 supra.
\textsuperscript{29}RCM 93-2605 (3).
\textsuperscript{30}RCM 64-101.
Obviously, with such an imprecise definition the determination of who is “insane” will have to await a case by case adjudication. It is apparent that the legislature intended to include the mentally retarded (“imbeciles”) and alcoholics (“habitual drunkards”) as well as persons suffering from mental illness in the statutory definition. However, any further analysis of the elements of “insanity” within the savings clause to the statute would be futile. There have been no Montana cases, and decisions from other jurisdictions are of little value because of their limited number and the great variety of statutory definitions. In any event, it seems clear that the statute includes both adjudicated and unadjudicated insanity. This is the majority, if not the universal rule, in this country and the relevant statutes do not appear to confine “persons of unsound mind” to persons declared legally insane. Moreover, it would hardly seem in accord with the policy behind the saving clause to deny an obviously incompetent person its benefits merely because he has not been formally declared non compos mentis.

One specialized problem deserves mention. That is whether insanity which arises simultaneously with the right of action tolls the statute of limitation.

R.C.M. 93-2710 states “[n]o person can avail himself of a disability, unless it existed when his right of action or entry accrued.” [emphasis supplied]. This would tend to imply that such a disability must have been in existence at the time the right of action accrued.

However, in face of a nearly identical statute the California District Court of Appeal held that:

Where insanity is caused by the wrongful act of negligence of another and occurs simultaneously with such act or negligence, it follows that such disability exists at the time the cause of action accrues and the statute of limitations does not commence to run against the cause of action.

The question is therefore an open one in Montana with the literal language of the statute pointing in one direction and persuasive authority from another jurisdiction in the other.

On analysis, however, the position of the California court appears to be the preferable one. The basic social purpose behind not allowing a subsequently acquired disability to toll the statute is that there is no convenient and readily determinable cutoff point after the right of action arises. A person who becomes insane one day before the statute...
runs would be as much entitled to toll it as one who became insane one day after the action accrued. In such a situation the legislature has made a determination that the social interests in cutting off the possibility of litigation outweighs the interests of a person who has had some time while competent to assert his rights.

These policy considerations do not apply to a situation where the right of action and the disability occur simultaneously. The time the action accrues furnishes a natural cutoff point and a person who is rendered insane by the wrongful act has no more opportunity to assert his rights than a person whose incompetency pre-existed the action.

EFFECT OF THE APPOINTMENT OF A GUARDIAN

Although the issue has not been litigated in Montana, the majority rule elsewhere is that the appointment of a guardian does not start the statute of limitations running against his ward whether the ward is insane\textsuperscript{37} or a minor\textsuperscript{38} or whether the guardianship is general\textsuperscript{39} or ad litem.\textsuperscript{40}

Such holdings have often been accompanied by dicta that a different result would follow if the right of action were in the guardian.\textsuperscript{41} However, as was pointed out in Aronson \textit{v.} Bank of America National Trust and Saving Association,\textsuperscript{42} a guardian \textit{qua} guardian's only duty is that of caretaker of the person or property of his ward. He has no interest in any action other than as guardian of the rights of another. Statutes which allow him to sue in his own name\textsuperscript{43} are procedural only, an exception to the rule that actions are to be prosecuted in the name of the real party in interest.\textsuperscript{44} It would seem, therefore, that the exception would apply, if at all, only if the guardian, in addition to his duties as guardian, held property in trust for his ward or in some other way was possessed of the legal title to the \textit{res}.

As was stated previously, this exact point has not been decided in Montana. However, in Lamont \textit{v.} Vinger\textsuperscript{45} it was held that the failure of an administrator to maintain an action to recover real property did not bar an action by the minor heirs even though the statute of limitations had long since run on the administrator.\textsuperscript{46} In the course of the decision, the Court assumed that the administrator and the heirs had a

\textsuperscript{39}Id.
\textsuperscript{40}Klosky \textit{v.} Dick, 359 Mich. 615, 103 N.W.2d 618, 621 (1960).
\textsuperscript{42}Note 38 supra.
\textsuperscript{43}E.g., MONT. R. CIV. PRO. 17(a).
\textsuperscript{44}Note 40 supra.
\textsuperscript{45}61 Mont. 530, 202 P. 769 (1921).
\textsuperscript{46}Id.
joint right to maintain the action. It would seem, therefore, that the Montana Court has, at least by implication, adopted the rationale behind the majority rule which is the protection of the minor from the negligence of those persons who are supposed to act for him.

IM PRISONMENT

In order for a person to be "imprisoned" within the meaning of the savings clause, he must be in actual legal confinement at the time the right of action accrues. Thus a person who is free on bond is not within the savings clause even if he is subsequently convicted and imprisoned. The same is true if a person is paroled or on probation.

The primary thrust of this clause is not designed to alleviate the practical problems which a convict would have in vindicating his rights. These would exist regardless of when the person was actually confined. Rather, the statute is aimed at the fact that a convict does not have a reasonable opportunity to discover that he has a right of action against another. Without such a savings clause, such a person's rights might be lost not through neglect to prosecute his action or even ignorance of his legal rights but from ignorance of the fact of the act itself.

SPECIAL STATUTES OF LIMITATION

The Montana Codes set forth some thirty-three special periods of limitation which are set forth in the Appendix. Although the issue has not been passed upon in Montana, it is virtually certain that the general disability savings clause does not apply to such special statutes.

This is unfortunate because the same policy considerations which apply to allowing an exception for the general statutes of limitations in favor of persons under certain disabilities, apply to at least some of the special statutes also. What is more unfortunate is that the situation appears to have resulted from legislative oversight.

"Id.


"Mitchell v. Greenough, 100 F.2d 184, 187 (9th Cir. 1938), cert. den. 306 U.S. 659 (1939).


"This is for a number of reasons. First, RCM 93-2401 specifically excludes special statutes from the provisions of the chapters covering general limitations. Second, both of the general disability saving clauses, RMC 93-2515 and 93-2703, more or less expressly, limit themselves to covering the general statutes which precede them. Supra, notes 17 and 22, respectively. Finally, four of the special limitations provisions contain their own disability saving clauses, which further negates a legislative intent to include all the special statutes within the general saving provisions. RMC 91-1101, 91-3036, 91-5207, 91-5208.

"The best example is RCM 87A-6-111 which places a special limitation of four years on any action for breach of a contract of sale. Although it is true that this section provides that "'[i]t is questionable whether this provision is sufficient to adopt the general disability saving clause in view of its inclusive nature. Id.
The general disability savings clauses have not been amended since 1895. At that time the statutes exhibited a certain consistent and logical pattern. The special statutes were few in number and many had special disability provisions.\textsuperscript{54} Those that did not were mostly limitations on lien foreclosures\textsuperscript{55} or actions against governmental units\textsuperscript{56} in which exclusion of a savings clause could be justified in terms of public policy.

Since that time special statutes of limitations, enacted for special purposes, have proliferated. Moreover, the situation is not likely to improve since Model and Uniform Acts are increasingly given to including special statutes as a part of their comprehensive format. And such acts are tending to cover broader and broader areas of the law.

This is not to berate the special statutes of limitations as a means of social policy. But if the state determines that individuals laboring under certain disabilities are to be exempted from the period of limitations, such an exemption should apply to all actions unless some overriding reason compels otherwise.

HAROLD V. DYE

APPENDIX

MONTANA SPECIAL STATUTES OF LIMITATION

<table>
<thead>
<tr>
<th>SECTION</th>
<th>RCM 1947 ACTION</th>
<th>PERIOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>9-604</td>
<td>Actions against a mausoleum-columbarium authority relating to the remains of a person left in their possession.</td>
<td>2 years</td>
</tr>
<tr>
<td>11-1310</td>
<td>Presentment of claims to a city or town.</td>
<td>1 year</td>
</tr>
<tr>
<td>11-2239</td>
<td>Actions to recover taxes paid under protest to Special Improvement Districts.</td>
<td>60 days</td>
</tr>
<tr>
<td>11-2911</td>
<td>Actions against grantee of a deed issued by an incorporated city or town after platting pursuant to sections 11-2901 through 11-2911 R.C.M.</td>
<td>2 years</td>
</tr>
<tr>
<td>15-2298</td>
<td>Actions against dissolved corporations.</td>
<td>5 years</td>
</tr>
<tr>
<td>21-130</td>
<td>Actions for divorce on grounds of adultery or conviction of a felony.</td>
<td>2 years</td>
</tr>
<tr>
<td>45-410</td>
<td>Actions to foreclose logger's liens.</td>
<td>8 months</td>
</tr>
<tr>
<td>45-419</td>
<td>Actions to foreclose lien for driving logs.</td>
<td>60 days</td>
</tr>
<tr>
<td>45-510</td>
<td>Actions to foreclose mechanic's liens.</td>
<td>2 years</td>
</tr>
<tr>
<td>45-805</td>
<td>Actions to foreclose thresherman's lien.</td>
<td>6 months</td>
</tr>
<tr>
<td>45-910</td>
<td>Actions to foreclose crop duster's lien.</td>
<td>90 days</td>
</tr>
<tr>
<td>48-203</td>
<td>Actions for annulment of marriage.</td>
<td>2 or 4 years</td>
</tr>
<tr>
<td>52-206</td>
<td>Period of real property mortgage lien.</td>
<td>8 years</td>
</tr>
<tr>
<td>52-407</td>
<td>Period for foreclosure of real estate trust.</td>
<td>8 years</td>
</tr>
<tr>
<td>72-131</td>
<td>Actions by railroads to recover charges.</td>
<td>3 years</td>
</tr>
<tr>
<td>83-602</td>
<td>Contract actions against state after exhaustion of administrative remedies.</td>
<td>1 year</td>
</tr>
</tbody>
</table>

\textsuperscript{54}\textit{E.g. MONTANA CODE OF CIVIL PROCEDURE OF 1895} (hereinafter Code of Civ. Pro.) sections 2360, 2705, 3055, 3056 (presently RCM 91-1101, 91-3036, 91-5207, 91-5208).

\textsuperscript{55}\textit{E.g. Code of Civ. Pro.} sections 2139 and 3946 (presently RCM 45-419, 45-510).

\textsuperscript{56}\textit{E.g. MONTANA POLITICAL CODE OF 1895 sections} 4024 and 4212 (presently RCM 84-4502, 41-1301).
84-726 Period for filing claims for refund of overpayment of inheritance and other taxes from State Board of Equalization. 5 years
84-4501 Actions to recover license fees paid under protest. 60 days
84-4502 Actions to recover taxes paid under protest. 60 days
84-4920 Period for state to revise income tax returns. 5 years
84-4922 Period for taxpayer to revise income tax return. 5 years
84-4923.1 Period for judicial review of State Board of Equalization. 6 months
87A-2-725* Actions for breach of contract for sale of goods. 4 years
87A-6-111 Actions under Bulk Sale Law. 6 months
89-1715 Actions attacking decree of court creating or modifying an irrigation district. 1 year
91-308 Actions by persons claiming real property under a will against good faith purchasers from an heir. 4 years
91-1101* Actions contesting probate or the validity of a will. 6 months
91-308 Actions for recovery of an estate sold by an heir. 4 years
91-3036* Actions for recovery of an estate sold by an executor or administrator. 3 years
91-5207* Actions against sureties on a guardian’s bond. 3 years
91-5208* Actions by ward for recovery of property sold by guardian. 3 years
93-6504 Actions against boats. 1 year
93-2901-3 Actions for accrued education and support of illegitimate children. 4 years

*Contains a special disability saving clause.