STATE OF MICHIGAN

COURT OF APPEALS

FIGGIE INTERNATIONAL, INC.,

Plaintiff-Appellant,

v

HARTFORD FIRE INSURANCE COMPANY, a/k/a HARTFORD INSURANCE GROUP, a/k/a ITT HARTFORD INSURANCE GROUP,

Defendant-Appellee,

and

MICHAEL HANKS,

Defendant.

UNPUBLISHED

April 8, 1997

No. 190827
Oakland Circuit Court
LC No. 94-482720-CK

Before: Sawyer, P.J., and Saad and Gage, JJ.

PER CURIAM.

Plaintiff, Figgie International, Inc., appeals by right an order granting summary disposition to defendant. We affirm.

In November 1993, plaintiff was served with a lawsuit alleging that it was liable for injuries sustained by defendant, Michael Hanks, which occurred while Hanks was employed by Safway Steel Products, one of plaintiff's subsidiaries, at the Chrysler Technology Center construction project in Auburn Hills. Plaintiff sought insurance coverage from Hartford under an insurance policy procured by Chrysler Corporation on behalf of the contractors and subcontractors performing work at the site. Hartford denied the claim, stating that the policy covered certain certified contractors (including Safway), but not "suppliers, manufacturers, parent companies, etc." Plaintiff commenced the instant declaratory judgment action to determine whether Hartford had a duty to defend and indemnify it.

Meanwhile, the complaint in the underlying lawsuit was amended to add Safway as a party defendant. Based on that amendment, Hartford agreed to assume defense of the litigation. Plaintiff amended its complaint for declaratory judgment, alleging that it was entitled to reimbursement for costs incurred from the outset of the underlying lawsuit. Plaintiff filed a motion for summary disposition, which

was denied by the trial court. Instead, the trial court granted summary disposition to Hartford. The court also denied plaintiff's motions for reconsideration.

On appeal, plaintiff first argues that the trial court erred in concluding that Hartford did not owe a duty to defend the underlying lawsuit because Hartford had an obligation to "look behind the pleadings" to determine whether they arguably stated a cause of action against Safway, its subsidiary, which was insured under the policy. This Court reviews a trial court's decision to grant summary disposition de novo on appeal. *Sharper Image Corp v Dep't of Treasury*, 216 Mich App 698, 701; 550 NW2d 596 (1996).

The trial court did not state the basis for its decision granting summary disposition in Hartford's favor. However, since Hartford did not file its own motion for summary disposition, we believe that the trial court's decision can only be characterized as being under MCR 2.116(I)(2). "Summary disposition is properly granted to the opposing party if it appears to the court that that party, rather than the moving party, is entitled to judgment." *Sharper, supra*; MCR 2.116(I)(2). Moreover, because the trial court's decision was based on a finding that Hartford did not owe a duty to defend plaintiff, the standards applicable to a motion under MCR 2.116(C)(10) apply. See *Fitch v State Farm Fire & Casualty Co*, 211 Mich App 468, 470; 536 NW2d 273 (1995). A motion under MCR 2.116(C)(10) tests the factual support for a party's claim. *Royce v Citizens Ins Co*, 219 Mich App 537; ___ NW2d ___ (1996). The reviewing court must consider the pleadings, affidavits, depositions and other available evidence, and "determine whether a record might be developed that will leave open an issue upon which reasonable minds could differ." *Id*.

Plaintiff cites *Protective National Ins Co of Omaha v Woodhaven*, 438 Mich 154, 159; 476 NW2d 374 (1991), and *Detroit Edison Co v Michigan Mutual Ins Co*, 102 Mich App 136; 301 NW2d 832 (1980). However, we agree with Hartford's assertion that those cases are distinguishable. *Protective*, *supra*, and *Detroit Edison*, *supra*, both dealt with the duty of an insurer to defend *its insured* in an underlying action. They hold that an insurer's duty to defend arises if the allegations *against the insured* in the underlying action even arguably come within the policy coverage. For example, in *Protective*, the issue was whether the policy's pollution exclusion was applicable. *Protective, supra* at 160-161. However, in neither case was there a dispute, as here, about whether the underlying claim was in fact against the insured.

Upon review of the underlying complaint in the present case, we find that it was against plaintiff, not Safway. The caption of the complaint did not name Safway as a defendant. Additionally, the complaint did not state a cause of action against or allege any wrongdoing by Safway. To the contrary, all the allegations of negligent and/or intentional tortious acts or omissions were made specifically against plaintiff, Chrysler Corporation, and Walbridge, Aldinger Company. Moreover, there was no reason for Hartford to conclude that Safway was being sued because Hanks had already filed a claim for, and was receiving, worker's compensation benefits from Safway. Consequently, because the underlying complaint was not against Safway, the trial court did not err in granting summary disposition in Hartford's favor.

Plaintiff next argues that the trial court erred in not allowing the amendment substituting Safway as a party in the underlying action to relate back to the filing of the original complaint. We disagree. The trial court addressed plaintiff's relation back argument in the context of two decisions denying plaintiff's motions for reconsideration, finding that the amendment could not relate back because Hartford was without notice. MCR 2.119(F)(3) provides:

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

"The grant or denial of a motion for rehearing is a matter addressed to the sound discretion of the trial judge." *Brown v Libbey-Owens-Ford Co*, 166 Mich App 213, 216; 420 NW2d 106 (1987). In this case, plaintiff did not demonstrate "a palpable error" entitling it to rehearing of its motion to dismiss.

MCR 2.118(D) provides for the relation back of amendments:

> Except to demand a trial by jury under MCR 2.508, an amendment relates back to the date of the original pleading if 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.

"A court rule should be construed in accordance with the ordinary and approved usage of the language in light of the purpose to be accomplished by its operation." *Smith v Henry Ford Hosp*, 219 Mich App 555; ___ NW2d ___ (1996). The rule allowing the relation back of amendments was developed "to associate the amended matter with the original pleading so that it would not be barred by the statute of limitation." *Id*. at 3.

We decline to extend the rule to the circumstances of this case. The issue is whether Hartford owed a duty to defend at the time the underlying action was first commenced, not whether the underlying action is barred by the running of the relevant period of limitation. Therefore, the purpose behind the relation back doctrine is simply not implicated here. The trial court should not have reached the notice issue at all. However, we will not disturb a decision reached by the trial court if it reached the right result for the wrong reason. *In re Condemnation of Private Property to Acquire Land for the Detroit Metropolitan Wayne Co Airport*, 211 Mich App 688, 696; 536 NW2d 598 (1995), lv gtd 453 Mich 925; 554 NW2d 916 (1996). Accordingly, we find that the trial court did not abuse its discretion in denying plaintiff's motions to reconsider.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Hilda R. Gage