IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3632

Summary Calendar

RICHARD NORWOOD, individually
and on behalf of his minor
daughter, Brandi Lee Norwood,

Plaintiff-Appellant,

versus

JOHNNY HUFFMAN, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-92-3858-M)

(March 8, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Richard Norwood brought this suit on behalf of his daughter, Brandi Lee Norwood, in federal district court under diversity jurisdiction. Richard Norwood alleges that Brandi suffered harm from a car accident that occurred in late 1991. The district court found that the prescriptive period on the claims had run and

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

granted the defendants' motion for summary judgment. Norwood timely appeals.

I.

In our review of the district court's grant of summary judgment for the defendants, we accept as true Norwood's version of incidents that gave rise to this suit. Bishop v. Wood, 426 U.S. 341 (1976).

In late 1991, Jeannie Huffman, a minor, acting with the permission of her parents, Johnny Huffman and Sissie Huffman, drove a car with Brandi Lee Norwood riding as her passenger. Johnny Huffman and the Fair Haven Children's Home had custody over Brandi Lee Norwood.

While traveling in her father's Ford Taurus down a winding road, Jeannie reached down to change the station on the radio. She then lost control of the car, swerving off of the road and crashing into a large tree. Brandi Lee Norwood suffered serious injuries as a result of the accident. Jeannie and Brandi proceeded on foot to the house of Jeannie's tutor, where Jeannie placed a telephone call to Johnny Huffman. Jeannie and Brandi returned to the scene of the accident to await Johnny's arrival.

Johnny Huffman subsequently placed a telephone call to have the automobile towed. Despite Brandi's requests, Johnny did not seek medical treatment for Brandi that night or at any time thereafter. He did not inform the police of the accident.

On May 6, 1992, approximately six months after the accident, Richard Norwood assumed custody of Brandi. He seeks, on Brandi's

behalf, to recover for injuries stemming from the accident and from the Huffmans' subsequent failure to provide Brandi medical care.

II.

The factual issue that divides Norwood and the defendants on appeal is the date of the accident. Norwood filed suit on November 23, 1992. All parties appear to agree that a one-year prescriptive period applies to Norwood's claims.

Norwood asserts that the accident occurred on or about December 27, 1991. He offers the affidavit of Brandi Lee Norwood, who claims, "This accident happened on a clear, cold December night after Christmas of 1991." He concludes that less than one year passed between the accident and this legal action.

The defendants assert that the accident occurred on October 3, 1991. They provide the affidavits of Chris Galloway, Jeannie Huffman, and Ray Jenkins, Sr., to substantiate their claim. Chris Galloway states that he served as Jeannie Huffman's tutor. He asserts that on the night of October 3, 1991, Jeannie and Brandi came to his home and that he then accompanied them to the site of the accident where he observed the wrecked Ford Taurus.

Jeannie Huffman corroborates the date Galloway offers. She further recounts that she and her family were on vacation in Oklahoma on December 27, 1991, the date on which Brandi claims the accident occurred.

Ray Jenkins, Sr., recalls that on October 3, 1991, he received a request to tow a disabled vehicle and that on October 4, 1991, he towed the vehicle. His description matches others of Johnny

Huffman's car. The defendants claim based on these three affidavits that by the time Norwood filed suit, the prescriptive period had run.

Norwood argues that Brandi's affidavit raises a genuine issue of material fact as to the date of the accident, rendering summary judgment inappropriate. He also asserts, in the alternative, that under Louisiana law, the prescriptive period did not begin to run on Brandi's claims against Johnny Huffman, as Brandi's caretaker, until Richard Norwood assumed custody over her on May 6, 1992. See La. Civ. Code Ann. art. 3469 (West 1994) ("Prescription is suspended between: the spouses during marriage, parents and children during minority, tutors and minors during tutorship, and curators and interdicts during interdiction, and caretakers and minors during minority. A 'caretaker' means a person legally obligated to provide or secure adequate care for a child, including a tutor, guardian, or legal custodian."); La. Civ. Code Ann. art. 3472 (West 1994) ("The period of suspension is not counted toward accrual of prescription. Prescription commences to run again upon the termination of the period of suspension.").

As we find that a genuine issue of material fact exists as to the date of the accident, we need not address the latter argument. If the finder of fact concludes that the accident occurred on October 3, 1991, as the defendants maintain, the trial court should then entertain Norwood's contention that Louisiana law suspended prescription.

The fact issue Norwood raises on appeal is material. If Brandi Lee Norwood is correct, and the accident occurred in late December, 1991, then the prescriptive period had not run on her claims before Richard Norwood filed suit on her behalf. The question is whether her affidavit is sufficient to create a genuine issue of fact.

A jury might find that Jeannie Huffman's affidavit is not credible. Jeannie's alleged negligence caused Brandi's injuries and Jeannie is the daughter of two of the defendants. She has a strong interest in this case. Similarly, Chris Galloway, while not apparently related to any of the parties in this suit, had a relationship with Jeannie as her tutor that a jury might conclude colors his recollections. Finally, Ray Jenkins, Sr., may simply be mistaken about the date on which the accident occurred.

We make no final evaluation of the relative credibility of Brandi's affidavit and of the affidavits the defendants present. We note only that the finder of fact could reasonably conclude that the defendants' affidavits lack credibility and that Brandi's affidavit is highly credible. As we have held in the past, "in a summary judgment setting, with conflicting affidavits on material-fact questions, a final resolution is inappropriate. Optional reasonable inferences and credibility assessments may not be made on a motion for summary judgment. It is only when there are no genuine issues of material fact that disposition by summary judgment is appropriate." Brumfield v. Jones, 849 F.2d 152, 155-56 (5th Cir. 1988) (citing Fed. R. Civ. P. 56; Romano v. Merrill,

Lynch, Pierce, Fenner & Smith, 834 F.2d 523 (5th Cir. 1987), cert. denied, 487 U.S. 1205 (1988); Phillips Oil Co. v. OKC Corporation, 812 F.2d 265 (5th Cir.), cert. denied, 484 U.S. 851 (1987)).

REVERSED and REMANDED.