

FEDERAL STATUTE DOES NOT TOLL LIMITATIONS PERIOD ON STATE CLAIM WHERE FEDERAL CASE IS DISMISSED FOR LACK OF JURISDICTION

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Morris v. Giovan

Ct. Appeals, Div. One, November 12, 2010

Authored by the [JSH Appellate Team](#)

28 U.S.C. § 1367(d) basically states that when a federal court declines supplemental jurisdiction over a state claim and remands it to state court, the statute of limitations on the state claim is tolled while the claim is pending in federal court. Here, Morris filed a medical malpractice action in state court against a Doe defendant, though he knew the identity of the doctor who was allegedly negligent. The action was dismissed for lack of service. Morris then filed a lawsuit in federal district court under the Federal Tort Claims Act, asking the court to assert supplemental jurisdiction over his state law claims. The federal action was eventually dismissed for lack of subject matter jurisdiction, because there was never any federal question jurisdiction. Just before the federal court's dismissal, Morris filed a second state court action naming Dr. Giovan as a defendant. The state court dismissed the action because more than two years had elapsed since Morris was on notice that he had a claim against Dr. Giovan. Morris filed a Rule 60(c)(6) motion for relief from final judgment, arguing that the statute of limitations for his state law claims was tolled while his action was pending in federal court. The trial court denied the motion, and Morris appealed.

The court of appeals affirmed, rejecting Morris's argument that the statute of limitations on his state law claim was tolled during his federal case, because the federal court never had any jurisdiction over the lawsuit. It reasoned that if the federal court lacks subject matter jurisdiction, its power to assert supplemental jurisdiction over state law claims is never triggered, and thus the tolling provision of § 1367(d) never comes into play. The court noted that its decision did not address the question of whether § 1367(d) applied to other dismissals not mentioned by the statute.