

# WVa Supreme Court says man waited too long to sue

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CHARLESTON, W.Va. (AP) — The West Virginia Supreme Court says a man who found a piece of scalpel in his thumb can't press his claim because he waited too long to file his lawsuit.

In a 4-1 ruling, the high court said Paul and Melissa Forshey missed the deadline to file a medical malpractice lawsuit by one year.

Paul Forshey filed his complaint against Charleston Dr. Theodore Jackson in August 2006, more than 11 years after Jackson performed surgery on Forshey to relieve his carpal tunnel syndrome. A Kanawha County circuit judge dismissed the case in 2007.

During arguments before the high court, the Forsheys' lawyer, Mark Underwood, argued the lawsuit should be reinstated under the state's continuous medical treatment doctrine.

Underwood argued Forshey had complained about pain in his hand to Jackson during follow-up visits, but it wasn't until 2005 that an ex-ray discovered a 3.4 centimeter-long-by-5-millimeter-wide piece of scalpel blade near Forshey's left thumb.

The high court accepted the doctrine argument, but said Forshey's circumstances didn't apply because he could pinpoint the exact date of the injury, which was the day of his 1995 surgery.

"Under the continuous medical treatment doctrine, when a patient is injured due to negligence that occurred during a continuous course of medical treatment, and due to the continuous nature of the treatment is unable to ascertain the precise date of the injury, the statute of limitations will begin to run on the last date of treatment," the court said in an opinion written by Justice Robin Davis.

"Merely establishing the continuation of the ill effects of an original wrongful act will not suffice."

Underwood said the Forsheys feel vindicated that their doctrine argument was accepted, but "Unfortunately, it didn't provide Mr. Forshey any relief."