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RECENT DEVELOPMENT

TURNER V. KIGHT: FILING PENDENT CLAIMS IN FEDERAL COURT SUSPENDS THE STATE STATUTE OF LIMITATIONS UNTIL THIRTY DAYS AFTER THE PENDANT CLAIMS TERMINATE.

By: Michael Beste

The Court of Appeals of Maryland held that when state law claims are filed in federal court based on supplemental jurisdiction, pursuant to Section 1367 of Title 28 of the United States Code, the state statute of limitations is suspended while the pendant claims are pending. *Turner v. Kight*, 406 Md. 167, 957 A.2d 984 (2008). The court further held that the suspension continues from the filing of the claim in federal court until thirty days after the district court dismisses the claim or, if appealed, the order dismissing the appeal or a mandate affirming the district court's dismissal. *Id.* at 189, 957 A.2d at 996-97.

On May 15, 2001, Sherri Turner ("Turner") filed a complaint in the United States District Court for the District of Maryland ("District Court") against Montgomery County Sheriff Raymond Kight and other officials ("County Officials"), alleging twelve federal law violations and seven Maryland state law violations. The allegations arose from events that transpired in April 2000, concerning the execution of a warrant for Turner's arrest and alleged mistreatment while in the State's custody. On March 26, 2002, the District Court granted summary judgment in favor of the County Officials on ten federal law counts, and dismissed two federal law counts. Consequently, the District Court declined to assert jurisdiction over the state law claims. On January 15, 2004, following denial of Turner's second motion to reconsider, Turner filed a timely appeal to the United States Court of Appeals for the Fourth Circuit. On January 7, 2005, the appellate court affirmed the District Court's decision. On March 16, 2005, the appellate court issued an appellate mandate, affirming the dismissal. On March 21, 2005, the mandate was docketed, terminating the federal action.

On March 11, 2005, Turner filed the state law claims in the Circuit Court for Montgomery County. The circuit court granted the County

Officials' motion to dismiss, holding that Section 1367(d) of Title 28 of the United States Code ("Section 1367(d)") required Turner to file a complaint in state court within thirty days following the District Court's dismissal because the three-year state statute of limitations ran while the claims were pending in federal court. Turner appealed to the Court of Special of Appeals of Maryland, which agreed with the circuit court's rationale and affirmed the dismissal. The Court of Appeals of Maryland granted Turner's petition for a writ of certiorari.

Section 1367(d) provides that the statute of limitations of pendent claims in federal court "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed." *Turner*, 406 Md. at 175, 957 A.2d at 988 (quoting 28 U.S.C. § 1367(d) (1990)). The Court of Appeals of Maryland found that the definitions of "tolling" and "pending," as used in Section 1367(d), were ambiguous. *Turner*, 406 Md. at 176-79, 957 A.2d at 989-90. Accordingly, the court relied on other jurisdictions and legislative history to determine Congress' intent. *Id.* at 177-82, 957 A.2d at 989-93.

The court acknowledged three possible interpretations of the tolling effect provided in Section 1367(d) which have been adopted in other jurisdictions: the suspension approach, the extension approach, and the substitution approach. *Id.* at 177, 957 A.2d at 989-90 (citing *Goodman v. Best Buy, Inc.*, 755 N.W.2d 354, 356-58 (Minn. Ct. App. 2008)). The court adopted the suspension approach, which provides that state statutes of limitations are suspended while pendent claims are pending in federal court. *Turner*, 406 Md. at 182, 957 A.2d at 992-93. The court explained that under this approach, when the claims are dismissed from federal court, the statutory period resumes for plaintiffs filing state law claims in state court, in addition to a thirty day extension. *Id.* at 177-78, 957 A.2d at 990.

The court recognized that some jurisdictions rejected the suspension approach because thirty days is ample time to file claims in state court. *Id.* at 179, 957 A.2d at 991 (citing *Kolani v. Gluska*, 64 Cal. App. 4th 402, 410 (1998)). Nevertheless, the court found that, by definition, a "tolling statute...interrupts the running of a statute of limitations in certain situations." *Turner*, 406 Md. at 181, 957 A.2d at 992 (quoting BLACK'S LAW DICTIONARY 1525 (8th ed. 2004)). The court also found that this interpretation of "tolling" was adopted by the United States Supreme Court. *Turner*, 406 Md. at 181, 957 A.2d at 992 (citing *Chardon v. Soto*, 462 U.S. 650, 652 (1983)). The court concluded that Congress intended the suspension approach because it

is most consistent with the common definition of “tolling.” *Turner*, 406 Md. at 182, 957 A.2d at 992-93.

The court examined the extension approach, which provides that plaintiffs have thirty days to file a complaint in state court following termination of pendent claims in federal court, but only when the state statute of limitations expires while the pendant claims are pending. *Id.* at 177, 957 A.2d at 990. The court found that Congress did not intend this approach because Section 1367(d) requires tolling in every claim based on supplemental jurisdiction, not merely upon the condition that the state statutory period expired. *Id.* at 179-80, 957 A.2d at 991 (citing *Goodman*, 755 N.W.2d at 357-58). Despite the court’s recognition that the extension approach avoids encroachment upon state sovereignty, the court asserted that it must interpret Congress’ intent, not implant its concerns into the legislation. *Turner*, 406 Md. at 181-82, 957 A.2d at 992.

The court also analyzed the substitution approach, in which the federal statute of limitations substitutes the state limitations period when a party files pendent claims in federal court. *Id.* at 177, 957 A.2d at 990 (citing *Goodman*, 755 N.W.2d at 356-57). The court found that Section 1367(d) provides that the statutory period is tolled, not substituted, while the claims are pending. *Turner*, 406 Md. at 180, 957 A.2d at 991. The court explained that if Congress intended a substitution approach, it would have specified the moment in which the federal statute of limitations supersedes the state law. *Id.* (citing *Goodman*, 755 N.W.2d at 357-58).

The court next considered the definition of “pending,” as used in Section 1367(d), and found that term ambiguous because it was unclear whether a claim was pending during appeal. *Turner*, 406 Md. at 182, 957 A.2d at 993. The court reasoned that if claims were not “pending” during appeal, plaintiffs would be forced to file protective claims in state court while pursuing an appeal in federal court. *Id.* at 186, 957 A.2d at 995. The court anticipated that because state courts may be disinclined to permit inactive cases on the docket, litigation may ensue in both systems, leading to potential inconsistent results. *Id.*

Relying on legislative history, the court noted that language, which suggested that a claim is pending only while in the district court, was omitted from a proposal for Section 1367(d). *Id.* at 188-89, 957 A.2d at 996 (citing H.R. REP. NO. 101-734, at 11 (1990)). The court found that this omission suggested that Congress intended claims to be pending while on appeal. *Turner*, 406 Md. at 189, 957 A.2d at 996.

Although the court found that claims are pending through an appeal of right, the court noted that claims may not be pending when petitioning for certiorari because appeals to courts of last resort are discretionary. *Id.* at 183, 957 A.2d at 993 (citing *Kendrick v. City of Eureka*, 82 Cal. App. 4th 364, 370 (2000)). The court declined to decide this issue, however, because it was not presented by the parties on appeal. *Turner*, 406 Md. at 189, 957 A.2d at 997. The court held that Turner properly filed a complaint in state court before the statute of limitations ran. *Id.* at 189, 957 A.2d at 997.

The court's holding in *Turner* provides plaintiffs with ample time to file state law claims in state courts following dismissal of pendent claims in federal courts. However, practitioners should be mindful that the court reserved the issue of whether a claim is pending while petitioning the United States Supreme Court for certiorari. Therefore, attorneys should file protective actions in state court to prevent the statute of limitations from expiring while petitioning for a writ of certiorari. Furthermore, attorneys should meticulously count the days to determine the new statute of limitations for state law claims, rather than simply estimating or counting a certain number of years into the future. Despite modern electronic scheduling capabilities, such a calendaring process is ripe for confusion and mistakes.