STATE OF MICHIGAN

COURT OF APPEALS

CHERYL DEJARNETTE,

Plaintiff-Appellant,

v

AMERICAN BUILDING MAINTENANCE,

Defendant-Appellee.

UNPUBLISHED
March 14, 1997

No. 191705
Wayne Circuit Court
LC No. 95-507052

Before: MacKenzie, P.J., and Wahls and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition on the basis of the statute of limitations. We affirm.

Plaintiff argues that the trial court should have denied defendant's motion because her amended complaint merely corrected a misnaming of the right defendant. Consequently, plaintiff argues, defendant had notice of her claim within the applicable limitations period. We disagree.

When this court reviews a motion for summary disposition under MCR 2.116(C)(7), it accepts the allegations in a well-pleaded complaint as true and construes them in the plaintiff's favor. *Kuebler v Equitable Life Assurance Society*, 219 Mich App 1, 5; ___ NW2d ___ (1996). This Court reviews questions of law de novo. *Id.* Here, plaintiff's initial and amended complaints alleged that she suffered personal injury on or about March 23, 1992. In Michigan, the limitations period for ordinary negligence actions is three years. MCL 600.5805(8); MSA 27A.5805(8); *Stephens v Dixon*, 449 Mich 531, 534; 536 NW2d 755 (1995). Accordingly, the period of limitations would have run on March 23, 1995, unless it was tolled by some action on the part of plaintiff.

Plaintiff filed her initial complaint on March 13, 1995, naming "Enviro-Clean Services, Inc." as the defendant. The complaint stated that Enviro-Clean Services, Inc. was formerly named American Building Maintenance, Inc. On May 1, 1995, plaintiff moved to amend her complaint, stating that Enviro-Clean Services, Inc., was not the company to which the allegations in her complaint referred. Initially, the trial court granted plaintiff's motion to amend her complaint, and denied defendant's motion

for summary disposition. After conducting further research, the trial court reconsidered, and granted defendant's motion for summary disposition based on the statute of limitations.

An amendment of pleadings under MCR 2.118(D) will generally not relate back to the original filing date for purposes of adding a new principal defendant. *Miszewski v Knauf Construction, Inc*, 183 Mich App 312, 316; 454 NW2d 253 (1983). However, where an amendment of pleadings is done merely to correct a prior error in naming the proper party to the lawsuit, and the proper defendant has not been denied notice of the action due to this misnomer, the amendment relates back to the date of the original pleading. *Id.* Thus, when the proper defendant has been served but the summons and complaint misname him, the defendant will ordinarily be unable to show the type of prejudice necessary to prevent the amended complaint from relating back to the date on which the original complaint was filed. *Wells v Detroit News, Inc*, 360 Mich 634, 641; 104 NW2d 767 (1960); *Vander Bossche v Valley Pub*, 203 Mich App 632, 642; 513 NW2d 225 (1994); *Miszewski, supra*, p 317.

In contrast to the *Wells* line of cases, here, there is no identity between the corporation named in plaintiff's initial complaint and the corporation which plaintiff intended to sue. In *Wells, supra*, p 639, although the initial complaint named the wrong party, it was not disputed: 1) that service was made upon a person who was a proper representative of both the named defendant and the intended defendant at the legal address of both corporations; 2) that both corporations were in the same general business, had most of the same officers, and were represented by the same law firm; and 3) that the officers of the intended defendant were clearly informed of facts which indicated to them the particular corporation which plaintiff intended to sue. Similarly, in *Vander Bossche, supra*, p 634, the plaintiff's initial complaint named an "unknown liquor establishment" as the dramshop defendant. Later, the plaintiff filed an amended complaint naming Valley Pub as the liquor licensee. *Id.*, pp 634-635. The plaintiff then discovered that the actual liquor licensee was not Valley Pub, but a corporation named M & H Beverage, Inc,, which was operating under the assumed name of Valley Pub. *Id.*, p 635. This Court noted that M & H Beverage, Inc., held itself out to the public as Valley Pub. *Id.*, p 639. Accordingly, the Court held that service on Valley Pub effectively operated as service on M & H Beverage, Inc. *Id.*, pp 641-642. Finally, in *Miszewski, supra*, p 317, the plaintiff's initial complaint named as the defendant Mr. Lynn Knauf doing business as Knauf Construction, Inc. Later, plaintiff filed an amended complaint against Knauf Construction, Inc. *Id.*, p 313. This Court held that service of process on Mr. Knauf put his corporation on notice of plaintiff's claim. *Id.*, p 317.

Here, it is undisputed that there were two unrelated corporations with the name of American Building Maintenance. Plaintiff's original complaint named the American Building Maintenance which had changed its name to Enviro-Clean Services, Inc. However, it was the other corporation named American Building Maintenance which had contracted to maintain the building in which plaintiff was injured.

Instead of the *Wells* line of cases, this case is controlled by *Ray v Taft*, 125 Mich App 314; 336 NW2d 469 (1983). In *Ray, supra*, p 318, the plaintiff filed his initial complaint against the driver of a car that struck his motorcycle. He then amended his complaint to add dramshop actions against "Albert T. Taft, Dennis H. Taft, doing business as The Squire Pub, jointly and severally." *Id.* Several

months later, and after the limitations period had run, the plaintiff filed a second amended complaint which added Harold Pukoff as a defendant. *Id.* Under these facts, this Court held that the plaintiff had not complied with the statute of limitations in his claim against Pukoff:

> Because defendant Pukoff was the true defendant, the trial court did not encounter a misnomer situation. Pukoff was not named as a defendant until after the expiration of the period of limitation, and was not served in either his right or a wrong name until after the expiration of the statutory period of limitation. Neither is there anything in the record to suggest that Pukoff had actual notice or constructive notice of the lawsuit within the limitations period. [*Id.*, pp 320-321.]

Here, service on the corporation which had changed its name to Enviro-Clean Services, Inc., did not give constructive notice of plaintiff's claim to the American Building Maintenance which was the true defendant. Nothing in the record suggests that the proper party was served in either its right or wrong name until after the expiration of the statutory period of limitation. See *Ray*, *supra*, p 319; see also *Apple v Solomon*, 12 Mich App 393; 163 NW2d 20 (1968). Plaintiff did not toll the statute of limitations until she moved to amend her complaint on May 1, 1995, which was after the three year period of limitation had expired. Compare *Fagerberg v LeBlanc*, 164 Mich App 349, 355; 416 NW2d 438 (1987) (where the plaintiff moved to substitute the real party in interest as a defendant *before* the statute of limitations had expired). Insofar as *Wells*, *supra*, p 641, and *Miszewski*, *supra*, p 316, require that the proper defendant receive notice of a plaintiff's claim, the filing of plaintiff's complaint against a wrong and unrelated corporation had no more legal effect than would have the filing of a "John Doe" complaint. See *Thomas v Process Equipment Corp*, 154 Mich App 78, 84; 397 NW2d 224 (1986); *Fazzalare v Desa Industries, Inc*, 135 Mich App 1, 6; 351 NW2d 886 (1984). Accordingly, the trial court did not err in granting defendant's motion for summary disposition. *Stephens*, *supra*, p 534.

Plaintiff also argues that the trial court abused its discretion in denying her motion for reconsideration because defendant should be estopped from asserting its statute of limitations defense where it knowingly misrepresented its true name on the janitorial contract between defendant and the DSS, plaintiff's employer. Plaintiff did not present any new facts which could not have been pled or argued prior to the trial court's original order. Accordingly the trial court did not abuse its discretion in denying plaintiff's motion for reconsideration. MCR 2.119(F)(3); *Cason v Auto Owners Insurance Co*, 181 Mich App 600, 605; 450 NW2d 6 (1989); *Charbeneau v Wayne County General Hospital*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

Affirmed. Defendant being the prevailing party, it may tax costs pursuant to MCR 7.209.

/s/ Barbara B. MacKenzie
/s/ Myron H. Wahls
/s/ Jane E. Markey