

264 Ga. 118
Supreme Court of Georgia.

SIEVERS a/k/a Kirkland

v.

ESPY, III, et al.

No. S94A0079.

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April 18, 1994.

Synopsis

Action was brought for medical malpractice. The Superior Court, Fulton County, Gail Tusan Joyner, J., dismissed suit as untimely, and appeal was taken. The Supreme Court, Benham, P.J., held that statute of repose, enacted after medical malpractice action was brought, was applicable to renewal action filed after initial action was voluntarily dismissed.

Affirmed.

Attorneys and Law Firms

***119 **232** William T. Cox, Jr., Powder Springs, GA, Billy E. Moore, Atlanta, Paul R. Bennett, Agnew, Schlam & Bennett, P.C., Columbus, for appellant.

****233** Y. Kevin Williams, J. Marcus Howard, W. Curtis Anderson, Downey, Cleveland, Parker, Williams & Davis, Marietta, Joseph W. Watkins, Jacqueline Drew, Long, Weinberg, Ansley & Wheeler, Atlanta, Benny C. Priest, Barnes, Browning, Tanksley & Casurella, Marietta, for appellees.

Opinion

***118** BENHAM, Presiding Justice.

Appellant Sievers filed a complaint on June 12, 1981, seeking damages for medical malpractice alleged to have occurred in July 1979. Sievers voluntarily dismissed the action on March 6, 1989, and timely filed a renewal action pursuant to OCGA §§ 9-2-61(a) and 9-11-41(a) on August 11, 1989. In 1993, the trial court, relying on the holding in *Wright v. Robinson*, 262 Ga. 844, 426 S.E.2d 870 (1993), granted appellees' motion to dismiss the renewal action on the ground that it was barred by the five-year statute of repose contained in OCGA § 9-3-71(b). Appellant has pursued this appeal, contending that the trial court violated the equal protection clauses of the U.S. and Georgia constitutions by applying the statute of repose retroactively to appellant's cause of action.

There is no question of retroactive application of the statute of repose since it, having been enacted in 1985, was in effect at the time the 1989 action was filed. *Hunter v. Johnson*, 259 Ga. 21(3), 376 S.E.2d 371 (1989). See also *Wright v. Robinson*, supra. There being no retroactive application of the statute of repose, we do not reach the question whether a retroactive application of the statute would violate equal protection.¹

Judgment affirmed.

All the Justices concur.

All Citations

264 Ga. 118, 442 S.E.2d 232

Footnotes

- 1 We note, however, that, in an uncodified section of the 1985 amendment to OCGA § 9–3–71 (1985 Ga.L., p. 556, § 3), the General Assembly provided a one-year grace period, ensuring that no cause of action in existence on the effective date of the amendment was immediately barred by the amendment. See *Allrid v. Emory University*, 249 Ga. 35(1)(b), 285 S.E.2d 521 (1982).