

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000109-MR

LUTHER E. CHAFFIN, ADMINISTRATOR
OF THE ESTATE OF JEFFREY
WAYNE STEVENS

APPELLANT

v. APPEAL FROM LAWRENCE CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
ACTION NO. 14-CI-00165

LOUISA HOME CARE SERVICES,
LLC, D/B/A THREE RIVERS
HOME CARE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, D. LAMBERT, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Luther E. Chaffin, Administrator of the Estate of Jeffrey

Wayne Stevens (Stevens or the Estate) brings this appeal from a January 12, 2016,

Order of the Lawrence Circuit Court dismissing the Estate's complaint as amended. We affirm.

In 2013, Jeffrey Wayne Stevens underwent surgery at the University of Kentucky, Markey Cancer Center, (UK) to remove portions of his liver, small intestines, and colon. After returning home, Three Rivers Home Care (Home Care) sent nurses three times per week to care for Stevens' surgical wound. Home Care nurses utilized a wound vac and black colored sponges. On one such visit, Stevens stated that he remembered a Home Health nurse placing two sponges into the wound; however, during the next visit, he believed the Home Care nurse only removed one sponge.¹ Stevens told the nurse that he thought two sponges were placed in the wound at the previous visit, but the nurse assured him no other sponges were in the wound. It appears from the record below that June 5, 2013, was the last date that Home Care provided wound care to Stevens.

On July 26, 2013, staff at the Kings Daughter Medical Center discovered a black sponge in Stevens' wound but could not remove it without surgery. On July 29, 2013, the sponge was removed by surgical procedure at UK.

On June 13, 2014, Stevens filed a medical negligence action against the Hospital of Louisa, Inc., d/b/a Three Rivers Medical Center (Medical Center).

In the complaint, Stevens alleged, in part:

7. Upon the Plaintiff's discharge from UK Hospital, he was placed into the care of the Defendant's home-based health care services, Three Rivers Home Care [Home Care].

¹ Jeffrey Wayne Stevens' deposition was taken January 12, 2015.

8. Three Rivers Home Care is explicitly affiliated with the Defendant Three Rivers Medical Center.

9. Three Rivers Home Care provided wound care to the Plaintiff with services being provided three times per week.

10. Three Rivers Home Care sent a nurse to the Plaintiff's home every other day to change the sponges that were used in conjunction with a wound vac. These sponges are black in color and far different from a surgical sponge.

.....

13. On or about July 29, 2013, Plaintiff underwent an additional procedure at UK Hospital in Lexington, Kentucky[,] to remove the retained wound vac sponge attached to the Plaintiff's flesh.

.....

16. The Plaintiff states that, at all times relevant herein, Defendant Hospital of Louisa d/b/a Three Rivers Medical Center was the administrator and/or entity bearing ultimate responsibility for the management of Home Care.

17. Plaintiff had medical problems that required in home treatment, and he went to Home Care seeking professional care for these problems. Home Care failed to provide him with treatment and/or care that would be expected of reasonable healthcare providers acting under the same or similar circumstances. The agents and employees of Home Care had a duty to exercise ordinary care and/or the highest degree of care in treating the Plaintiff.

.....

21. All persons alleged in the Complaint to have committed tortious acts against the Plaintiff were agents,

either actual or ostensible, or employees of Home Care, and Defendant Three Rivers Medical Center is liable for their acts pursuant to the doctrine of *respondet superior*.

Verified Complaint at 2-5. The Medical Center filed an answer on July 2, 2014.

Therein, the Medical Center specifically responded:

6. With regard to paragraph 7 of the Complaint, Defendant specifically denies that it “placed” Plaintiff into the care of Three Rivers Home Care; Defendant does not own or operate Three Rivers Home Care.

7. With regard to paragraph 16 of the Complaint, Defendant specifically denies that it was the administrator and/or entity bearing responsibility for the management of Three Rivers Home Care.

8. Plaintiff’s injuries and damages, if any, were caused in whole or in part, by the negligent or wrongful acts and/or omissions of other individuals or entities but for which they would not have occurred and for which the Defendant is not responsible or liable.

Answer at 8.

Subsequently, on June 25, 2015, almost two years after the occurrence of the alleged negligence, Stevens filed a motion for leave to file an amended complaint “in order to correct a mistake as to the identity of the proper Defendant.” Stevens alleged that the proper defendant was “Louisa Home Care Services, LLC, doing business as Three Rivers Home Care.” Stevens maintained that he made “a mistake in corporate identity.” Stevens sought to have the amended complaint relate back in time to the filing of the original complaint under Kentucky Rules of Civil Procedure (CR) 15.03 and thus be considered timely filed.²

² Presumably, based upon the record in this case, the motion to file an amended complaint was in response to the Hospital of Louisa, Inc., d/b/a Three Rivers Medical Center’s motion for

By order entered July 14, 2015, the circuit court granted Stevens'

motion and initially held that CR 15.03 was applicable:

This matter is governed by Civil Rule 15.03(2). Under that rule an amendment relates back to the original claim if the party brought in by the amendment has received sufficient notice of the institution of the action that he will not be prejudiced and knew or should have known that the action would have been brought against him except for a mistake concerning the identity of the proper party. In this case, the apparent proper party is Louisa Home Care Services LLC, d/b/a Three Rivers Home Care as opposed to Hospital of Louisa, Inc. As pointed out by the plaintiff in their motion to file the amended complaint, the President of Hospital of Louisa, Inc. is W. Larry Cash. He is also a manager of Louisa Home Care Services LLC. Secretary of Hospital of Louisa, Inc. is Rachel Seifert. She is also manager of Louisa Home Care Services LLC. The third manager of Louisa Home Care Services LLC is Martin Schweinhert. He is also Director of Hospital of Louisa, Inc. They all have the same address, 4000 Meridian Boulevard, Franklin, Tennessee[,] 37067. It appears clear to the Court that there is sufficient identity between the current defendant and the proposed defendant that there will be no prejudice to the defendant in the amendment of the complaint and it is clear that the proposed defendant knew or should have known of this action. . . .

July 14, 2015, Order at 1-2.

Stevens passed away on August 9, 2015, and his Estate was substituted as plaintiff on December 11, 2015, by the circuit court. On December 21, 2015, Home Care filed a motion to dismiss the amended complaint, arguing that the action was untimely filed. Home Care maintained that the original complaint was filed outside the one-year limitation period, and that even if the

summary judgment, filed June 5, 2015.

original complaint were timely filed, the amended complaint did not relate back in time to the filing of the original complaint under CR 15.03(2)(b).

By Order entered January 12, 2016, the circuit court granted Home Care's motion and dismissed the amended complaint against Home Care. The circuit court concluded that Stevens knew that Home Care's nurse failed to remove the sponge "some time prior to June 5, 2013"; thus, the circuit court believed that the original complaint was untimely filed on June 13, 2014. Additionally, the circuit court also held that the amended complaint naming Home Care did not relate back in time to the filing of the original complaint under CR 15.03(2):

Furthermore, the Court is of the opinion that even if the statute of limitations had been complied with in this case, there is no relation back of the amended complaint to the time of the filing of the original complaint. Rule 15.03(2) requires, among other things, that the amendment relates back if the Defendant knew or should have known that but for a mistake concerning the identity of the proper party, the action would not have been brought against it. In this case, Hospital of Louisa, Inc.,] pointed out clearly in its answer that it did not own or operate Three Rivers Home Care, and had no responsibility for the management of Three Rivers Home Care. That clearly put the Plaintiff on notice that Three Rivers Home Care was not a subsidiary of Hospital Louisa, Inc.

January 12, 2016, Order at 3.³ This appeal follows.

STANDARD OF REVIEW

³ The circuit court effectively reconsidered its July 14, 2015, interlocutory order allowing the amended complaint to be filed and clearly determined in a final order that the amended complaint was untimely filed as a matter of law.

As noted, the circuit court entered an Order dismissing the Estate's complaint against Home Care. Upon review of this Order, it is clear that the circuit court considered matters outside the pleadings, including Stevens' deposition. Where matters extraneous to the pleadings were considered by the circuit court, our review shall proceed under the summary judgment standard pursuant to CR 56. *See Ferguson v. Oates*, 314 S.W.2d 518 (Ky. 1958). Thereunder, summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). All facts and inferences therefrom are to be viewed in a light most favorable to the nonmoving party. *Id.*

ANALYSIS

To begin our analysis, we note that the one year statute of limitations is applicable to this case for appellant to have asserted a negligence claim against Home Care. Kentucky Revised Statutes (KRS) 413.140. For purposes of this opinion, we agree with the Estate that Stevens did not discover that the sponge remained in his body until July 26, 2013, when it was determined through a procedure at King's Daughter Medical Center that the sponge was still intact in Stevens' abdomen. Thus, the one year statute of limitations for a claim against Home Care began to run on July 26, 2013. *See Wiseman v. Alliant Hospitals, Inc.*, 37 S.W.3d 709 (Ky. 2000).

As noted, the original complaint filed by Stevens against the Medical Center was filed on June 13, 2014, clearly within the one year statute of limitations

period. However, the Medical Center was the wrong defendant. As noted, on June 25, 2015, almost two years after the discovery of the alleged negligence, Stevens filed a motion to amend his complaint, asserting for the first time his negligence claim against Home Care. In Stevens' motion and supporting memorandum to amend the complaint, Stevens alleged a "mistake in corporate identity" to support the relation back of the amendment pursuant to CR 15.03. Record at 203-220.

Upon a thorough review of the record, including the supporting exhibits attached to the Estate's brief from the records of the Kentucky Secretary of State, we do not believe a mistake of corporate identity occurred in this case. The language from the complaint previously recited in this opinion unequivocally indicates that Stevens intended to sue the Medical Center under a mistaken legal belief or theory, but not mistaken identity, that Home Care was affiliated with the Medical Center. The Medical Center is a corporation and Home Care is a limited liability company (LLC). The fact that they have the same managers or directors does not mean they are the same entity. The complaint explicitly recognizes that Home Care is a separate legal entity, alleging that Home Care's agents or employees committed tortious acts against Stevens. And, the documents relied upon by the Estate from the Secretary of State to establish mistaken corporate identity, were available to counsel in June 2014. These records clearly and succinctly reflect that the Medical Center was a Kentucky Corporation and Home Care was a Delaware LLC doing business in Kentucky under the assumed name of "Three Rivers Home Care" in 2014. Stevens could have protected his timely claim

against Home Care in June 2014 by simply naming Home Care as a co-defendant which would have survived the Medical Center's dismissal. In its answer filed on July 2, 2014, the Medical Center put Stevens on notice it was not legally affiliated with or responsible for the management of Home Care. Stevens could have still asserted a timely claim against Home Care within the one-year statute of limitation, July 26, 2014, by either seeking to amend the complaint under CR 15.01 or by simply filing a new action against Home Care before the limitation period ran. Stevens did neither and thus the circuit court was correct in ruling that the claims were barred by the one year limitation set out in KRS 413.140.

For similar reasons, the Estate's argument regarding CR 15.03 and the relation back of the amended complaint must also fail. The Estate contends that the circuit court erred by concluding that the amended complaint did not relate back in time to the filing of the original complaint under CR 15.03. The Estate points out that it erroneously named the Medical Center as the defendant in the original complaint but that the proper defendant was Home Care. In the amended complaint, the Estate named Home Care as the defendant. The Estate asserts that the "same claim" asserted in the original complaint against the Medical Center is also asserted in the amended complaint against Home Care. Estate Brief at 13. Additionally, the Estate argues that the claims in the original complaint against the Medical Center and in the amended complaint against Home Care "arose out of the same conduct, transaction and occurrence." Estate Brief at 13. According to the Estate, "[t]he only question under CR 15.03 . . . is whether . . . [Home Care] knew

or should have known that, absent some mistake, the action would have been brought against it.” Estate Brief at 14. The Estate also argues that the circuit court erred by concluding that the amended complaint did not relate back in time to the filing of the original complaint under CR 15.03 because the Estate “had notice that it had sued the wrong entity.” Finally, the Estate argues that knowledge or diligence upon its part is irrelevant to application of CR 15.03. We disagree with all of these arguments.

To begin, the claims in the complaint against the Medical Center were premised upon its control or ownership of Home Care and more importantly, based upon the mistaken legal theory that the Medical Center was responsible for damages under the doctrine of *respondeat superior*. None of the claims asserted against the Medical Center are referenced in the amended complaint. In fact, the Estate misrepresented to the circuit court that the “amended pleading asserts an identical claim against Three Rivers Home Care.” Record at 205. This is simply not true, as the amended complaint for the first time asserted negligence claims against Home Care as a separate legal entity, which Stevens had knowledge of at the time of filing the complaint in June 2014. Additionally, there was no reference to the *respondeat superior* doctrine in the amended complaint.

As concerns the CR 15.03 argument, the Rule reads:

(1) Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

(2) An amendment changing the party against whom a claim is asserted relates back if the condition of paragraph (1) is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (a) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (b) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

CR 15.03 permits an untimely filed amended complaint to “relate back” to the original complaint, so the amended complaint is treated as being filed at the time of the original complaint. *See Phelps v. WEHR Constructors, Inc.*, 168 S.W.3d 395 (Ky. App. 2004). Under CR 15.03, a plaintiff seeking to add a defendant to an action after the relevant limitation period has expired must satisfy three requirements: (1) the claim(s) asserted in the amended complaint must arise from the same “conduct, transaction, or occurrence” as set forth in the original complaint, (2) the newly named party must have received such notice of the action that he will not suffer prejudice, and (3) the newly named party must have known that but for a mistake concerning the identity of the proper defendant he would have been so named. CR 15.03. It has been recognized that the above three requirements of CR 15.03 must be “strictly construed”:

[CR 15.03] reflects the tension between the plaintiff’s interest in relation back to preserve the plaintiff’s claim and the defendant’s interest in a limitations defense—timely notice and response. In order to maintain a proper balance between these competing interests, if a new party is to be added after the limitations period has run, then all

three requirements of CR 15.03 must be strictly construed. (Footnote omitted.)

Phelps, 168 S.W.3d at 397.

In this case, the Estate cannot meet the requirement of mistaken identity of the proper defendant to support relation back of the amended complaint. Stevens knew or should have known that the Medical Center was the wrong defendant or otherwise was not responsible for Steven's negligence claims in June 2014. He acknowledged the same at his deposition in January 2015. Record at 228. CR 15.03 is not intended to remedy a "mistake" of legal theory or liability, especially given that Stevens knew the Medical Center and Home Care were separate and distinct legal entities when he filed the original complaint. Nor is CR 15.03 intended to correct a party's failure to conduct due diligence, given that the Estate waited until June 2015 to file its motion to amend the complaint.⁴ Accordingly, we agree with the circuit court that the Estate failed to satisfy CR 15.03(2)(b) and that the amended complaint naming Home Care as defendant was untimely filed.

We view the any remaining contentions of error asserted by the Estate as moot.

⁴ During oral argument, counsel for appellant indicated that there had been a change of counsel within the firm representing Stevens/the Estate during the litigation, suggesting that this had contributed to the delay in filing the motion to amend the complaint. However, our review of the record reflects that the same attorney who filed the complaint in June 2014, was also the same attorney who filed the motion to amend and the amended complaint in June 2015.

In sum, we are of the opinion that the circuit court properly rendered summary judgment dismissing the Estate's claims against Home Care as time-barred.

For the foregoing reasons, the Order of the Lawrence Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Brad Derifield
James Brandon May
Louisa, Kentucky

BRIEF AND ORAL ARGUMENT
FOR APPELLEE:

Nicholas R. Hart
Louisville, Kentucky

ORAL ARGUMENT FOR
APPELLANT:

Brad Derifield
Louisa, Kentucky